Progressive Agenda for the States 2007

Values & Vision for America

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From the Executive Director

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Dear Friends:

For the seventh consecutive year, we are proud to offer you a *Progressive Agenda for the States*.

This year's policy handbook covers 50 different topics and contains 60 model bills. Eighty other topics, with model legislation, are also available on our website, www.stateaction.org.

The mission of the Center for Policy Alternatives (CPA) is to strengthen the capacity of state legislators to lead and achieve progressive change. We offer this book as a resource to help you take the offensive with progressive, values-based policies that address our nation's most pressing problems.

I am delighted to report that, despite the recent conservative stranglehold at the federal level, state legislators won dozens of progressive victories in 2006. Legislators are now at the forefront of the progressive movement, enacting the nation's most far-reaching, visionary measures. And we are proud of the part that CPA has played. Of the major proactive progressive state laws enacted this year, more than 50 percent resemble solutions featured in the *Progressive Agenda*.

With divided government at the federal level, state legislators shoulder a great responsibility. Americans are counting on legislators to stand up and lead our nation with public policies based on the progressive values of freedom, opportunity and security for all.

We wish the best of luck to all our allies in 2007. Your courage, sacrifice and hard work inspire all of us here at CPA, and we dedicate this *Progressive Agenda* to you.

Sincerely,

Tim McFeeley

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Introduction

The Progressive Agenda is designed to help you promote progressive ideas in your statehouse. It focuses mostly on the substance of law and legislation, facts and figures.

But to win our battles, we also need to carefully select the language we use. George Lakoff has done more than anyone to sound the message framing alert, arguing that conservatives—both Republican and Democratic—have mastered political linguistics while progressives—both Democratic and Republican—have failed "to put forth our moral vision, celebrate our values and principles, and shout them out loud."

I think he's right, and apparently so do activists who have displayed a voracious appetite for books and articles that deconstruct conservative language and bemoan progressives' failure to connect. Generally, these writings do an admirable job of explaining the problem—but they offer few or no practical solutions.

Progressives are the true defenders of fundamental American political values—freedom, opportunity and security.

The results of the 2006 elections do not suggest that progressives have solved the message framing puzzle. The victors didn't ride into office on a bandwagon of ideas. Democrats won because… well, they weren't Republicans. They weren't the agents of an unpopular president. They weren't the advocates of a disastrous war. They weren't playing footsy with Jack Abramoff, Tom DeLay, or Mark Foley. This let-the-other-side-blow-it approach won't work in state legislative battles, and it won't work in the next round of elections.

How can we successfully describe our progressive vision for the future? I don't mean a laundry list of policies—I mean a cogent philosophy of government. Polls consistently show that voters think that, compared to conservatives, we don't know what we stand for.

This year, the Center for Policy Alternatives (CPA) commissioned a post-election poll from Lake Research Partners specifically to find an answer to that question.

The poll had two special features. First, it was conducted immediately following the 2006 elections, making it an unusually accurate indicator of the beliefs of actual voters in the aftermath of a heated campaign. Second, the poll oversampled "persuadable" voters, that is, those whose votes are not reliably Republican or Democratic. This relatively small group of Americans—persuadables who actually vote—controls our national political destiny. They're the people we need to understand.

Before testing progressive messages, the poll addressed a preliminary question—do voters even like the word "progressive?" To our relief, it's not a bad label. In fact, voters are substantially more favorable toward "a progressive candidate" than "a liberal candidate." That should be no surprise—the word "liberal" has taken a beating for the past three decades. But what's surprising is that persuadable voters favor "a progressive candidate" slightly more than a conservative one.

That's not to say that voters completely understand what "progressive" means. No doubt there is considerable confusion—even among activists like us. But it's significant that 93 percent of voters and 92 percent of persuadables thought they knew enough about "a progressive candidate" to attempt a rating. This brand name is catching on.

Next, the poll examined voters' feelings about public policy and "values." Those of you who are familiar with CPA know that when we say values, we're not referring to the anti-choice, antigay, anti-science mores of the right wing. Values are ideals that describe the kind of society we are trying to build, such as those that make up the "Family of Values" on this page.

The good news from the poll—persuadable voters strongly agree with us on policy. The bad news—they tend to agree with conservatives on values. To persuadable voters, the strongest value is "freedom," which is the cornerstone of conservative philosophy. While voters like the bedrock progressive values of fairness and equality, they prefer freedom over fairness.

In economic matters specifically, persuadable voters prefer "free competition" to "fair competition." When asked if the best government "steps in to stop unfair competition" or "stays out of the way and lets the free market work," persuadable voters—by ten percentage points—favor the free market. All voters, including hard-core Democrats, think it's important "that government be kept small" and that we "limit the areas in which government is involved."

How do we overcome these message framing challenges? By showing that progressives are the true defenders of fundamental American political values—freedom, opportunity and security.

The poll tested various progressive messages against each other and against the generic conservative message of less government, lower taxes, and a return to religion and morality. The progressive messages were: Al Gore's "the people versus the powerful;" John Edwards' "two Americas;" a message voiced by many progressives in 2006—"the common good;" and CPA's own "freedom, opportunity, security."

CPA FAMILY OF PROGRESSIVE VALUES

Freedom ▼	Opportunity ▼	Security ▼
Liberty	Equality	Safety
Privacy	Justice	Health
Choice	Fairness	Protection
Basic rights	Level playing field	Quality of life

Distinguish with **Responsibility**

How'd they test? All the progressive messages were popular with voters. "The people versus the powerful" remains a very strong battle cry—it is the favorite among the Democratic base—but it doesn't do quite as well with persuadable voters. The "common good" is close behind, while "two Americas" brings up the rear. Unfortunately, none of these tops the generic conservative message among persuadable voters. They're good, but not good enough.

Against the conservative philosophy, there is only one winning message: "Government should promote freedom, opportunity and security for all Americans." Ninety-one percent of persuadables agree with that statement; 73 percent of them strongly agree. When tested not just as a slogan but as a three sentence description of philosophy, "freedom, opportunity, security" beats the conservative message among all voters and—more important—among the persuadables.

For much more information about progressive values and the Lake Research Partners poll, visit us at www.stateaction.org. This is a battle we can win.

Bernie Horn
Senior Director for Policy and Communication

Model Progressive Declaration of Values

As progressive Americans seek popular support, it is crucial that we convey the values that underlie our political philosophy. Four pillars support our common vision for the role of government:

First, progressives are resolved to safeguard our individual freedoms. For two centuries, America has been defined by its commitment to freedom. We must fervently guard our constitutional and human rights, and keep government out of our private lives.

Second, progressives strive to guarantee equal opportunity for all. America's historic success has come by providing all citizens, not just the privileged few, with the opportunity for a better life. We must vigorously oppose all forms of discrimination, create a society where hard work is rewarded, and ensure that all Americans have equal access to the American Dream.

Third, progressives are determined to protect our security. To make us truly secure, America not only must stop domestic criminals and foreign invaders, it must also promote our health and welfare. While forcefully continuing to protect lives and property, we must strengthen programs that insure the sick and vulnerable, safeguard the food we eat and products we use, and preserve our environment.

Fourth, progressives take responsibility for the future. America's strength is rooted in its history of investment for the benefit of future generations. We are determined to carry on that proud tradition, building a better nation and a better world for our children and their children.

Our progressive values differ fundamentally from those of conservatives. While conservatives work to protect freedom, opportunity and security only for a select few, progressives work to extend these protections to all Americans. While conservative anti-government ideology surrenders responsibility for solving America's social and economic problems, progressives insist that we can, and must, make a difference for future generations.

Our progressive values of freedom, opportunity, security and responsibility mean that:

1. **Progressives stand for better wages and benefits for working Americans.** Our economy should provide opportunities for all hard-working individuals and families to enjoy life. Therefore, we support legislation to increase the minimum wage.
2. **Progressives stand for affordable, high-quality, health care for all.** The security of comprehensive health insurance should be a right, not a privilege. Therefore, we support legislation to lower the cost of prescription drugs through greater access to manufacturer rebates, bulk purchasing, and re-importation.
3. **Progressives stand for building an education system that is the best in the world.** Every child should have an equal opportunity to learn. Therefore, we support legislation to invest in our children's education by recruiting well-qualified teachers, lowering class sizes, and developing more preschool and after-school programs.

4. **Progressives stand for a cleaner, safer environment.** We must conserve our natural resources both to secure our own health and well being, and to fulfill our responsibility to future generations. Therefore, we support legislation to increase energy efficiency and lower the level of pollutants in our air and water.
5. **Progressives stand for the elimination of discrimination.** Discrimination against any American diminishes freedom for us all. Therefore, we support legislation to eliminate the practice of racial profiling.
6. **Progressives stand for real security for the most vulnerable Americans.** We must protect the security of our nation's children, elderly, disabled and disadvantaged. Therefore, we support legislation to make healthcare, child care, elder care, and housing programs more accessible, efficient and effective.
7. **Progressives stand for the protection of privacy.** For Americans to be truly free, government must stay out of our private lives. Therefore, we favor legislation to keep abortion safe and legal, and ensure access to all reproductive health services.
8. **Progressives stand for a criminal justice system that focuses on security instead of retribution.** Tough sentences alone don't make us safer. We need to deter crime with more police, programs for at-risk youth, education, and rehabilitation. Therefore, we support legislation to stop the cycle of addiction by requiring rigorous treatment instead of incarceration for non-violent drug crimes.
9. **Progressives stand for fiscal responsibility.** Instead of providing equal opportunity, government spending and tax policies often deliver special benefits to wealthy special interests. Therefore, we support legislation to eliminate wasteful subsidies and tax breaks that are both unfair and not worth the cost.
10. **Progressives stand for an inclusive, open government.** Every American must have an equal opportunity to participate in our democracy. But average Americans are increasingly shut out by the influence of big money on politics. Therefore, we support legislation for public financing of elections.

As progressives, we walk in the footsteps of those great Americans whose words and deeds shaped our values today. Their hard work, courage, and sacrifice inspire us, and we dedicate our progressive labors to them.

[Like CPA's policy models, this model declaration is intended as a resource for legislators and candidates to edit and adapt to the situations in their own states.]

Acknowledgements

The *Progressive Agenda* is a collaborative effort. The organizations listed below drafted, edited or provided substantial information for policy summaries related to their areas of expertise.

Contributors:

AARP
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National Center for Lesbian Rights*
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National Gay and Lesbian Task Force*
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National Juvenile Defender Center
National Legislative Association on Prescription Drug Prices*
National Partnership for Women and Families*
Natural Resources Defense Council
Public Citizen
Sentencing Project
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Wider Opportunities for Women

* Designates members of the State Issues Forum (SIF), a collaboration of national advocacy organizations that work to advance progressive policy at the state level. The Center for Policy Alternatives, founder and chair of the SIF, convenes meetings and staffs the forum.

Budget and Taxation

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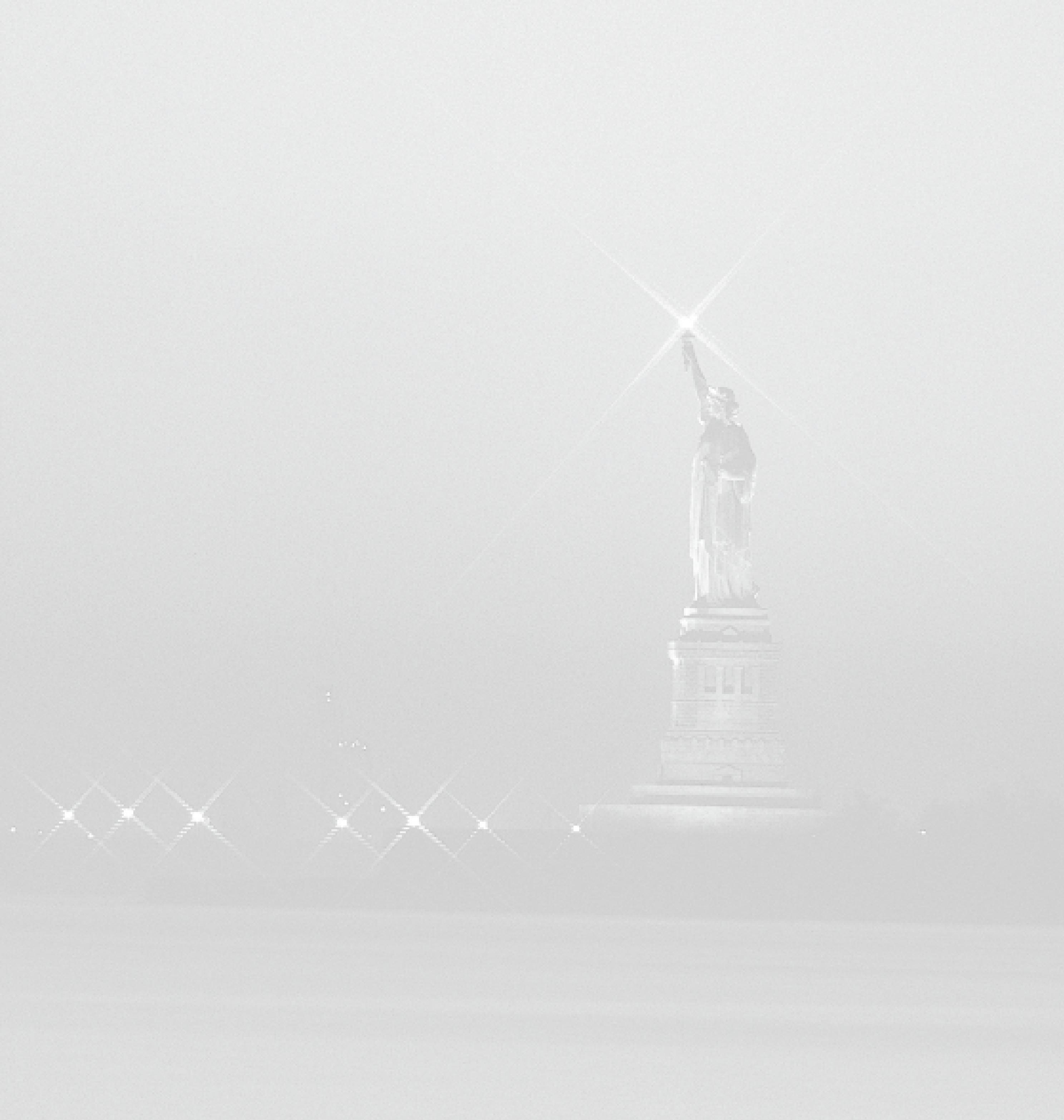

Balancing State Budgets

- ✱ Rebounding general fund balances led many states to pass unaffordable tax cuts.
- ✱ State taxes are structured so that state expenditures will exceed revenues in the long run.
- ✱ Recent state budget shortfalls were caused by tax cuts, not by overspending.
- ✱ A wide variety of policies are available to increase revenues.
- ✱ If progressives don't offer a program to balance state budgets, the conservative agenda—laying off government workers and slashing social services—will prevail.

Rebounding general fund balances led many states to pass unaffordable tax cuts.

After three years of losses, state revenues rebounded strongly. Nonetheless, fiscal directors in many states are concerned that spending needs will outstrip revenue growth over the longer term.[1]

State taxes are structured so that state expenditures will exceed revenues in the long run.

Overall, states face a long-term structural deficit—a chronic inability of state revenues to grow as quickly as the costs of government. This is because most state tax systems were designed in the 1930s and 1940s for a different kind of economy. Since that time, our nation's economy has shifted from production to services, far more corporations operate across state and national boundaries, mail order and Internet sales across state borders have exploded, income taxes have become less progressive, and federal policies have increased state budget responsibilities.[2]

Recent state budget shortfalls were caused by tax cuts, not by overspending.

Adjusted for inflation and population growth, spending of state-raised funds increased by only about two percent annually during the 1990s—substantially less than the increases in state spending over the past five decades.[3] Recent budget deficits are primarily the result of states responding to the strong economy of the 1990s with large, permanent cuts in personal and corporate income taxes. In most states, if taxes were restored to pre-1994 levels, budget problems would be solved. Many states have responded to recent increases in revenue by passing tax cuts. But these cuts will cause fiscal strain on future budgets.[4]

A wide variety of policies are available to increase revenues.

Nobody likes to raise taxes or cut government services, but most legislatures will eventually be forced to do one or both. The following are 25 possible ways to close budget deficits:

✱ **Tobacco Excise Tax—**Increase the tax and cover more tobacco products. One of the quickest and most popular ways for states to raise hundreds of millions of dollars is to increase the tobacco tax. State polls conducted across the country have found that Americans strongly favor tobacco tax increases of 50 or 75 cents per pack.[5] Since 2002, 42 states (AL, AK, AZ, AR, CO, CT, DE, GA, HI, ID, IL, IN, KS, KY, LA, ME, MD, MA, MI, MN, MT, NE, NV, NH, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WY) have raised cigarette taxes. Of these, Arizona, Colorado, Montana, Oklahoma, Oregon, South Dakota and Washington increased tobacco taxes by statewide referendum. In 2006, five states (AK, HI, NJ, NC, SD) raised their tobacco taxes, providing nearly half a billion dollars in revenue.[6] States have also expanded the tax to cover chewing tobacco and snuff. In addition to the fiscal benefits, higher tobacco taxes save thousands of lives by reducing tobacco use.

★ **Alcohol Excise Tax—**Increase the tax. All states impose a "sin" tax on alcohol, but most tax alcohol at low rates. The average excise tax on liquor is about four dollars per gallon; several state taxes exceed six dollars per gallon. Most states tax beer and wine at much lower rates than spirits, based on the percentage of alcoholic content. States with the lowest alcohol taxes include AR, CO, IN, KS, KY, LA, MD, MO, NE, NV, ND, SC and TX. A 2004 poll conducted for the American Medical Association found that, by a margin of two-to-one, voters favor a state alcohol tax increase to help cover the ancillary healthcare and law enforcement costs of drinking.[7] In 2005, both Kentucky and Washington increased their alcohol excise taxes, resulting in $14.4 and $22 million increases, respectively, in state revenues.[8]

★ **Estate Tax—**Decouple from federal estate tax. States have lost billions of dollars in tax revenue because of a change to the federal estate tax enacted in 2001. Most state estate tax formulas are linked to the federal estate tax credit, which is being phased out over the course of three years. As a result, revenues are plummeting. Fourteen states (IL, ME, MD, MA, MN, NE, NJ, NY, NC, OK, RI, VT, WA, WI) have taken action to decouple from the federal estate tax. Three states (CT, KS, WA) have estate taxes that are not tied to the federal tax. Seven other states (IN, IA, KY, OH, OK, PA, TN) were never coupled to the federal estate tax.[9] Washington's new estate tax, which uses a rate structure different from federal law, generated approximately $40 million in 2005.[10]

★ **Personal Income Tax—**Raise the rate for the highest incomes. The simplest way to make income tax rates more progressive is to institute a surcharge or a new tax bracket for individuals who earn more than $250,000, $500,000 or $1 million per year. In 2004, New Jersey increased revenues by more than $850 million through a 2.6 percent rate increase for taxpayers who earn more than $500,000. Similarly, a November 2004 California referendum instituted a one percent surtax on taxpayers earning more than $1 million. This kind of increase can be enacted as a permanent or temporary tax. During the last recession, four states increased top rates permanently, while five others enacted temporary increases.

★ **Personal Income Tax—**Implement a more graduated scale. If taxes must be raised, why not do it fairly? Of the 41 states with a personal income tax on earnings, only 14 have graduated tax brackets that truly differentiate between lower- and upper-income taxpayers. Six states have a flat tax rate—no income brackets at all. In 16 other states, the top tax bracket is $25,000 or less. In other words, about half of the states are ripe for a fundamental reform of income tax brackets.

★ **Personal Income Tax—**Eliminate or suspend exemptions, credits or deductions. Virtually every state with an income tax has created or expanded income tax exemptions, credits or deductions over the past ten years. Advocates should research tax loopholes—changes designed to benefit special interests or the highest tax-bracket, instead of the average family—and the amount of revenue lost because of each loophole. Legislation can either eliminate the loopholes permanently or suspend them temporarily. In 2005, New Jersey gained $45 million in revenue when it eliminated a pension income tax exclusion for higher-income taxpayers.[11]

★ **Personal Income Tax—**Tax non-resident gambling income. State residents' net winnings from casinos and lottery games are taxed as income. But states can also tax non-residents who have gambling winnings in the state. CA, CO, IL, MD, MA, MN, NJ, ND, PA and WI tax non-resident gambling income. Connecticut and Rhode Island tax non-residents for state lottery winnings. The value of such a tax expansion depends, of course, on the amount of gambling activity in the state.

★ **Personal Income Tax—**Implement a tax amnesty. Over the past 20 years, 41 states have implemented tax amnesty periods to collect overdue taxes. California, Florida and Indiana offered tax amnesties in 2005. Connecticut's most recent amnesty collected more than $100 million in back taxes. A 2003 Illinois amnesty collected back taxes from almost 20,000 businesses and individuals. However, by offering amnesties too often, states lower taxpayers' incentive to pay on time.

★ **Corporate Income Tax—**Implement a more graduated scale. Thirty-one states use a flat tax for corporate income. That means there is only one tax bracket, with no graduated scale. These states can adopt a graduated system that increases the tax rate for corporate income over certain levels, e.g. $25,000, $100,000, $250,000, $500,000 and $1 million. For example, Iowa, Kentucky and Maine have graduated scales from $25,000 to $250,000, with tax rates ranging from 3.5 percent at the lowest to 12 percent at the highest. If necessary, a graduated scale can be implemented temporarily by imposing a surcharge on corporate profits over a certain level—for example, a five percent surcharge on corporate profits over $250,000. In 2006, New Jersey imposed a corporate surtax expected to raise $121 million.[12]

★ **Corporate Income Tax—**Require combined reporting. When filing tax returns, corporations that operate across state lines apportion their income among the states where they do business. In doing so, corporations use many strategies to artificially shift the reporting of their income to low-tax or no-tax states. Combined reporting is the broadest and fairest reform to stop the most common tax avoidance strategies. Because combined reporting requires corporations to add together the profits of related businesses before the combined profit is subject to apportionment, the company gains little or no advantage by shifting profit among its subsidiaries in different states. Combined reporting ensures that a corporation's state income tax liability remains the same regardless of the corporation's legal structure. Seventeen states (AK, AZ, CA, CO, HI, ID, IL, KS, ME, MN, MT, NE, NH, ND, OR, UT, VT) use combined reporting.

★ **Corporate Income Tax—**Close the PIC trademark loophole. Large corporations commonly shift the reporting of income by using a "passive investment company" (PIC), a corporate affiliate that is often no more than a file in a Delaware lawyer's office. The PIC holds legal ownership to the parent corporation's patents and trademarks and may charge huge royalties to the parent company, which shields those funds from taxation. This tax dodge was made famous by Toys R Us, which paid its PIC subsidiary for the use of the "Geoffrey" giraffe trademark and other intangible assets. Twenty-six states have closed this loophole, most recently Maryland in 2004. The following states could gain tax revenue by eliminating this income shifting tactic: AR, DE, FL, GA, IN, IA, KY, LA, MO, NM, OK, PA, RI, SC, TN, TX, VT, WV, WI and the District of Columbia. Adoption of combined reporting also blocks the PIC trademark loophole.

★ **Corporate Income Tax—**Redefine "business income." The U.S. Supreme Court has limited the types of business income that are subject to apportionment among the states. To comply with Supreme Court rulings, most states define and tax "business income." But the commonly-used definition allows corporations to avoid taxes by declaring certain transactions to be "irregular" and therefore "non-business income," a practice which cheats states out of their fair share of corporate tax revenue. States can close the "non-business income" loophole by redefining "business income" to be as broad as the Supreme Court allows—that is, "business income means all income which is apportionable under the United States Constitution." Only six states (FL, IA, MN, NC, PA, TX) have adopted this definition. All other states with a corporate income tax could increase revenue by adopting this definition as well.

★ **Corporate Income Tax—**Enact a "throwback" rule for "nowhere income." A little-known federal law, P.L. 86-272, prohibits states from taxing corporate income if the corporation does not conduct a certain level of activity in the state. As a result, corporations often claim that a substantial portion of their profits come from sales in those states where federal law prohibits taxation. For tax purposes, the income seems to come from "nowhere." Twenty-six states have a "throwback" rule that directs that if income from a product is not taxed in the state where it is sold, it is taxed in the state where it was made. The throwback rule is simple—it can be accomplished by adding a single sentence to existing corporate tax law. Nineteen states (AR, CT, DE, FL, GA, IA, KY, LA, MD, MA, MN, NE, NY, NC, OH, PA, RI, SC, TN) could gain revenue by enacting a throwback rule.

★ **Corporate Income Tax—**Tighten rules on "silent partners." Certain business entities, such as S-corporations, partnerships and limited-liability companies, are not taxed because income flows directly to their partners, who are supposed to pay tax on that income. But many out-of-state partners do not report their earnings to the states where the partnerships earned profits. Often, states do not check to see if these "silent" partners reported any income to the state. Most states' efforts to check on pass-through reporting are inadequate, and millions of dollars of tax revenue are lost. Ohio, New Jersey and New York have tightened the rules on pass-through entities in recent years.

★ **Corporate Income Tax—**Eliminate or suspend exemptions, credits and deductions. Over the past 20 years, states have created hundreds of different exemptions, credits and deductions to the corporate income tax. These exemptions, credits and deductions reward different types of businesses or business behavior. Advocates should research each of the corporate tax loopholes created since the early 1980s, and determine the amount of revenue it lost. Legislation can either eliminate the loopholes permanently or suspend them temporarily.

★ **Corporate Income Tax—**Accelerate sunset dates for tax exemptions. A number of states have created corporate tax exemptions that sunset after a period of years. States can gain additional revenue by accelerating exemption sunset dates.

★ **Corporate Income Tax—**Decouple from federal bonus depreciation. States lost billions of dollars in tax revenue because of a change in the federal corporate income tax that was enacted in March 2002. A new federal tax deduction, called "bonus depreciation," allows businesses to claim 50 percent depreciation in the first year for certain business machinery placed in service after September 2001. Thirty states that had previously followed federal depreciation rules have decoupled from the federal tax code, which effectively disallows the new bonus depreciation provision. However, AL, CO, DE, FL, KS, LA, MO, MT, NM, NC, ND, OK, OR, SD, UT, VT and WV stand to lose more than $1.1 billion over the next two years if they do not permanently decouple from the federal depreciation rules.[13]

★ **Corporate Income Tax—**Decouple from the federal qualified production activities income depreciation. Twenty-nine states will lose between $850 million to $1.2 billion annually if they don't act to disallow a new federal tax break known as the "qualified production activities income," or QPAI. The federal QPAI, enacted in 2004, is the largest new federal tax break for American corporations in years. Eighteen states (AR, CA, GA, HI, IN, ME, MD, MA, MN, MS, NH, NC, ND, OR, SC, TN, TX, WV) and the District of Columbia have disallowed the QPAI tax break. New Jersey has partially decoupled.[14]

★ **Corporate Income Tax—**Reform the Alternative Minimum Tax. It is all too common for corporations to use a series of tax loopholes to avoid paying any state tax at all. The federal government has an Alternative Minimum Tax (AMT) for these situations. Currently, 13 states impose a corporate minimum tax that is a fixed amount—ranging from ten dollars in Oregon to $2,000 in New Jersey. Seven states go further and require businesses to pay the higher of a tax calculated as a percentage of profit or a tax calculated on some other basis. In Texas, the alternative basis is the business' net worth; in New Hampshire, it is "value-added" within the business; and in New Jersey, it is the business' gross receipts.[15]

★ **Sales Tax—**Delete exemptions on some products. Each state has different sales tax exemptions. Some are progressive (e.g. exemptions for food, medicine and back-to-school items), but many states have created sales tax exemptions simply to encourage or reward certain industries, including exemptions for vending machines, technology, warehousing, and chemical sprays. Advocates can create a list of unjustified sales tax exemptions and target some or all of them for suspension or elimination.

★ **Sales Tax—**Apply to some services. The sales tax—the largest source of revenue for many states—usually applies only to the purchase of tangible personal property (e.g. clothing, housewares, appliances), and in some cases, to the installation or repair of property (e.g. plumbing, auto repair). However, most business, financial and professional services are exempt from the sales tax. States can expand revenue by extending the sales tax to cover specific categories of services, such as advertising, data processing, business consulting, engineering, or architectural services.

★ **Luxury Tax—**Impose a special sales tax on luxury goods and services. Sales taxes are regressive—they absorb a larger proportion of the income of lower-income taxpayers than of higher-income taxpayers. To counter this, states can single out "luxury" goods or services for a sales tax that is either equal to or greater than the normal sales tax rate. A surtax can apply to goods that are unusually expensive—for example, non-business purchases over $50,000. Or a tax can apply to athletic club, country club, or golf club memberships.

★ **Intangible Wealth Tax—**Cover stocks, bonds, etc. States can follow Florida's lead and tax intangible wealth, such as stocks, bonds and money market accounts. For example, a one percent tax on personal and corporate intangible wealth, with a maximum exemption of $3,000 (excluding IRAs and other retirement accounts), would raise nearly $1 billion in the average state. A narrower version has been proposed in New Jersey. In that state, a one quarter of one percent tax on intangible assets worth more than $2 million would affect only the richest one percent of taxpayers.

★ **Gasoline Tax—**Increase the state tax. Every state levies a gasoline tax in addition to the federal tax of 18.4 cents per gallon. Some states charge a flat rate per gallon, while others tax the price, rather than the quantity, of gas sold. Some states charge as much as 29 to 31 cents per gallon (PA, RI, WI). Nineteen states have gas taxes below 20 cents per gallon (AL, AK, AZ, CA, FL, GA, HI, IN, KY, MI, MS, MO, NH, NJ, NM, OK, SC, VA, WY). Alaska's and Georgia's rates are the lowest—less than ten cents per gallon.[16] In 2006, New Jersey raised its gasoline tax by referendum.

★ **Tax Enforcement—**Hire tax investigators to collect more revenue. Most states do a very poor job of enforcing tax law. As a result, hundreds of millions of dollars in revenue go uncollected. It has been estimated, for example, that Illinois could generate $160 million annually by hiring 100 additional tax investigators. A report in Minnesota found that the state was losing $288 million per year in uncollected tax revenue. In 2001, Kansas invested $3 million to create 75 new tax collection positions. While the legislature projected that the additional collection efforts would yield $48 million, the state actually collected nearly $110 million in additional revenue.

If progressives don't offer a program to balance state budgets, the conservative agenda—laying off government workers and slashing social services—will prevail.

A budget is a statement of a government's fundamental values. It allocates resources among the programs and policies that are important to state residents. Progressives must demonstrate that their budget proposals reflect American values by apportioning taxes fairly and spending the funds wisely.

The portions of this policy summary dealing with corporate, estate and gasoline taxes rely in large part on information from the Center on Budget and Policy Priorities.

Endnotes

1 National Conference of State Legislatures, "State Budget & Tax Actions 2006: Preliminary Report," 2006.

2 Iris Lav, Elizabeth McNichol and Robert Zahradnik, "Faulty Foundations: State Structural Budget Problems and How to Fix Them," Center on Budget and Policy Priorities, May 2005.

3 Elizabeth McNichol, "The State Fiscal Crisis was not Caused By Overspending," Center on Budget and Policy Priorities, May 2003.

4 Nicholas Johnson and Sarah Farkas, "Tax Cuts on Layaway: The Short- and Long-Term Fiscal Implications of 2006 State Tax Actions," Center on Budget and Policy Priorities, October 10, 2006.

5 Campaign for Tobacco-Free Kids, "Voters Across the Country Support Significant Increases in State Cigarette Taxes," June 25, 2003.

6 "State Budget & Tax Actions 2006: Preliminary Report."

7 American Medical Association, "Americans overwhelmingly support increase in state alcohol taxes," *U.S. Newswire*, May 4, 2004.

8 National Conference of State Legislatures, "State Budget & Tax Actions 2005: Preliminary Report," 2005.

9 Elizabeth McNichol, "State Taxes on Inherited Wealth Remain Common: 24 States Levy an Estate or Inheritance," September 8, 2006.

10 "State Budget & Tax Actions 2005: Preliminary Report."

11 Ibid.

12 Ibid.

13 Nicholas Johnson, "Federal Tax Changes Likely to Cost States Billions of Dollars in Coming Years," Center on Budget and Policy Priorities, June 2003.

14 Elizabeth McNichol and Nicholas Johnson, "States Are Decoupling from the Federal 'Qualified Production Activities Income' Deduction," Center on Budget and Policy Priorities, September 14, 2005.

15 Michael Mazerov, "Many States Could Avoid an Unnecessary Revenue Loss During the Current Fiscal Crisis by Disallowing Business Operating Loss Carrybacks," Center on Budget and Policy Priorities, May 2003.

16 Nicholas Johnson, "Should States Suspend Their Gasoline Taxes?" Center on Budget and Policy Priorities, September 8, 2005.

Balancing State Budgets

Combined Reporting Act

Summary: The Combined Reporting Act requires that multi-state corporations apportion their income fairly among the states where they do business.

SECTION 1. SHORT TITLE

This Act shall be called the "Combined Reporting Act."

SECTION 2. COMBINED REPORTING FOR CORPORATE INCOME TAXES

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Affiliated group" means one or more chain(s) of corporations that are connected through stock ownership with a common parent corporation and meet the following requirements:
   a. At least 80 percent of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and
   b. The common parent directly owns at least 80 percent of the stock of at least one of the corporations in the group. "Affiliated group" does not include corporations that are qualified to do business but are not otherwise doing business in this state. For purposes of this section, "stock" does not include nonvoting stock which is limited and preferred as to dividends.
2. "Common ownership" means the direct or indirect control or ownership of more than 50 percent of the outstanding voting stock of:
   a. A parent-subsidiary controlled group as defined in Section 1563 of the United States Internal Revenue Code of 1986, as amended, except that the amount of 50 percent shall be substituted for all references to "80 percent" in such definition;
   b. A brother-sister controlled group as defined in Section 1563 of the United States Internal Revenue Code of 1986, as amended, except that the amount of 50 percent shall be substituted for all references to "80 percent" in such definition; or
   c. A common parent corporation of an affiliated group of corporations. Ownership of outstanding voting stock shall be determined in accordance with Section 1563 of the United States Internal Revenue Code of 1986, as amended.
3. "Corporate return" or "return" includes a combined report.
4. "Doing business" means any transaction in the course of its business, including:
   a. The owning, renting or leasing of real or personal property within this state; and
   b. The participation in joint ventures, working and operating agreements, the performance of which takes place in this state.
5. "Foreign corporation" means a corporation that is not incorporated or organized pursuant to the laws of this state.

6. "Foreign operating company" means a corporation that:
   a. Is incorporated in the United States; and
   b. Conducts 80 percent or more of its business activity outside the United States. "Foreign operating company" does not include a corporation that qualifies for the Puerto Rico and Possession Tax Credit provided pursuant to Section 936 of the United States Internal Revenue Code of 1986, as amended.
7. "Unitary group" means a group of corporations that are related through common ownership, and, by a preponderance of the evidence, are economically interdependent with one another as demonstrated by the following factors:
   a. Centralized management;
   b. Functional integration; and
   c. Economies of scale.
8. "Water's edge combined report" means a report that combines the income and activities of all members of a unitary group that are corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936 of the United States Internal Revenue Code of 1986, as amended, and corporations organized or incorporated outside the United States that meet the threshold level of business activity.

(B) COMBINED REPORTING REQUIRED

1. If any corporation does business in [State] and is a member of a unitary group, the unitary group shall file a water's edge combined report. A group of corporations that are not otherwise a unitary group may elect to file a water's edge combined report if each member of the group is doing business in [State], is part of the same affiliate group and is qualified pursuant to Section 1501 of the United States Internal Revenue Code of 1986, as amended, to file a federal consolidated return.
2. Each corporation within an affiliated group that does business in [State] shall file a combined report. If an affiliated group elects to file a combined report, each corporation within the affiliated group that does business in [State] shall file a combined report.
3. A corporation that elects to file a water's edge combined report pursuant to this section shall not thereafter elect to file a separate return without the consent of the [Comptroller].
4. If two or more corporations, whether or not organized or doing business in this state, and whether or not affiliated, are owned or controlled directly or indirectly by the same interests, the [Comptroller] shall be authorized to distribute, apportion or allocate gross income or deductions between or among such corporations, if the [Comptroller] determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or to clearly reflect the income of any such corporations.
5. The [Comptroller] shall, by regulation, make adjustments to [State] taxable income when, solely by reason of the enactment of this section, a taxpayer would otherwise receive or have received a double tax benefit or suffer or have suffered a double tax detriment.

6. A group that files a combined report shall calculate federal taxable income of the combined group by:
   a. Computing federal taxable income on a separate return basis;
   b. Combining income or loss of the members included in the combined report; and
   c. Making appropriate eliminations and adjustments between members included in the combined report. For purposes of this subsection, if an entity does not calculate federal taxable income, then the federal taxable income shall be calculated based on the applicable federal tax laws.
7. For purposes of the apportionment provisions within [citation to state law], corporations filing a combined report shall not include inter-company sales or other transactions between the corporations included in the combined report when determining the sales factor. Inter-company rents between members of a combined report may not be considered in the computation of the property factor.

(C) ENFORCEMENT

The [Comptroller] shall promulgate regulations consistent with this section in order that the tax liability of any affiliated group of corporations that files a [State] consolidated income tax return, and of each corporation in the group, before, during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted, in a manner that accurately reflects the [State] taxable income derived from sources inside the state, and in order to prevent avoidance of such tax liability.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2007 and shall apply to tax returns filed for any tax year beginning on or after January 1, 2007.

Earned Income Tax Credit

- ✱ More than one in six American children live in poverty.
- ✱ The federal Earned Income Tax Credit (EITC) was created in 1975 to support low-income workers.
- ✱ Most of the federal EITC's benefits are targeted toward families with children.
- ✱ The federal program is a "refundable" credit.
- ✱ The EITC is the most effective anti-poverty program in America.
- ✱ EITCs are finely-targeted and effective in reaching the working poor and near-poor.
- ✱ EITCs are administratively simple, efficient and nonbureaucratic.
- ✱ EITCs garner bipartisan support.
- ✱ The EITC has gained momentum at the state level.

More than one in six American children live in poverty.

Nearly 13 million children live in families that earn less than the federal poverty level. For 71 percent of these children, a family member works but simply does not earn enough to support the household.[1]

The federal Earned Income Tax Credit (EITC) was created in 1975 to support low-income workers.

The program was expanded in 1986, 1990, 1993 and 2001, and has become a central part of federal efforts to fight poverty and move Americans from welfare to work. Only wage earners qualify for this program, and the value of the tax credit depends on a worker's income and family size. Workers who earn the minimum wage benefit most from EITCs.[2]

Most of the federal EITC's benefits are targeted toward families with children.

In tax year 2006, qualifying families with two or more children received up to $4,536, and families with one child received up to $2,747. Workers with no dependent children were eligible only to receive a maximum of $412 from the federal EITC.[3]

The federal program is a "refundable" credit.

If a credit exceeds a family's total income tax liability, the difference is paid to the family as a refund. If a family doesn't earn enough to owe income tax, it receives a check based on its annual household income. Fourteen states (CO, IL, IN, KS, MD, MA, MN, NJ, NY, OK, OR, RI, VT, WI) and the District of Columbia offer a refundable credit that is a percentage of the federal EITC. Four states (DE, IA, ME, VA) have less effective "non-refundable" EITC statutes. In those states, the credit can erase tax liability, but the poorest wage earners—those with incomes too low to owe any state income taxes—receive no state benefit at all.

The EITC is the most effective anti-poverty program in America.

The federal EITC helps more working parents and children move out of poverty than any other government program. In 2003, the federal EITC lifted 4.4 million people out of poverty, including more than 2.4 million children.[4] The addition of a state EITC helps to offset the rising costs of health care, child care, housing, and other necessities of life.

EITCs are finely-targeted and effective in reaching the working poor and near-poor.

The EITC program puts extra dollars directly into the pockets of people who need help the most: those who work for poverty-level wages. Extensive research has found that this enhances incentive to work and is substantially responsible for increased employment among single parents.[5] Studies have found that as many as 81 to 86 percent of those eligible for the credit apply for it.[6]

EITCs are administratively simple, efficient and nonbureaucratic.

Because it is a straightforward tax credit, the EITC is simple to administer. Nearly all of the funds spent on EITC programs go to workers who need the money, rather than government administration costs.

EITCs garner bipartisan support.

The federal EITC was enacted during the presidency of Gerald Ford and expanded under the Reagan, Clinton and both Bush Administrations. Similarly, state EITC programs have been created by governments led by both Democrats and Republicans, and have been supported by both business groups and social service advocates.

The EITC has gained momentum at the state level.

Sixteen states and the District of Columbia have adopted or substantially increased their EITCs since 2000. In 2006, Michigan and Nebraska adopted refundable EITCs. In 2005, Delaware adopted a 20 percent EITC, and Rhode Island increased its refundable credit from five to ten percent. Oregon made its five percent credit refundable and will increase its EITC to six percent in 2008, and Indiana extended its EITC for another six years. The District of Columbia increased its EITC to 35 percent.

This policy summary relies in large part on information from the Center on Budget and Policy Priorities.

STATE EARNED INCOME TAX CREDITS BASED ON THE FEDERAL EITC

State	Percentage of the Federal EITC
Refundable Credits	
District of Columbia	35%
Illinois	5%
Indiana	6%
Kansas	15%
Maryland*	20%
Massachusetts	15%
Michigan	10% in 2008, 20% in 2009
Minnesota	33% on average, varies with earnings
Nebraska	8%
New Jersey	20% if income is under $20,000
New York	30%
Oklahoma	5%
Oregon	5%, increases to 6% in 2008
Rhode Island	25%, of which 10% is refundable
Vermont	32%
Wisconsin	4% - one child 14% - two children 43% - three or more children
Non-Refundable Credits	
Delaware	20%
Iowa	6.5%
Maine	5%
Virginia	20%

* Maryland also offers a non-refundable EITC set at 50 percent of the credit. Taxpayers in effect may claim either the refundable credit or the non-refundable credit, but not both.

Endnotes

1 U.S. Bureau of Labor Statistics and U.S. Census Bureau, “Annual Demographic Survey, March Supplement,” Current Population Survey, March 2005.

2 Robert Greenstein, “The Earned Income Tax Credit: Boosting Employment, Aiding the Working Poor,” Center on Budget and Policy Priorities, August 17, 2005.

3 Ifie Okwuje and Nicholas Johnson, “A Rising Number of State Earned Income Tax Credits are Helping Working Families Escape from Poverty,” Center on Budget and Policy Priorities, October 20, 2006.

4 “The Earned Income Tax Credit: Boosting Employment, Aiding the Working Poor.”

5 Ibid.

6 Michael O’Connor, “Using the Internet to Make Work Pay for Low-Income Families,” The Brookings Institution, May 2002.

Earned Income Tax Credit

Earned Income Tax Credit Act

Summary: The Earned Income Tax Credit Act provides low-income workers with a refundable state tax credit based on the federal Earned Income Tax Credit.

SECTION 1. SHORT TITLE

This Act shall be called the "Earned Income Tax Credit Act."

SECTION 2. EARNED INCOME TAX CREDIT

After section XXX, the following new section XXX shall be inserted:

EARNED INCOME TAX CREDIT

1. A taxpayer shall be allowed a tax credit equal to 20 percent of the earned income credit allowed under section 32 of the federal Internal Revenue Code.
2. If the credit exceeds tax owed, the [Tax Commissioner] shall treat such excess as an overpayment, and shall pay the taxpayer, without interest, the amount of such excess.
3. In the case of a married couple who file their state tax returns separately, the credit allowed may be applied against the tax of either, or divided between them, as they elect.
4. The [Tax Commissioner] shall make efforts every year to inform taxpayers who may be eligible to receive the credit.

SECTION 3. EFFECTIVE DATE

This Act shall take effect for taxable years beginning on or after January 1, 2007.

Tobacco Taxes

- ✱ States can raise hundreds of millions of dollars in new revenue by increasing tobacco taxes.
- ✱ Higher tobacco taxes save thousands of lives by reducing tobacco use, especially by teens.
- ✱ States that have increased tobacco taxes have had only minor problems with cigarette smuggling and tax evasion.
- ✱ Americans strongly support increasing tobacco taxes.
- ✱ Since 2002, 42 states have increased their tobacco taxes.

States can raise hundreds of millions of dollars in new revenue by increasing tobacco taxes.

Every state that has significantly raised its cigarette tax rate has experienced a major increase in state revenue. Ohio raised more than $280 million in one year after its 31-cent per pack tax increase was implemented. Annual tobacco tax revenues grew by $134 million in Connecticut, $280 million in Indiana, and $100 million in Washington from tax increases implemented in 2002.[1] In the first year after raising its tax from eight cents to $1.50, New York City experienced a nine-fold increase in revenues to $250 million—significantly more than expected.[2]

Higher tobacco taxes save thousands of lives by reducing tobacco use, especially by teens.

Research has consistently documented that smoking declines when cigarette prices increase—especially among teens and people with low incomes. Internal tobacco industry documents show companies recognize that tax increases reduce their sales—especially among youth—and have admitted this in their filings with the U.S. Securities and Exchange Commission since the early 1980s. Indeed, tobacco companies oppose state cigarette tax increases because they result in lower smoking rates and pack sales.

States that have increased tobacco taxes have had only minor problems with cigarette smuggling and tax evasion.

All major studies have shown that smuggling and tax avoidance are relatively insignificant problems. Cigarette smuggling, cross-border cigarette purchases, and Internet sales account for not more than five to ten percent of all cigarette sales.[3]

A California study found that after the state's 50-cent cigarette tax increase went into effect in 1999, fewer than five percent of all continuing smokers were avoiding the state's cigarette tax.[4] It is also worth noting that the smuggling and tax avoidance that followed New York's 55-cent tax increase in 2000 did not discourage the state from adding another 39 cents in 2002, bringing the tax to $1.50 per pack—nor did it prevent New York City's eight cent supplementary local cigarette tax increase to $1.50 per pack the same year.

Americans strongly support increasing tobacco taxes.

Poll after poll has shown strong support for increased tobacco taxes in every region of the country. More than 30 different state polls conducted across the country since 2002 report that Americans favor tobacco tax increases of 50 to 75 cents per pack. Even in the tobacco-growing state of Kentucky, 60 percent of voters favored a 75-cent per pack tax increase. In most states, voters favor the tax increase by at least a two-to-one margin. Every poll in every state found at least majority support among Democrats, Republicans and Independents. And in nearly every state, a large majority preferred a state tobacco tax increase over any other measure that would significantly increase taxes or cut programs.

Since 2002, 42 states have increased their tobacco taxes.

Since 2002, the average state cigarette tax has increased from 62 cents to one dollar per pack. Forty-two states (AL, AK, AZ, AR, CO, CT, DE, GA, HI, ID, IL, IN, KS, KY, LA, ME, MD, MA, MI, MN, MT, NE, NV, NH, NJ,

NM, NY, NC, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WY) have raised cigarette taxes. Of these, Arizona, Colorado, Montana, Oklahoma, Oregon, South Dakota and Washington increased tobacco taxes by statewide referendum. Most of the recent tax increases were quite large—60 cents or more per pack. Eighteen states more than doubled their tobacco taxes. Tennessee raised its tax for the first time in 33 years. Tobacco taxes now range from South Carolina's seven cents per pack to New Jersey's $2.58. Twenty-one states and the District of Columbia have tobacco taxes of one dollar per pack or more.[5]

This policy summary relies in large part on information from the Campaign for Tobacco-Free Kids.

Endnotes

1 Orzechowski and Walker, "Tax Burden on Tobacco," Economic Research Service, U.S. Department of Agriculture, 2004.

2 Eric Lindblom, "Raising Cigarette Taxes Always Increases State Revenues and Always Reduces Smoking," Campaign for Tobacco-Free Kids, August 4, 2004.

3 Matthew Farelly, "State Cigarette Excise Taxes: Implications for Revenue and Tax Evasion," RTI International, 2003; Yurekli and Zhang, "The Impact of Clean Indoor-Air Laws and Cigarette Smuggling on Demand for Cigarettes: An Empirical Model," *Health Economics,* 2000.

4 Sherry Emery, "Was there significant tax evasion after the 1999 50 cent per pack cigarette tax increase in California?," *Tobacco Control,* June 2002.

5 Katie McMahon, "State Cigarette Excise Tax Rates and Rankings," Campaign for Tobacco-Free Kids, September 1, 2006.

State Cigarette Excise Tax Rates & Rankings

Rank	State	Tax (¢ / pack)
1	New Jersey	257.5
2	Rhode Island	246
3	Washington	202.5
4	Maine	200
4	Michigan	200
6	Arizona*	198
7	Alaska	180
8	Vermont	179
9	Montana	170
10	Hawaii	160
11	South Dakota**	153
11	West Virginia	153
13	Connecticut	151
13	Massachusetts	151
15	New York	150
16	Texas	141
17	Pennsylvania	135
18	Ohio	125
19	Minnesota	123
20	Oregon	118
21	Oklahoma	103
22	District of Columbia	100
22	Maryland	100
24	Illinois	98
25	New Mexico	91
26	California	87
27	Colorado	84
28	Nevada	80
28	New Hampshire	80
30	Kansas	79
31	Wisconsin	77
32	Utah	69.5
33	Nebraska	64
34	Wyoming	60
35	Arkansas	59
36	Idaho	57
37	Indiana	55.5
38	Delaware	55
39	North Dakota	44
40	Alabama	42.5
41	Georgia	37
42	Iowa	36
42	Louisiana	36
44	North Carolina	35
45	Florida	33.9
46	Kentucky	30
46	Virginia	30
48	Tennessee	20
49	Mississippi	18
50	Missouri	17
51	South Carolina	7
	Overall Average	**99.6**
	Major Tobacco States' Average	**26.5**
	Other States' Average	**110.9**

* Effective date to be determined.
** Includes $1 increase effective 1/1/07.

Tobacco Taxes

Tobacco Tax Revenue Act

Summary: The Tobacco Tax Revenue Act taxes tobacco products to generate state revenue.

SECTION 1. SHORT TITLE

This Act shall be called the "Tobacco Tax Revenue Act."

SECTION 2. DEFINITIONS

After subsection XXX, the following new subsection XXX shall be inserted:

1. "Other tobacco product" means:
   a. Any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco; or
   b. Any other tobacco or product containing tobacco, other than a cigarette, that is intended for human consumption by smoking, by insertion into the mouth or nose, or by other means.
2. "Wholesaler" means, unless the context requires otherwise:
   a. A person who acts as a wholesaler as defined in [citation to state law referring to cigarette wholesalers]; or
   b. A person who:
      (1) Holds other tobacco products for sale to another person or entity for resale; or
      (2) Sells other tobacco products to another person or entity for resale.
3. "Wholesale price" means the price for which a wholesaler sells other tobacco products to a retailer, exclusive of any discount, trade allowance, rebate, or other reduction.

SECTION 3. TOBACCO TAX RATES

Section XXX is hereby repealed and the following new section XXX is inserted:

1. Except as otherwise provided in this section, the tobacco tax rate for cigarettes is:
   a. $1.50 for each package that contains 20 or fewer cigarettes, whether sold or provided as a free sample.
   b. 7.5 cents for each cigarette in a package that contains more than 20 cigarettes, whether sold or provided as a free sample.
2. The tobacco tax rate for other tobacco products is 45 percent of the wholesale price of the other tobacco products, whether sold or provided as a free sample.
3. The requirement under this subsection includes:
   a. Cigarettes and other tobacco products in vending machines or other mechanical dispensers.
   b. Cigarettes and other tobacco products generally referred to as "floor stock" in packages that bear stamps issued by the [Comptroller] for an amount less than the full tax imposed.
   c. Cigarettes and other tobacco products delivered to consumers in the state by mail, common carrier, or other delivery service.

4. No cigarette or other tobacco product shall be sold or delivered to a consumer without a tax stamp issued by the [Comptroller] that shows the tax has been paid.
5. All cigarettes and other tobacco products held for sale by any person that bear a tax stamp issued by the [Comptroller] in a value less than the full tax imposed must be stamped with the additional stamps necessary to make the aggregate value equal to the full tax imposed. However, in lieu of the additional stamps necessary to make the aggregate tax value equal to the full tax imposed, the [Comptroller] may provide an alternate method of collecting the additional tax.
6. The [Comptroller] shall establish, by regulation, a system of administering, collecting and enforcing the tobacco tax on other tobacco products. Regulations adopted under this section may include:
    a. Self-assessment, filing of returns, and maintenance and retention of records by wholesalers or retailers.
    b. Payment of the tax by:
        (1) A wholesaler who sells other tobacco products to a retailer or consumer in the state; or
        (2) A retailer or consumer who possesses other tobacco products in the state on which the tobacco tax has not been paid.
    c. Any other provision that the [Comptroller] considers necessary to efficiently and economically administer, collect and enforce the tax.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

BUDGET AND TAXATION RESOURCES

Balancing State Budgets

Campaign for Tobacco-Free Kids
Center on Budget and Policy Priorities

Earned Income Tax Credit

Center on Budget and Policy Priorities
Economic Policy Institute
Internal Revenue Service
Making Wages Work
National Council of La Raza
Urban Institute

Tobacco Taxes

American Cancer Society
American Lung Association
Campaign for Tobacco-Free Kids

A full index of resources with contact information can be found on page 291.

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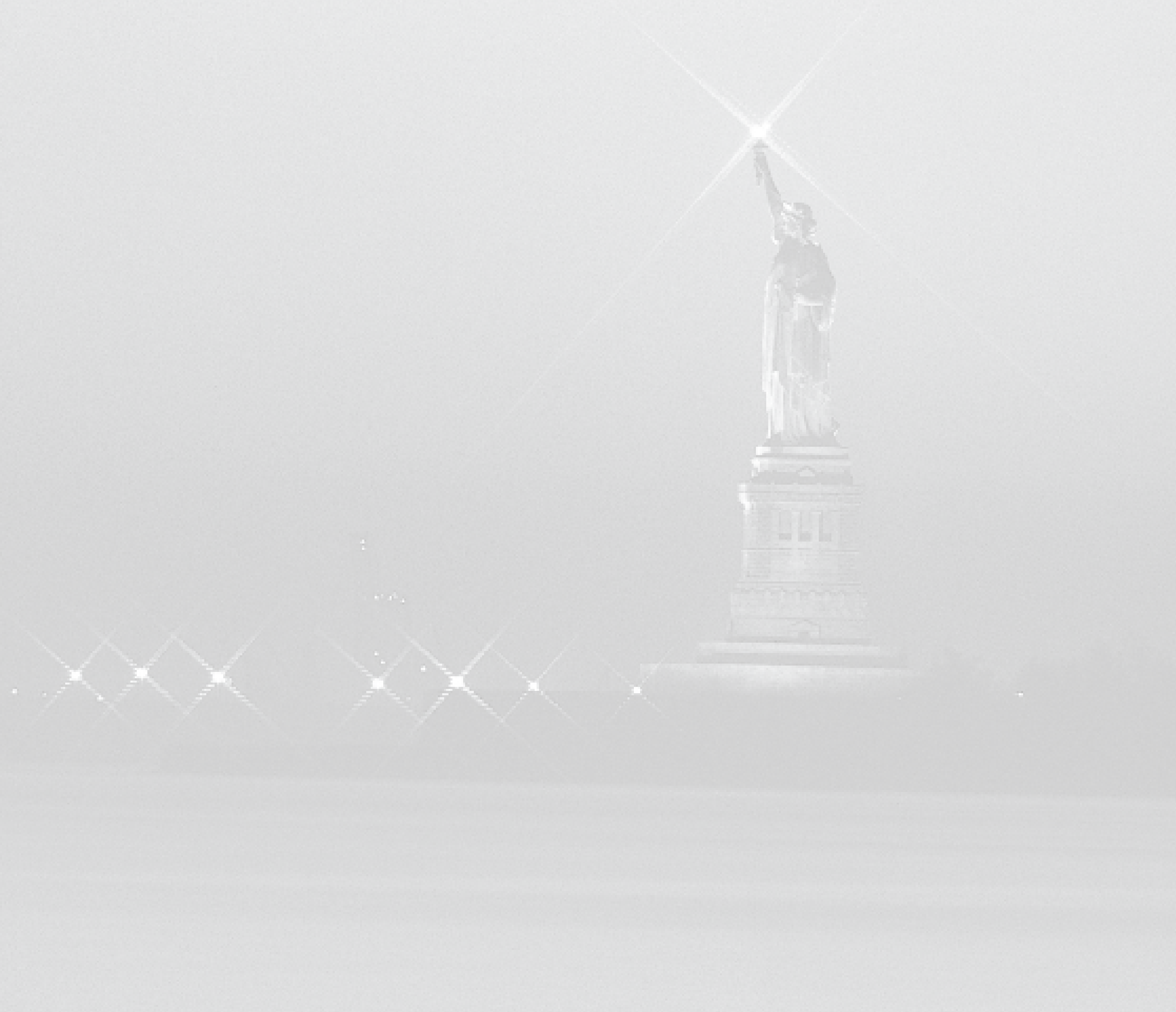

Corporate Accountability

- ✱ States and cities spend more than $50 billion a year on economic development subsidies—mostly tax incentives—for businesses.
- ✱ In recent years, states have significantly expanded their use of tax expenditures and other economic development subsidies.
- ✱ Few states track spending on tax credits or hold subsidized companies accountable for job creation and other commitments.
- ✱ Economic development subsidies that cost more than $100,000 per job created are not unusual.
- ✱ Economic development subsidies promote suburban sprawl and poverty-wage jobs.
- ✱ It makes economic sense to require companies that receive subsidies to prove that they are used properly.
- ✱ States, cities and counties are beginning to demand accountability for economic development subsidies.
- ✱ Corporate accountability legislation ensures an annual assessment of the cost-effectiveness of economic development subsidies.

States and cities spend more than $50 billion a year on economic development subsidies—mostly tax incentives—for businesses.[1]

States have more than 1,500 economic subsidy programs. They take the form of corporate income tax credits, property tax abatements, low-interest loans, enterprise zones, tax increment financing, training grants, land and site preparation, and infrastructure. In return, companies promise economic development, especially the creation of new jobs.

In recent years, states have significantly expanded their use of tax expenditures and other economic development subsidies.

In 1977, nine states gave tax credits for research and development. By 2001, that number had quadrupled to 36. During the same period, the number of states that made loans for machinery and equipment expanded from 13 to 43; the number that offered tax-free revenue bond loans rose from 20 to 44; and the number that granted corporate income tax exemptions increased from 21 to 37.

Few states track spending on tax credits or hold subsidized companies accountable for job creation and other commitments.

Once granted, states rarely audit economic development subsidies to examine their outcomes. This makes it impossible to determine if incentives are cost-effective.

Economic development subsidies that cost more than $100,000 per job created are not unusual.

States that require disclosure of tax expenditure costs have discovered dozens of deals in which subsidies exceed $100,000 per job created.[2] The ratio of tax subsidy dollars to the number of jobs created or retained is often enormous.

Economic development subsidies promote suburban sprawl and poverty-wage jobs.

Tax increment financing and enterprise zone programs—originally intended to reverse inner-city decline—have been stretched or deregulated so that even affluent suburbs can use them. Often this is done simply to pirate jobs from other jurisdictions in the same metropolitan area.[3] And subsidy programs usually lack job quality standards for wages and health benefits. This allows companies that pay poverty-level wages to receive taxpayer subsidies.

It makes economic sense to require companies that receive subsidies to prove that they are used properly.

Citizens rely upon elected officials to be fiscally responsible with taxpayer dollars. Tax breaks and subsidies should be at least as well-scrutinized as line items in the state budget—but they are not. While lawmakers use test scores to hold public schools accountable, and judge social services using cost and quality of service indicators, few states apply the same high standards to companies that receive incentives such as sales tax exemptions, tax abatements, tax credits, and industrial revenue bonds.

States, cities and counties are beginning to demand accountability for economic development subsidies.

Washington and North Dakota enacted laws in 2005 that strengthen subsidy accountability. Twelve states now require company-specific data that reveal the value of subsidies and the extent to which companies have complied with program requirements. In addition, 20 states have "clawback" provisions that force companies that fail to meet program requirements to repay all or part of a subsidy. At least 43 states and more than 40 cities and counties have attached some job quality standards—living wages, healthcare benefits, or full-time hours—to incentives.[4] Job quality standards promote fiscal responsibility, since they prevent taxpayer subsidization of poverty-level jobs with additional outlays such as food stamps, Medicaid and the earned income tax credit.

Illinois has the strongest accountability law.

In the summer of 2005, Illinois implemented its landmark 2003 law, which serves as a model for reform. The state launched a user-friendly online database that catalogues all state subsidies, mandates extensive disclosure in applications for economic assistance, requires annual progress reports from companies that receive assistance, and provides for the recapture of tax credits from corporations that do not meet their obligations.

Corporate accountability legislation ensures an annual assessment of the cost-effectiveness of economic development subsidies.

Model legislation, based upon corporate accountability laws enacted in Illinois, Maine and Minnesota, provides comprehensive accountability standards. The legislation gives policymakers and the public information about specific deals and programs. This legislation:

- Requires an analysis of every kind of state expenditure for economic development.
- Imposes disclosure requirements for annual, company-specific reports on each incentive deal, as well as company-specific disclosure of state corporate income tax credits (with small-business exceptions), as part of a comprehensive report on each state program—including both appropriations and tax expenditures.
- Caps incentives at $35,000 per job, a level derived from the Department of Housing and Urban Development and the Small Business Administration.
- Mandates a market-based system of wage floors pegged at 85 percent of the market, with an extra ten percent allowance for small businesses.

This policy summary relies in large part on information from Good Jobs First.

Endnotes

1 Peter Fisher and Alan Peters, "The Failures of Economic Development Incentives," *Journal of the American Planning Association*, Winter 2004.

2 Greg LeRoy and Sara Hinkley, "No More Secret Candy Store: A Grassroots Guide to Investigating Development Subsidies," Good Jobs First, March 2002.

3 Alyssa Talenker and Kate Davis, "Straying from Good Intentions: How States are Weakening Enterprise Zone and Tax Increment Financing Programs," Good Jobs First, August 2003.

4 Anna Purinton, "The Policy Shift to Good Jobs," Good Jobs First, November 2003.

Corporate Accountability

Economic Development and Corporate Accountability Act

Summary: The Economic Development and Corporate Accountability Act requires companies that receive economic development subsidies to ensure that subsidies result in improved standards of living for working families.

SECTION 1. SHORT TITLE

This Act shall be called the "Economic Development and Corporate Accountability Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The state and its local government units have granted numerous economic development subsidies over the last 25 years for the purpose of creating good jobs, but the real wage levels and healthcare coverage of working families have declined.
2. Jobs that pay low wages and offer poor benefits impose hidden costs on the state in the form of Medicaid, food stamps, earned income tax credits, and public assistance to the working poor and their families.
3. It is necessary to collect, analyze and make public information regarding those economic development subsidies, and to enact safeguards for their use.

(B) PURPOSE—This law is enacted to improve the effectiveness of economic development expenditures and to ensure that such expenditures raise living standards for working families.

SECTION 3. ECONOMIC DEVELOPMENT AND CORPORATE ACCOUNTABILITY

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Corporate parent" means any person, association, corporation, joint venture, partnership, or other entity, that owns or controls 50 percent or more of a recipient corporation.
2. "Date of subsidy" means the date that a granting body provides the initial monetary value of a development subsidy to a recipient corporation. If the subsidy is for the installation of new equipment, such date shall be the date the corporation puts the equipment into service. If the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the corporation occupies the property, whichever is earlier.
3. "Development subsidy" means any expenditure of public funds with a value of at least $25,000, for the purpose of stimulating economic development within the state, including but not limited to bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.
4. "Full-time job" means a job in which an individual is employed by a recipient corporation for at least 35 hours per week.

5. "Granting body" means any agency, board, office, public benefit corporation, or authority of the state or local government unit that provides a development subsidy.
6. "Local government unit" means an agency, board, commission, office, public benefit corporation, or public authority of a political subdivision of the state.
7. "Part-time job" means a job in which an individual is employed by a recipient corporation fewer than 35 hours per week.
8. "Project site" means the site of a project for which any development subsidy is provided.
9. "Property-taxing entity" means any entity which levies taxes upon real or personal property.
10. "Recipient corporation" means any person, association, corporation, joint venture, partnership, or other entity that receives a development subsidy.
11. "Small business" means a corporation whose corporate parent, and all subsidiaries thereof, employed fewer than 20 full-time employees or had total gross receipts of less than $1 million during the previous calendar year.
12. "State" means an agency, board, commission, office, public benefit corporation, or public benefit authority of the state.
13. "Subsidy value" means the face value of any and all development subsidies provided to a recipient corporation.
14. "Temporary job" means a job in which an individual is hired for a season, or for a limited period of time.

(B) UNIFIED ECONOMIC DEVELOPMENT BUDGET

The [Department of Revenue] shall submit an annual Unified Economic Development Budget to the legislature no later than three months after the end of the state's fiscal year. The report shall present all types of expenditures for economic development during the prior fiscal year, including but not limited to:

1. The amount of uncollected state tax revenues that result from every corporate tax credit, abatement, exemption and reduction provided by the state or a local governmental unit, including but not limited to gross receipts, income, sales, use, raw materials, excise, property, utility, and inventory taxes.
2. The name of each corporate taxpayer which claimed any tax credit, abatement, exemption or reduction with a value of $5,000 or more, together with the dollar amount received by each such corporation.
3. Any tax credit, abatement, exemption or reduction received by a corporation of less than $5,000 each shall not be itemized. The [Department of Revenue] shall report an aggregate dollar amount of such expenditures and the number of companies so aggregated for each tax expenditure.
4. All state appropriated expenditures for economic development, including line-item budgets for every state-funded entity concerned with economic development, including but not limited to [list appropriate state agencies].

(C) UNIFIED REPORTING OF PROPERTY TAX REDUCTIONS AND ABATEMENTS

1. Each property-taxing entity shall annually submit a report to the [Department of Revenue] regarding any real property in the entity's jurisdiction that has received a property tax abatement or reduction during the fiscal year. The report shall contain information including, but not limited to: the

name of the property owner; the address of the property; the start and end dates of the property tax reduction or abatement; the schedule of the tax reduction; each tax abatement, reduction and exemption for the property; and the amount of property tax revenue not paid to the taxing entity as a result of the reduction or abatement.

2. Each property-taxing entity shall also submit a report to the [Department of Revenue] that sets forth the total property tax revenue not paid to such entity during the fiscal year as a result of all property tax reductions and abatements in the entity's jurisdiction.
3. The reports required under paragraphs (1) and (2) shall be prepared on two forms approved by the [Department of Revenue], and shall be submitted to the Department by the property-taxing entity no later than three months after the end of the fiscal year.
4. The [Department of Revenue] shall annually compile and publish all of the data contained in the reports required under paragraphs (1) and (2) in both written and electronic form, including publication on the Department's website.
5. If a property-taxing entity fails to submit required reports to the [Department of Revenue] within the prescribed time, the Department shall notify the [Comptroller], whereupon the [Comptroller] shall withhold further payments of any development subsidy to the delinquent entity until the entity files its reports with the Department.

(D) APPLICATION FOR ECONOMIC DEVELOPMENT SUBSIDIES

1. A development subsidy applicant shall complete an application for the subsidy on a form prepared by the [Department of Economic Development]. The information required on the application shall include the following:
   a. An application tracking number provided by the granting agency for the project.
   b. The name, street and mailing address, and phone number of the chief officer of the granting body provided by the granting agency.
   c. The name, street and mailing address, and phone number of the chief officer of the applicant's corporate parent.
   d. The name, street and mailing address, and phone number of the chief officer of the applicant.
   e. The street address of the project site.
   f. The three-digit North American Industry Classification System number of the project site.
   g. The total number of individuals employed by the applicant at the project site on the date of the application, broken down by full-time, part-time, and temporary positions.
   h. The total number of individuals employed in the state by the applicant's corporate parent, and all subsidiaries thereof, as of December 31 of the prior fiscal year, broken down by full-time, part-time and temporary positions.
   i. The development subsidy or subsidies being applied for with the granting body, and the value of such subsidy or subsidies.
   j. The number of new jobs to be created by the applicant at the project site, broken down by full-time, part-time, and temporary positions.
   k. The average hourly wage to be paid to all current and new employees at the project site, broken down by full-time, part-time, and temporary positions, and further broken down by wage groups as follows: $6.00 or less an hour, $6.01 to $7.00 an hour, $7.01 to $8.00 an hour, $8.01

to $9.00 an hour, $9.01 to $10.00 an hour, $10.01 to $11.00 an hour, $11.01 to $12.00 an hour, $12.01 to $13.00 an hour, $13.01 to $14.00 an hour, and $14.01 or more per hour.

l. For project sites located in a Metropolitan Statistical Area, as defined by the federal Office of Management and Budget, the average hourly wage paid to non-managerial employees in the state for the industries involved at the project, as established by the U.S. Bureau of Labor Statistics.

m. For project sites located outside of Metropolitan Statistical Areas, the average weekly wage paid to non-managerial employees in the county for industries involved at the project, as established by the U.S. Department of Commerce.

n. The type and amount of healthcare coverage to be provided by the applicant within 90 days of commencement of employment at the project site, including any costs to be borne by the employees.

o. A list of all development subsidies that the applicant requests, and the name of any other granting body from which such subsidies are sought.

p. A statement as to whether the development subsidy may reduce employment at any other site controlled by the applicant or its corporate parent, inside or outside the state, resulting from automation, merger, acquisition, corporate restructuring, or other business activity.

q. A statement as to whether or not the project involves the relocation of work from another address and if so, the number of full-time, part-time and temporary jobs to be relocated, and the address from which they are to be relocated.

r. A certification by the chief officer of the applicant as to the accuracy of the application.

2. If the granting body shall approve the application, it shall send a copy to the [Department of Economic Development] within 15 days of such approval. If the application is not approved, the granting body shall retain the application in its records.

(E) ANNUAL REPORTS

1. Each granting body shall file a progress report with the [Department of Economic Development] for each project for which a development subsidy has been granted, no later than February 1 of each year. The report shall include the following information:

a. The application tracking number.

b. The name, street and mailing addresses, phone number, and chief officer of the granting body.

c. The name, street and mailing addresses, phone number, and chief officer of the recipient corporation.

d. A summary of the number of jobs required, created and lost, broken down by full-time, part-time and temporary positions, and by wage groups as defined in (D)(1)(k).

e. The type and amount of healthcare coverage provided to the employees at the project site, including any costs borne by the employees.

f. The comparison of the total employment in the state by the recipient's corporate parent on the date of the application and the date of the report, broken down by full-time, part-time and temporary positions.

g. A statement as to whether the use of the development subsidy during the previous fiscal year reduced employment at any other site controlled by the recipient corporation or its corporate parent, inside or outside the state as a result of automation, merger, acquisition, corporate restructuring or other business activity.

h. A signed certification by the chief officer of the recipient corporation as to the accuracy of the progress report.

2. On all subsequent annual progress reports, the granting body shall indicate whether the recipient corporation is still in compliance with its job creation, wage, and benefit goals, and whether the corporate parent is still in compliance with its state employment requirement.
3. Granting bodies and recipient corporations shall file annual progress reports for the duration of the subsidy, or not less than five years, whichever period is greater.

(F) TWO-YEAR REPORT

1. No later than 15 days after the second anniversary of the date of subsidy, the granting body shall file a two-year progress report with the [Department of Economic Development], and include the same information as required under section (E). The recipient corporation shall certify as to the accuracy of such report.
2. The granting body shall state in the two-year report whether the recipient corporation has achieved its job creation, wage, and benefit goals, and whether the corporate parent has maintained 90 percent of its employment in the state.
3. The [Department of Economic Development] shall compile and publish all data from the progress reports in both written and electronic form, including publication on the Department's website.
4. The granting body and the [Department of Economic Development] shall have access at all reasonable times to the project site and the records of the recipient corporation in order to monitor the project and to prepare progress reports.
5. A recipient corporation that fails to provide the granting body with the information or access required under this section shall be subject to a fine of not less than $500 per day to commence within ten working days after the February 1 deadline, and of not less than $1,000 per day to commence 20 days after such deadline.

(G) SUBSIDY LIMIT AND JOB QUALITY STANDARDS

1. A granting body shall not award a development subsidy if the cost per job is greater than $35,000. Such cost shall be determined by dividing the amount of the subsidy by the number of full-time jobs required under the application approved by the granting body.
2. A granting body shall not grant a subsidy to an applicant unless the wages paid to employees at the project site are equal to or exceed 85 percent of the average wage as established under paragraphs (D)(1)(l) and (D)(1)(m), provided, however, that for small businesses, the average wage must equal or exceed 75 percent of the wages established thereunder. The computation of wages under this section shall only apply to a recipient corporation that provides the healthcare coverage as approved in its application by the granting body.

(H) RECAPTURE

1. A recipient corporation shall fulfill its job creation, wage, healthcare, and other benefit requirements for the project site within two years of the date of subsidy. Such recipient shall maintain its wage and benefit goals as long as the subsidy is in effect, or five years, whichever is longer.

2. The corporate parent of a recipient corporation must maintain at least 90 percent of its employment in the state as long as the development subsidy is in effect, or not less than five years, whichever is longer.
3. If the requirements under paragraphs (1) or (2) are not fulfilled, the granting body shall recapture the development subsidy from the recipient corporation as follows:
   a. Upon a failure by the recipient corporation to create the required number of jobs, or to pay the required wages or benefits, the amount recaptured shall be based on the *pro rata* amount by which the unfulfilled jobs, wages or benefits bear to the total amount of the development subsidy.
   b. Upon a failure of the corporate parent to maintain 90 percent of its employment in the state, the rate of recapture shall equal twice the percentage by which such employment is less than 90 percent.
4. The granting body shall provide notice and explanation to the recipient corporation of its intent to recapture the development subsidy and state the amount to be recaptured. The recipient corporation shall remit to the governing body such amount within 60 calendar days of the date of notice.
5. If a recipient corporation defaults on a development subsidy in three consecutive calendar years, the granting body shall declare the subsidy null and void, and shall so notify the [Department of Economic Development] and the recipient corporation. The recipient corporation shall pay back to the granting body all remaining value of the development subsidy it has not previously repaid within 180 calendar days of the date of the notice of such default.

(I) PRIVATE ENFORCEMENT ACTION

If a granting body fails to enforce any provision of this section, any individual who paid personal income taxes to the state in the calendar year prior to the year in dispute, or any organization representing such taxpayers, shall be entitled to bring a civil action in state court to compel enforcement under this statute. The court shall award reasonable attorney's fees and costs to such prevailing taxpayer or organization.

(J) PUBLIC RECORD DISCLOSURE

All records required to be prepared or maintained under this section, including but not limited to applications, progress reports, recapture notices, and any other records or proceedings relating thereto, shall be subject to disclosure under the [cite appropriate section].

(K) NO REDUCTION IN WAGES

Nothing in this section shall be construed to require or authorize a recipient corporation to reduce wages established by any collective bargaining agreement or state or federal prevailing wage laws.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Minimum Standards for Subsidized Jobs Act

Summary: The Minimum Standards for Subsidized Jobs Act requires economic development subsidy recipients to meet minimum standards for job quality.

SECTION 1. SHORT TITLE

This Act shall be called the "Minimum Standards for Subsidized Jobs Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Every year, [State] awards more than [insert amount] dollars in economic development subsidies to for-profit businesses.
2. The creation or promotion of low-paying jobs is incompatible with sustainable economic development.
3. When state-subsidized jobs provide low wages and poor benefits, they increase the need for government services, including public assistance for food, housing, health care, and childcare.

(B) PURPOSE—This law is enacted to improve the effectiveness of economic development expenditures, take pressure off state social service programs, and improve the public health and welfare by ensuring that major state subsidies are used to support adequate living standards for working families.

SECTION 3. MINIMUM STANDARDS FOR SUBSIDIZED JOBS

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Economic development subsidy" means any expenditure of public funds with a value of at least [$100,000] for the purpose of stimulating economic development within the state, including but not limited to bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.
2. "Secretary" means the Secretary of the Department of [Labor], or the Secretary's designee(s).

(B) MINIMUM STANDARDS FOR WAGES AND BENEFITS

1. No person, association, corporation or other entity shall be eligible to receive any economic development subsidy unless that entity:
   a. Pays all its employees in the state a minimum wage that is at least one dollar per hour higher than the [federal/state as appropriate] minimum wage provided in [section number].
   b. Offers to all its employees in the state who work at least 35 hours per week a health insurance benefits plan for which the employer pays at least 80 percent of the monthly premium, and the coverage pays at least 80 percent of the costs of physician office visits, emergency care, surgery, and prescriptions, with an annual deductible of no more than $1,000.

c. Offers a worker training program that meets minimum standards issued by the Secretary to at least 20 percent of its workers in the state.

d. Has not been adjudicated to be in violation of any federal, state or local laws during the prior five years.

2. The provisions of this section do not apply to:

   a. A not-for-profit entity that is exempt from taxation under [cite section].

   b. An intern or trainee who is under 21 years of age and who is employed for a period of not longer than three months.

3. If the Secretary determines that application of this section would conflict with a federal program requirement, the Secretary, after notice and public hearing, may grant a waiver from the requirements of this section.

(C) ENFORCEMENT

1. The Secretary shall promulgate such regulations as are necessary to implement and administer compliance.
2. No person, association, corporation or other entity shall discharge, demote, harass or otherwise take adverse actions against any individual because such individual seeks the enforcement of this section, or testifies, assists or participates in any manner in an investigation, hearing or other proceeding to enforce this section.
3. No entity shall pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the requirements of this section.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007 and shall apply to any economic development subsidy awarded or renewed on or after October 1, 2007.

International Trade Agreements

- ✱ A wide variety of state laws are threatened by international trade agreements.
- ✱ International trade agreements contain powerful enforcement mechanisms that make state compliance mandatory.
- ✱ Foreign companies are trying to use international trade agreements to block state laws.
- ✱ International trade agreements promote job offshoring and prohibit local procurement preferences—sending jobs overseas.
- ✱ State legislators are not consulted about—or even notified of—the implications of new trade agreements on existing state law.
- ✱ State legislatures can act to monitor the implementation of international trade agreements and ensure that they are informed of the agreements' effect on state law.
- ✱ State legislatures can refuse to be bound by an international trade agreement's procurement rules.

A wide variety of state laws are threatened by international trade agreements.

Beginning in the 1990s, the United States entered into a series of international trade pacts, such as the North American Free Trade Agreement (NAFTA) and the trade agreements which resulted in the formation of the World Trade Organization (WTO). Under the terms of these agreements, state laws governing land use, education and procurement, as well as worker, consumer, public health, and environmental protections are subject to challenge in international tribunals by the other signatory countries in which such laws could be declared "barriers to trade."

International trade agreements contain powerful enforcement mechanisms that make state compliance mandatory.

The WTO provides a venue for foreign governments—often at the behest of private industry—to challenge U.S. federal, state and local laws in closed-door international trade tribunals. If a tribunal rules against a law or regulation, it must be eliminated or amended to avoid trade sanctions. The federal government must take all available steps to force state compliance, including enacting preemptive legislation, filing lawsuits, or withholding federal funding. NAFTA has the same mechanism, and also allows companies to seek monetary damages in international tribunals to compensate them for diminution of their profits.

Foreign companies are trying to use international trade agreements to block state laws.

Canadian mining company Glamis Gold is using NAFTA to challenge California policies that safeguard the environment. Glamis Gold wants to avoid the requirement that companies return mining sites to their original condition so that it can operate an open-pit mine utilizing environmentally hazardous cyanide leach mining technology. Mexican candy producers threatened to act under NAFTA if the California legislature held Mexican candy to the state's lead contamination standards. The California Department of Health had found that one-fourth of Mexican candy contained high levels of lead.[1] When Massachusetts banned procurement from companies doing business in Burma, the European Union and Japan argued the law violated the WTO Agreement on Government Procurement. The challenge was withdrawn after the U.S. Supreme Court struck down the Massachusetts statute on different grounds. Australian pharmaceutical manufacturers argue that America's free trade agreement with their country precludes states' use of preferred drug lists to lower drug prices.[2] State attorneys general were shocked when a Canadian tobacco distributor challenged the 46-state tobacco settlement as a "barrier to trade" and when a WTO ruling on Internet gambling declared that state anti-gambling laws violate the WTO.

International trade agreements promote job offshoring and prohibit local procurement preferences—sending jobs overseas.

Many international trade agreements prohibit states from favoring domestic companies over foreign ones in government procurement. Currently, eight states (AZ, IL, MI, MN, MO, NJ, NC, TN) have anti-offshoring laws or executive orders that may be subject to challenge. Other states have policies that favor local suppliers of goods and services. These too could be subject to challenge under the terms of WTO, NAFTA and other agreements.

State legislators are not consulted about—or even notified of—the implications of new trade agreements on existing state law.

The Office of the United States Trade Representative (USTR) negotiates trade deals for the federal government. Even when the USTR proposes terms that adversely affect the ability of states to protect their citizens, state legislators are left in the dark. The USTR provides infrequent, limited information to one liaison in each state—called a "State Point of Contact" (SPOC)—but that liaison represents the governor, not the legislature. In addition, international trade agreements sometimes give states the opportunity to "grandfather in" existing laws—but legislators are rarely informed of these options. And when the USTR asks states to endorse trade agreement procurement restrictions, those requests are made only to governors, even though state legislatures set procurement policies.

State legislatures can act to monitor the implementation of international trade agreements and ensure that they are informed of the agreements' effect on state law.

In 2006, Utah passed legislation that created an 11-member commission to study the impact of trade agreements on state policy. California and Maine have similar bodies. Legislation also can require the SPOC to share information with appropriate House and Senate committees. The committees can review pending trade agreements and determine their potential effects on state laws and regulations. In addition, states can pass legislation which requires the prior informed consent of the legislature before a state is bound to comply with the service sector, procurement, or investment constraints included in any trade agreement.

State legislatures can refuse to be bound by an international trade agreement's procurement rules.

In the early 1990s, 37 governors (AZ, AR, CA, CO, CT, DE, FL, HI, ID, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NY, OK, OR, PA, RI, SD, TN, TX, UT, VT, WA, WI, WY) opted into an agreement that commits their states to give foreign companies in 23 countries equal footing with U.S. companies in government procurement decisions. More recently, only 19 states agreed to sign on to the procurement terms of the Central American Free Trade Agreement (CAFTA) and only eight have agreed to comply with the procurement rules of the U.S.-Peru Free Trade Agreement. In 2005, the Maryland legislature not only rescinded the governor's consent to be bound to CAFTA's procurement rules, it enacted a law mandating that the Maryland legislature—not the governor—holds the power to bind the state to comply with trade agreements. Rhode Island subsequently enacted similar legislation.

This policy summary relies in large part on information from Public Citizen.

Endnotes

1 Sierra Club, "When Bad Things Happen to Good Laws: How International Trade Pacts Threaten California's Environmental Laws," September 2004.

2 Inside Washington Publishers, "States Fear Trade Pacts May Hinder Efforts to Cut Medicaid Drug Costs," *FDA Week*, March 24, 2006.

International Trade Agreements

Safeguarding Federalism in Trade Act

Summary: The Safeguarding Federalism in Trade Act ensures that only the legislature can bind the state to international trade agreements and declares the legislature's opposition to "Fast Track" trade authority.

SECTION 1. SHORT TITLE

This Act shall be called the "Safeguarding Federalism in Trade Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Today's international trade agreements have impacts which extend significantly beyond the bounds of traditional trade matters such as tariffs and quotas, and instead grant foreign investors and service providers certain rights and privileges regarding operations within a state's territory, subject various state non-trade related laws to challenge as "barriers to trade" in the binding dispute resolution bodies that accompany the pacts, and place limits on the future policy options of state legislatures.
2. NAFTA, for example, grants foreign firms new rights and privileges for operating within a state that exceed those granted to U.S. businesses under state and federal law. NAFTA has already generated "regulatory takings" cases against state and local land use decisions, state environmental and public health policies, adverse state court rulings, and state and local contracts that would not have been possible in U.S. courts.
3. When states agree to be bound by government procurement provisions contained in trade agreements such as WTO, NAFTA and various NAFTA-expansion agreements such as CAFTA, common economic development and environmental policies, such as buy-local laws, policies to prevent offshoring of state jobs, as well as recycled content laws could be subject to challenge as "barriers to trade" as they contradict the obligations in the trade agreements.
4. Today's trade agreements also curtail state regulatory authority by placing constraints on future policy options. The WTO services agreement undermines state efforts to expand healthcare coverage and rein in healthcare costs, and places constraints on state and local land use planning. New negotiations in the services area will have additional implications for state regulation of energy, higher education, professional licensing, and more.
5. Despite the indisputable fact that today's international trade agreements have far-reaching impacts on state and local law and policy, federal government trade negotiators have failed to provide state legislatures with necessary information and documents regarding provisions directly affecting state jurisdiction, have failed to consult with state legislatures when seeking the consent of states to be bound to trade agreement procurement obligations, and have sought neither governor nor legislature consent before binding states to comply with numerous other trade agreement provisions.
6. The current encroachment on state regulatory authority by international trade agreements has been exacerbated because U.S. trade policy is being formulated and implemented under "Fast Track" Trade Authority procedures. Fast Track eliminates any meaningful role for states and limits Congress' role to a yes or no vote with no amendments after negotiations are completed and a final agreement is

signed. When Fast Track sunsets in 2007, it should be replaced with a more democratic model for negotiating trade agreements, one which ensures that the prior informed consent of states is secured before states are bound to the regulatory terms of any trade agreement.

(B) PURPOSE—This law is enacted to protect the state's sovereignty; the state's ability to safeguard the health, safety and welfare of its citizens; and the Founders' system of federalism in the current era of globalization.

SECTION 3. INTERNATIONAL TRADE AGREEMENTS

After section XXX, the following new section XXX shall be inserted:

(A) The individual or office in the state government that has been designated as the "State Point of Contact" for interactions with the Office of the United States Trade Representative (USTR) shall transmit copies of all information received from and sent to the U.S. government to the House Committees on [Health and Safety, Environment and Labor] and the Senate Committee on [Health and Safety, Environment and Labor].

(B) Except as provided in subsection (C) of this section, [State] officials, including the governor, may not:

1. Bind the state to the terms of an international trade agreement or otherwise commit the state to comply with the non-tariff terms of an international trade agreement; or
2. Give consent to the federal government to bind the state to the terms of an international trade agreement or otherwise indicate that the state will comply with the non-tariff terms of an international trade agreement.

(C) The governor may bind the state or give consent to the federal government to bind the state to the government procurement, services or investment rules of an international trade agreement only if the legislature enacts legislation that explicitly authorizes the governor to do so.

SECTION 4. COMMUNICATIONS TO THE FEDERAL GOVERNMENT

(A) It is the sense of this legislature that the Congress of the United States should replace the failed "Fast Track" system of trade negotiation with a new, more democratic and inclusive model, and pass binding legislation instructing the USTR to fully and formally consult individual state legislatures regarding procurement, services, investment or any other trade agreement rules that impact state laws or authority before negotiations begin and as they develop, and to seek informed consent from state legislatures prior to binding states to conform their laws to the regulatory terms of international commercial agreements.

(B) Not later than October 1, 2007, the Attorney General shall notify the USTR of the enactment of this legislation.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Minimum Wage

- ✱ The current minimum wage of $5.15 per hour leaves millions of Americans in poverty.
- ✱ The value of the minimum wage has plummeted due to inflation and federal inaction.
- ✱ Only 28 states have a minimum wage greater than $5.15 per hour.
- ✱ An increased minimum wage would help millions of working families escape poverty.
- ✱ An increased minimum wage would especially benefit women and people of color.
- ✱ The current minimum wage strains state public assistance programs.
- ✱ States do not have to sacrifice jobs for an increased minimum wage.
- ✱ Americans strongly support a higher minimum wage.

The current minimum wage of $5.15 per hour leaves millions of Americans in poverty.

A full-time job should be a bridge out of poverty, an opportunity to make a living through work. But for minimum wage earners—especially those with families—it is not. An individual who works full-time at the current minimum wage earns about $10,700 a year—$5,900 below the 2006 poverty line for a family of three, and $9,300 below the poverty line for a family of four.

The value of the minimum wage has plummeted due to inflation and federal inaction.

The federal minimum wage is not adjusted for inflation, and it has not increased since September 1997. Low-wage workers fall further and further behind each year that the president and Congress neglect the minimum wage. If the minimum wage had kept pace with inflation since 1979, when it was $2.90 per hour, it would now be over $8.10. The real, inflation-adjusted value of the minimum wage in 2006 is at its lowest point in 50 years.[1]

Only 28 states have a minimum wage greater than $5.15 per hour.

Twenty-eight states (AK, AZ, AR, CA, CO, CT, DE, FL, HI, IL, ME, MD, MA, MI, MN, MO, MT, NV, OH, NJ, NY, NC, OR, PA, RI, VT, WA, WI) and the District of Columbia have a minimum wage greater than the federal as of January 2007, the highest being $7.93 in Washington. West Virginia has a minimum wage higher than the federal, but it only applies to a small segment of workers. Fifteen states (GA, ID, IN, IA, KY, NE, NH, NM, ND, OK, SD, TX, UT, VA, WY) match the federal minimum of $5.15. Kansas has a minimum wage that is lower than the federal, and five (AL, LA, MS, SC, TN) have no state minimum wage at all.

An increased minimum wage would help millions of working families escape poverty.

If the minimum wage were increased from $5.15 to $6.65—just $1.50—it would directly affect the wages of five to ten percent of the work-force, depending on the state.[2] The wage of an additional five to ten percent of workers—those who currently earn between $6.65 and $7.65 per hour—would increase because of the "spillover" effect of a rise in the minimum wage.

An increased minimum wage would especially benefit women and people of color.

About 12.6 percent of working women—11 million women—and their families would be directly affected by a one dollar increase in the minimum wage. Similarly, 18.1 percent of African American workers and 14.4 percent of Hispanic workers would directly benefit from such an increase.[3]

The current minimum wage strains state public assistance programs.

Minimum wage workers and their families must rely on public assistance to survive. They need Medicaid, subsidized housing, childcare programs, and free school lunches. Raising the minimum wage requires employers to shoulder responsibility for the basic needs of their employees, thereby lowering costs for states and taxpayers.

States do not have to sacrifice jobs for an increased minimum wage.

A comprehensive study by the Economic Policy Institute found that the 1996 and 1997 federal minimum wage increases did not result in job losses. Even teen employment—which some argue is the most vulnerable to minimum wage increases—suffered no job losses.[4] Increases in the minimum wage do not harm businesses because costs are offset by their benefits: higher employee productivity, lower turnover, decreased absenteeism, and increased worker morale.

Americans strongly support a higher minimum wage.

Eighty-six percent of Americans favor raising the minimum wage from $5.15 to $6.45 per hour, according to a poll by the Pew Research Center.[5] In November 2006, voters approved ballot initiatives to increase the minimum wage in six states. In every case, the measure was approved by a substantial margin: 66 to 34 percent in Arizona, 53 to 47 percent in Colorado, 76 to 24 percent in Missouri, 73 to 27 percent in Montana, 69 to 31 percent in Nevada, and 56 to 44 percent in Ohio.

This policy summary relies in large part on information from the Economic Policy Institute.

Endnotes

1 Based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) computed by the U.S. Bureau of Labor Statistics.

2 Economic Policy Institute, "Step Up, Not Out: The Case for Raising the Federal Minimum Wage for Workers in Every State," 2001.

3 Ibid.

4 Economic Policy Institute, "The Impact of the 1996-97 Minimum Wage Increase," 1998.

5 Pew Research Center for the People and the Press, "Beyond Red and Blue: Republicans Divided About Role of Government—Democrats by Social and Personal Values," May 10, 2005.

Minimum Wage

Fair Minimum Wage Act

Summary: The Fair Minimum Wage Act raises the state's minimum wage to $6.15 and provides an automatic cost-of-living increase each year.

SECTION 1. SHORT TITLE

This Act shall be called the "Fair Minimum Wage Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The current minimum wage is insufficient to keep families out of poverty.
2. Due to inflation and federal inaction, the value of the federal minimum wage has plummeted.
3. State services are strained by families of minimum-wage workers who qualify for public programs like Medicaid and SCHIP.

(B) PURPOSE—This law is enacted to increase the wages of low-income workers, promote the economic strength of the state, and take pressure off state social service programs.

SECTION 3. FAIR MINIMUM WAGE

After section XXX, the following new section XXX shall be inserted:

1. No employer shall pay less than the [State] minimum wage designated in this section to each employee in every occupation.
2. The minimum wage for employees shall be $6.15 per hour, beginning on July 1, 2007.
3. On September 30, 2007, and on September 30 of each following year, the Secretary [of Labor] shall calculate an adjusted minimum wage rate in direct proportion to an increase or decrease in the U.S. Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), or a successor index, for the prior period of July 1 to June 30. That adjusted minimum wage shall take effect on the following January 1.
4. [OPTIONAL: For occupations in which gratuities are customarily recognized as part of the remuneration for employment, employers are entitled to an allowance for gratuities in an amount not to exceed 40 percent of the minimum wage rate. The Secretary [of Labor] shall require each employer that desires an allowance for gratuities to provide substantial evidence that the amount claimed was actually received by the employee in the period for which the claim of exemption is made, and no part thereof was returned to the employer.]

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

State Financial Accountability in Labor Organizing

- Billions of taxpayer dollars are squandered on campaigns that are unrelated to the states' work.
- Companies spend considerable sums to influence employees about unionization.
- Many federal programs prohibit contractors from using federal funds to influence unionization.
- A federal appeals court recently upheld California's law that prohibits employers from using state funds to assist, promote or deter union organizing.
- The State Financial Accountability Act is based on the California model.
- The State Financial Accountability Act does not prohibit any private employer from presenting its views on unionization.

Billions of taxpayer dollars are squandered on campaigns that are unrelated to the states' work.

Billions of dollars from state treasuries are spent by state contractors and subcontractors to hire attorneys and consultants, train supervisors in campaign tactics, and produce materials to influence workers' choices about unionization. State funds are also used to pay wages and salaries of employees who stop working to attend mandatory meetings during which the employer tries to influence their choices about unions. Such unintended use of state funds constitutes a misuse of taxpayer dollars and the misapplication of scarce public resources.

Companies spend considerable sums to influence employees about unionization.

A campaign by a small- to medium-sized firm typically costs between $20,000 and $30,000 in legal fees alone, but full-scale campaign costs can exceed $100,000. Campaigns run by large firms may cost more than $1 million.[1] Of course, companies have the right to spend whatever they want to communicate with their own employees. But there is no reason why the government should allow taxpayers' money—appropriated to provide products or services—to be diverted to a different use.

Many federal programs prohibit contractors from using federal funds to influence unionization.

A variety of programs prohibit contractors from using federal funds to influence unionization efforts, including the Workforce Investment Act, the National and Community Service Act, the Head Start Programs Act and Medicare. A regulation that would have applied this rule to all federal contracts was issued by the Clinton Administration, but was suspended by the Bush Administration.

A federal appeals court recently upheld a California law that prohibits employers from using state funds to assist, promote or deter union organizing.

In 2000, California became the first state to enact a state law to prohibit both public and private employers from using state money or property to influence their employees' decisions about unionization. The law was vigorously challenged in court. The U.S. Court of Appeals for the 9th Circuit upheld the law, ruling *en banc* that it is not preempted by federal labor law.[2]

The State Financial Accountability Act is based on the California model.

The model act:

* Requires the state to include in state contracts for goods or services a provision that bars the use of any state funds to assist, promote or deter union organizing.
* Stipulates that every contractor's request for reimbursement from state funds must include a certification that the contractor has not billed for costs incurred to assist, promote or deter union organizing.
* Provides enforcement through both administrative and civil proceedings.

The State Financial Accountability Act does not prohibit any private employer from presenting its views on unionization.

Such legislation does not prohibit or deter employer campaigns. Employers remain free to hire expensive labor consultants and pay them to produce elaborate posters, leaflets, mailers, buttons, bumper stickers, and videos about unions—they simply cannot use state funds for these purposes. Employers remain free to address their employees about unionization in meetings and other gatherings, through mailings, and all other legal means—as long as state taxpayers are not footing the bill. In this way, the state ensures that it—the government of all the people—is not subsidizing such campaigns.

This policy summary relies in large part on information from the AFL-CIO.

Endnotes

1 Bruce Kaufman and Paula Stephan, "The Role of Management Attorneys in Union Organizing Campaigns," *Journal of Labor Research*, Fall 1995.

2 *Chamber of Commerce of the U.S. v. Lockyer*, U.S. Court of Appeals for the 9th Circuit, September 21, 2006.

State Financial Accountability in Labor Organizing

State Financial Accountability Act

Summary: The State Financial Accountability Act prohibits the use of state funds or property for the purpose of assisting, promoting or deterring union organizing.

SECTION 1. SHORT TITLE

This Act shall be called the "State Financial Accountability Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. It is the policy of the state that its funds will not be used to subsidize interference with an employee's choice of whether to join or be represented by a labor union.
2. Some private employers use state funds to aid or subsidize efforts to deter union organizing.
3. Such use of state funds is contrary to the purposes for which they were appropriated, and is wasteful of scarce public resources.

(B) PURPOSE—This law is enacted to forbid the use of state funds for unintended purposes and to conserve state resources by ensuring that state funds are used as intended.

SECTION 3. STATE FINANCIAL ACCOUNTABILITY IN LABOR ORGANIZING

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Assist, promote or deter union organizing" means any attempt by an employer to influence the decision of any or all of its employees or the employees of its subcontractors regarding:
   a. Whether to support or oppose a labor organization that represents or seeks to represent those employees; or
   b. Whether to become a member of any labor organization.
2. "Employer" means any individual, corporation, association, partnership or other legal entity that employs more than one person in the state.
3. "State" means the state or any agency of state government.
4. "State contract" means a contract with the state for goods or services, or a subcontract for providing part or all of the goods or services covered by another entity's contract for goods or services.
5. "State contractor" means an employer that has a state contract.
6. "State funds" means any money drawn from the State Treasury or any special or trust fund of the state, including any money appropriated by the state and transferred to any public agency.

(B) NO STATE FUNDS TO ASSIST, PROMOTE OR DETER LABOR ORGANIZING

1. Any state contract for goods or services must prohibit state contractors from using any state funds to assist, promote or deter union organizing. No state funds shall be used to reimburse a state contractor for any costs incurred to assist, promote or deter union organizing.
2. During the duration of a state contract, no state contractor shall use any state funds to assist, promote or deter union organizing. Every request for reimbursement from state funds by a state contractor shall include a certification that the contractor is not seeking reimbursement for costs incurred to assist, promote or deter union organizing.
3. The recipient of a grant of state funds, including state funds disbursed as a grant by any public agency, shall not use the funds to assist, promote or deter union organizing. Prior to the disbursement of a grant of state funds, the recipient shall provide a certification to the state that none of the funds will be used to assist, promote or deter union organizing.
4. No state contractor shall discharge, demote, harass or otherwise take adverse actions against any individual because such individual seeks to enforce this section, or testifies, assists or participates in any manner in an investigation, hearing or other proceeding to enforce this section.
5. For purposes of this section, any expense, including legal and consulting fees and salaries of supervisors and employees, incurred for research for, or preparation, planning or coordination of, or carrying out, an activity to assist, promote or deter union organizing shall be treated as paid or incurred for that activity. For purposes of accounting for expenditures, if state funds and other funds are commingled, any expenditures to assist, promote or deter union organizing shall be allocated between state funds and other funds on a *pro rata* basis.

(C) EXCEPTIONS

1. This section shall not apply to an activity performed, or to an expense incurred, in connection with:
   a. Addressing a grievance or negotiating or administering a collective bargaining agreement.
   b. Allowing a labor organization or its representatives access to the employer's facilities or property.
   c. Performing an activity required by federal or state law or by a collective bargaining agreement.
   d. Negotiating, entering into, or carrying out an agreement with a labor organization.
2. This section shall not apply to a fixed-price contract or to any other arrangement by which the amount of the payment of state funds does not depend on the costs incurred by the state contractor.
3. This section shall not apply to a grant or contract awarded prior to July 1, 2007, unless the grant or contract is modified, extended or renewed after July 1, 2007.

(D) ENFORCEMENT

1. This section shall be enforced by [appropriate state agency], which shall promulgate such regulations as are necessary to implement and administer compliance. Regulations shall include reasonable requirements for state contractors and grantees to maintain records sufficient to show that no state funds are used to assist, promote or deter union organizing.

2. A civil action for a violation of this section may be brought by [appropriate state agency], or by any state taxpayer on behalf of the people of the state, for injunctive relief, damages, civil penalties, and other appropriate equitable relief. All damages and civil penalties collected pursuant to this section shall be paid to the State Treasury.
3. Before filing an action under this section, a taxpayer shall give written notice to [appropriate state agency] of the alleged violation and the intent to bring suit. If the state commences a civil action for the same alleged violation within 60 days of receiving the notice, a separate action by the taxpayer shall be barred. A taxpayer may intervene as a plaintiff in any action brought under this section. If the plaintiff prevails, a taxpayer plaintiff or taxpayer intervenor who makes a substantial contribution to the action is entitled to recover reasonable attorney's fees and costs.
4. A state contractor or employer that violates this section shall be liable to the state for a civil penalty equal to triple the amount of any funds expended to assist, promote or deter union organizing.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Unemployment Insurance—Options For Reform

* Millions of Americans fall outside the unemployment insurance (UI) program's safety net.
* States must avoid cutting UI benefits.
* Several states have funds sufficient to expand their UI safety nets.
* A number of states have accumulated ample UI trust funds by paying below-average benefits to a small proportion of their unemployed workers.
* States can use several UI reforms to boost their economies.
* Americans strongly support measures that assist laid off workers.

Millions of Americans fall outside the unemployment insurance (UI) program's safety net.

Despite the improved economy, long-term unemployment remains high and a significant number of middle-class jobless workers cannot find jobs that pay fair wages. Yet many state UI programs cover a low proportion of unemployed workers, or pay inadequate benefits.

States must avoid cutting UI benefits.

States are facing their fifth straight year of higher UI costs. Some state UI programs, including those in AR, CA, MA, MN, NY, NC, ND, PA and VA, were under considerable financial pressure in 2005. A few states continued to use federal loans to pay UI benefits in 2006. All states with serious UI financial problems entered the economic downturn with smaller-than-recommended UI trust fund reserves. Many had given UI tax breaks of some sort in the 1990s, or kept UI payroll tax rates too low to build their reserves. In many states, high UI payouts have produced payroll tax increases. These increases are needed in order to rebuild trust fund reserves in the event of a future recession. Given that tax rates rise and fall over economic cycles, states must not overreact to rising tax rates by cutting benefits or restricting eligibility.

Several states have funds sufficient to expand their UI safety nets.

Regular state UI benefits are financed through payroll taxes and paid from state trust fund accounts maintained in the U.S. Treasury. Most state UI trust funds could adequately meet the needs of the jobless in 2006. Twelve states (AZ, DE, HI, ME, MT, NH, NM, OK, OR, UT, VT, WY) and the District of Columbia have comfortable trust fund surpluses at this point in the economic cycle.

A number of states have accumulated ample UI trust funds by paying below-average benefits to a small proportion of their unemployed workers.

Arkansas, Arizona, Delaware and New Hampshire are examples of relatively solvent states that pay below-average weekly UI benefits. States with restrictive UI eligibility requirements and above-average trust fund reserves include AZ, CO, FL, GA, NH, NM, OK and VA. Although many individuals face long-term unemployment due to Hurricane Katrina, Louisiana and Mississippi have large trust funds and low payroll taxes. Both states can meet the unemployment challenges by modernizing their UI programs.

States can use several UI reforms to boost their economies.

* **Increased weekly UI benefit amounts**—Too many states provide inadequate weekly benefits. UI benefits should replace about half of lost wages, up to a maximum of two-thirds of the state average weekly wage. Many states need to update their UI benefit levels in order to protect laid off workers' standards of living. Alabama, Arizona and Missouri raised their maximum weekly benefit amounts in 2004. Georgia,

Nebraska and Virginia did the same in 2005. Both Washington and New Jersey improved formulas used to calculate benefits in 2005. The new formulas increased weekly benefits for many workers in Washington and extended the duration of benefits in New Jersey.

★ **Alternative base periods (ABPs)**—When calculating UI eligibility and benefit levels, these provisions take more recent wages into account than traditionally defined methods. ABPs promote UI eligibility expansion, especially among women, new entrants to the labor market (including former welfare recipients), re-entrants to the workforce, and low-wage workers. A total of 19 states (CT, GA, HI, IL, ME, MA, MI, NH, NJ, NM, NY, NC, OH, OK, RI, VT, VA, WA, WI) and the District of Columbia have adopted ABPs. Nearly half of the nation's UI claims will come from states that have implemented ABPs once the Illinois provision takes effect in 2008. ABPs have a minimal effect on overall UI programs. If all states had adopted ABPs in 2003, the number of workers eligible for UI would have increased by only about seven percent.[1]

★ **Equitable coverage of part-time workers**—Part-time workers account for nearly 20 percent of the workforce but do not qualify for UI benefits in many states. These workers are predominantly women and disproportionately low-income. Extension of UI benefits to part-time workers has only a small effect on overall UI programs. In Maine, where a significant expansion was enacted in 2003, just $1.8 million of a total $115.7 million in benefits was paid to part-time UI claimants. More than 70 percent of the workers who benefited from the expansion were women.[2] New Hampshire and Texas adopted modest expansions of part-time eligibility in 2005.

★ **Extended benefit triggers**—States can adopt triggers that extend UI coverage for an additional 13 weeks under temporary federal extensions and the federal-state extended benefits program. Eight states (AK, CT, KS, NJ, OR, RI, VT, WA) have adopted the Total Unemployment Rate trigger, while Michigan and North Carolina adopted temporary triggers in order to pay an added 13 weeks of federal extensions during 2002 and 2003.

★ **State benefit extensions**—To address long-term unemployment beyond the 13 weeks provided by the temporary federal extension program, seven states (KS, MA, NH, NJ, NM, OR, UT) have passed measures to pay additional benefits. Six states (CA, ME, MA, NJ, NY, WA) provide benefit extensions to jobless individuals who are in approved training programs.

Americans strongly support measures that assist laid off workers.

Anxiety about offshoring and job loss remains high in spite of the somewhat-improved economy. Polls consistently show that jobs and the economy are among the public's biggest concerns. Middle-class families understand that few jobs are safe in our global economy. A stronger safety net for jobless workers is one way to address these legitimate fears.

This policy summary relies in large part on information from the National Employment Law Project.

Endnotes

1 National Employment Law Project and Center for Economic and Policy Research, "Clearing the Path to Unemployment Insurance for Low-Wage Workers: An Analysis of Alternative Base Period Implementation," September 2005.

2 National Employment Law Project, "How Much Does Unemployment Insurance for Part-Time Workers Cost?" May 2005.

Unemployment Insurance—Options For Reform

Alternative Base Period Act

Summary: The Alternative Base Period Act takes recent wages into account when Unemployment Insurance benefits are calculated.

SECTION 1. SHORT TITLE

This Act shall be called the "Alternative Base Period Act."

SECTION 2. ALTERNATIVE BASE PERIOD

After section XXX, the following new section XXX shall be inserted:

1. If an individual does not have sufficient qualifying weeks or wages in the base period to be eligible for unemployment insurance benefits, the individual shall have the option of designating that the base period shall be the "alternative base period," which means:
    a. The last four completed calendar quarters immediately preceding the individual's benefit period, or
    b. The last three completed calendar quarters immediately preceding the benefit period and, of the calendar quarter in which the benefit period commences, the portion of the quarter that occurred before the benefit period.
2. The [unemployment insurance agency] shall inform the individual of the option under this section.
3. If information regarding weeks and wages for the calendar quarter or quarters immediately preceding the benefit period is not available from the regular quarterly reports of wage information, and the [unemployment insurance agency] is not able to obtain the information using other means pursuant to state or federal law, the [unemployment insurance agency] may base the determination of eligibility for unemployment insurance benefits on the affidavit of an individual about weeks and wages for that calendar quarter. The individual shall furnish payroll documentation, if available, in support of the affidavit. A determination of unemployment insurance benefits based on an alternative base period shall be adjusted when the quarterly report of wage information from the employer is received, if that information causes a change in the determination.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Unemployment Insurance Eligibility for Part-Time Workers Act

Summary: The Unemployment Insurance Eligibility for Part-Time Workers Act makes part-time workers eligible for unemployment benefits.

SECTION 1. SHORT TITLE

This Act shall be called the "Unemployment Insurance Eligibility for Part-Time Workers Act."

SECTION 2. EXTENSION OF UNEMPLOYMENT INSURANCE TO PART-TIME WORKERS

After section XXX, the following new section XXX shall be inserted:

1. An unemployed individual shall not be disqualified for unemployment insurance benefits solely on the basis that he or she is only available for part-time work.
2. If an individual restricts his or her availability to part-time work, he or she may be considered to be able to work and available for work pursuant to [cite appropriate section], if it is determined that all of the following conditions exist:
    a. The claim is based on the individual's part-time employment.
    b. The individual is actively seeking, and is willing to accept, work under essentially the same conditions that existed while the wage credits were accrued.
    c. The individual imposes no other restrictions, and is in a labor market in which a reasonable demand exists for the part-time services he or she offers.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Worker Freedom from Mandatory Meetings

- ✱ A growing number of employers use mandatory meetings to force their religious and political beliefs on workers.
- ✱ Intimidation and coercion at the workplace is un-American.
- ✱ The Worker Freedom Act would protect Americans from having to attend coercive meetings that are unrelated to how employees perform their jobs.
- ✱ The Worker Freedom Act does not limit employers' First Amendment rights.
- ✱ The Worker Freedom Act is not preempted by the federal National Labor Relations Act.

A growing number of employers use mandatory meetings to force their religious and political beliefs on workers.

It is entirely legal for a supervisor or business owner to order an employee into an office or meeting room and force him or her to listen to almost anything. It is also legal to fire an employee who refuses to attend, does not listen, or tries to respond. Commonly, these meetings fall into one of three categories:

✱ **Political campaigning—**During the last presidential election, the National Association of Manufacturers and other politically-charged business groups made a concerted effort to get employers to use the workplace for partisan politics. Employers responded by urging workers to "help" by opposing candidates deemed "unacceptable" to the company. As the *Legal Times* reported, "People need their jobs, and many will sacrifice their rights as citizens to continue to provide for themselves and their families. Consequently, an employer that tries to use its financial muscle to control employees' political behavior will often succeed."[1]

✱ **Religious proselytizing—**In more and more workplaces, employees are expected to attend prayer breakfasts, forced to undergo unsolicited faith-based "training and education," and "encouraged" to share their employer's religious affiliation. A number of evangelical organizations now offer to businesses Christian ministry services for employees during work hours. For example, Marketplace Ministries Inc., of Dallas, Texas employs more than 1,700 chaplains who make on-site visits to 300 companies in 38 states.[2]

✱ **Anti-Union propagandizing—**It is common for employers to compel workers to sit through mandatory anti-union presentations during labor organizing campaigns. A report for the federal government, based on a study of more than 400 union representation election campaigns, found that during 92 percent of union organizing drives, employers forced their employees to attend closed door anti-union meetings. In addition, 78 percent of employers directed supervisors to deliver anti-union messages to employees in one-on-one meetings. On average, employers held 11 captive audience meetings during every union organizing campaign.[3]

Intimidation and coercion at the workplace is un-American.

At-will employees can be fired for any reason, even for refusing to adopt an employer's religious or political views. For example, an Alabama woman was fired because she refused to remove a John Kerry bumper sticker from her car during the 2004 campaign. A Maryland worker was fired after he attempted to question President Bush about Iraq at a campaign rally. In Wisconsin, a man was fired for declining to make a political contribution to the party favored by his boss.[4] Yet, in every case these employees were exercising their rights as Americans to hold their own personal beliefs. Unfortunately, without additional legislation, workers' First Amendment rights are held hostage to their jobs.

The Worker Freedom Act would protect Americans from having to attend coercive meetings that are unrelated to how employees perform their jobs.

The Worker Freedom Act would make it illegal for an employer to require workers to sit through meetings while the employer lectures on religious or political beliefs, including beliefs about joining a union. The Act also prohibits employers from firing or disciplining workers who report coercive meetings.

The Worker Freedom Act does not limit employers' First Amendment rights.

Under the Act, employers remain free to hold meetings, voice their opinions, and distribute information, but it allows workers to decline to participate without fear of being fired or suffering other penalties. Meetings about political or religious beliefs must be voluntary.

The Worker Freedom Act is not preempted by the federal National Labor Relations Act.

The National Labor Relations Act neither protects nor prohibits mandatory meetings of workers. Section 8(c) of the Act says that an employer's *non-coercive* expression of views "shall not constitute or be evidence of an unfair labor practice," but nothing in the Act gives employers the right to compel workers to listen. The Worker Freedom Act addresses only the coercive expression of political and religious views, something that is entirely within states' rights to legislate.

This policy brief relies in large part on information from AFL-CIO.

Endnotes

1 Lewis Maltby, "Office Politics: Civic speech shouldn't get employees fired," *Legal Times*, August 29, 2005.

2 Stephan Singer, "Conn. Considers Bill to Prevent Proselytism in the Workplace," *Associated Press*, March 11, 2006.

3 Dr. Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing," U.S. Trade Deficit Review Commission, 2000.

4 "Office Politics: Civic speech shouldn't get employees fired."

Worker Freedom from Mandatory Meetings

Worker Freedom Act

Summary: The Worker Freedom Act prohibits employers from requiring workers to attend meetings where the employer lectures on religious or political beliefs, including beliefs about joining a union.

SECTION 1. SHORT TITLE

This Act shall be called the "Worker Freedom Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Increasingly, employers are using mandatory meetings to force their religious and political beliefs on workers.
2. This kind of intimidation and coercion is un-American.
3. The state has a long history of protecting employees in the workplace, including minimum wages, prohibitions against discrimination, workplace safety standards and workers' compensation.

(B) PURPOSE—This law is enacted to protect workers from political and religious coercion.

SECTION 3. WORKER FREEDOM

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Employer" means a person engaged in business that has employees, including the state and any political subdivision of the state.
2. "Employee" means any person engaged in service to an employer in a business of the employer.
3. "Labor organization" means any organization that exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.
4. "Political matters" means the decision to join or not join any lawful political, social or community group or activity or any labor organization.

(B) PROHIBITION OF MANDATORY MEETINGS ON POLITICS, RELIGION OR JOINING A UNION

1. No employer or employer's agent, representative or designee may require its employees to attend a meeting or participate in any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinion about religious or political matters.

2. No employer or employer's agent, representative or designee shall discharge, discipline or otherwise penalize, or threaten to discharge, discipline or otherwise penalize, any employee:
   a. As a means of requiring an employee to attend a meeting or participate in communications described in paragraph 1, above, or
   b. Because the employee, or a person acting on behalf of the employee, makes a good faith report, verbally or in writing, of a violation or a suspected violation of this section, except that such prohibitions shall not be applicable when the employee knows that such report is false.
3. Employers shall post a notice to employees of employee rights under this section. Such posting shall be in a place normally reserved for such employment-related notices and in a place commonly frequented by employees.
4. Nothing in this section shall prohibit:
   a. A religious organization from requiring its employees to attend an employer-sponsored meeting or to participate in any communications with the employer or its agents or representatives, the primary purpose of which is to communicate the employer's religious beliefs, practices or tenets; or
   b. A political organization from requiring its employees to attend an employer-sponsored meeting or to participate in any communications with the employer or its agents or representatives, the primary purpose of which is to communicate the employer's political tenets or purposes.

(C) ENFORCEMENT

1. Any aggrieved employee may enforce the provisions of this section by means of a civil action brought no later than ninety days after the date of the alleged violation in the court for the judicial district where the violation is alleged to have occurred or where the employer has its principal office. The court may award a prevailing employee all appropriate relief, including rehiring or reinstatement of the employee to the employee's former position, back pay and reestablishment of any employee benefits to which the employee would otherwise have been eligible if such violation had not occurred. The court shall award a prevailing employee treble damages, together with reasonable attorneys' fees and costs.
2. Nothing in this section shall be construed to limit an employee's right to bring a common law cause of action against an employer for wrongful termination or to diminish or impair the rights of a person under any collective bargaining agreement.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

BUSINESS AND LABOR RESOURCES

Corporate Accountability

AFL-CIO

AFL-CIO Working for America Institute

Center on Wisconsin Strategy

Corporation for Enterprise Development: Business Incentives Reform Clearinghouse

Good Jobs First

Policy Matters Ohio

Worker Center
King County Labor Council, AFL-CIO

International Trade Agreements

AFL-CIO

Public Citizen

Sierra Club

Minimum Wage

AFL-CIO

Ballot Initiative Strategy Center

Coalition on Human Needs

Economic Policy Institute

State Financial Accountability for Labor Organizing

AFL-CIO

Unemployment Insurance—Options for Reform

AFL-CIO

Center on Budget and Policy Priorities

Economic Policy Institute

National Employment Law Project

Worker Freedom

AFL-CIO

A full index of resources with contact information can be found on page 291.

Civil Rights & Liberties

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Divestment to Support Human Rights in Sudan

- About 450,000 people have died and 2.5 million have been displaced by government-supported genocide in Sudan.
- There is no end in sight for the Darfur genocide.
- The Sudanese government depends heavily on foreign investment for military funding.
- Divestment is a proven tactic in the battle for human rights.
- State divestment is legal in the absence of federal legislation that expressly or impliedly preempts state authority.
- Eight states have enacted divestment legislation.
- Americans favor divestment from Sudan.
- Divestment will not harm U.S. companies.

About 450,000 people have died and 2.5 million have been displaced by government-supported genocide in Sudan.[1]

Since February 2003, the Sudanese government has attempted to crush a rebel movement in the Darfur region of western Sudan. In this struggle, the government has backed Arab militia groups called the janjaweed. Together, the Sudan military and the janjaweed have mercilessly attacked the non-Arab civilian population. It is estimated that the military and the janjaweed have looted or destroyed approximately 90 percent of all villages in Darfur, causing widespread disease and starvation.[2] The ethnic cleansing of non-Arab people in Darfur is recognized as genocide by numerous international organizations and national governments, including the Bush Administration.[3]

There is no end in sight for the Darfur genocide.

In May 2006, the Sudanese government signed a peace agreement with one Darfur faction, but violence continued after a new alliance of rebels rejected the accord. Sudan has refused to allow a United Nations peacekeeping force into Darfur. In the fall of 2006, Sudan tightened restrictions on aid workers and foreign journalists traveling to Darfur in order to conceal the bloodshed.[4]

The Sudanese government depends heavily on foreign investment for military funding.

Foreign investment in the oil, energy and construction sectors of the Sudanese economy is largely used to strengthen that nation's military. For example, more than 60 percent of the country's 2001 oil revenue was used to support the military.[5] Little of Sudan's revenues benefit the civilian population south and west of Khartoum. For example, in 2000, the government announced that it had spent three million dollars on development in the south—an amount equivalent to one percent of the military budget in that year.[6]

Divestment is a proven tactic in the battle for human rights.

Throughout the 1980s, at least 16 states (CA, CO, CT, IA, KS, LA, MD, MA, MI, MN, NE, NJ, NM, ND, RI, WI) and dozens of municipalities enacted laws that blocked government investment in companies doing business in South Africa. This campaign, aimed at ending apartheid, resulted in a significant decrease in U.S. investment in South Africa. In the 1990s, some jurisdictions ended investments in companies doing business with Burma to protest abhorrent human rights violations in that country.

State divestment is legal in the absence of federal legislation that expressly or impliedly preempts state authority.

In the 2000 case of *Crosby v. National Foreign Trade Council*, the U.S. Supreme Court struck down a Massachusetts law forbidding state purchases from companies doing business with Burma.[7] But the court limited its ruling to the issue of preemption, finding that Congress had enacted a law that substantially conflicted with the Massachusetts statute. The Supreme Court did not adopt arguments that the U.S. Constitution bars states from ever having the power to enact divestment provisions.[8] Since there is no federal law that conflicts with state divestment from Sudan, such legislation is legal.

Eight states have enacted divestment legislation.

Five states (CA, IL, ME, NJ, OR) have enacted statutes to divest state pension funds from companies that do business with the government of Sudan. New Jersey's divestment law, adopted in July 2005, requires all state pensions and annuity funds to phase out investments in companies which directly or indirectly support the Sudanese government—with the exception of companies that provide humanitarian aid. The law affects about $2.16 billion in investments and requires all divestment to be completed by July 2008. Three other states (CT, OH, VT) have passed non-binding resolutions that encourage divestment from Sudan.

Americans favor divestment from Sudan.

A November 2006 Lake Research poll found that, by a three-to-one margin, voters favor legislation "that directs state pension funds to boycott companies that do business in Sudan, until that government protects the people in Darfur."[9]

Divestment will not harm U.S. companies.

In the 1990s, the U.S. government listed Sudan as a country which supports terrorism. As a result, the Clinton Administration imposed trade sanctions which remain in place today. The sanctions prohibit companies based in the U.S. from operating in Sudan. Therefore, divestment legislation only requires states to end their investments in multinational and foreign-based companies that do business in Sudan. In fact, several multinational companies, including Xerox and 3M, have already limited operations in Sudan to humanitarian work.[10]

Endnotes

1 Associated Press, "Aid Group Quits Darfur, Citing Disruptions," *Washington Post*, November 11, 2006.

2 Sudan Divestment Task Force, "Options and Resources for Sudan Divestment," updated July 5, 2006.

3 Sudan Divestment Task Force, "Arguments for the Efficacy of Targeted Divestment from Sudan," updated August 17, 2006.

4 Reuters, "Controls Tighten on Media and Aid Workers in Darfur," *New York Times*, November 8, 2006

5 "Arguments for the Efficacy of Targeted Divestment from Sudan."

6 Christian Aid Society, "The Scorched Earth: Oil and War in Sudan," March 2001.

7 *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000).

8 Michelle Cadin, "State Autonomy and International Policy Making: *Crosby v. National Foreign Trade Council*," *New England Journal of International and Comparative Law*, 2002.

9 Lake Research Partners, conducted for Center for Policy Alternatives, November 2006.

10 'Nora Boustany, "Sudan Divestment Effort Gains Momentum at State Level," *Washington Post*, October 7, 2006.'

Divestment to Support Human Rights in Sudan

Sudan Genocide Divestment Act

Summary: The Sudan Genocide Divestment Act requires the [Treasurer] to divest state pension and annuity funds from investments in companies doing business with the government of Sudan.

SECTION 1. SHORT TITLE

This Act shall be called the "Sudan Genocide Divestment Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The government of Sudan has engaged in a policy of genocide against its own non-Arab population in Darfur through use of its military and through sponsorship of attacks by armed Arab militias known as the janjaweed.
2. The janjaweed and military of the Sudanese government are responsible for razing 90 percent of Darfur's villages, gang-raping civilians, slaughtering as many as 450,000 victims, displacing two million more, using forced starvation as a weapon of war, and impeding access of humanitarian aid.
3. The Sudanese government and janjaweed militias have continued their attacks despite the Darfur Peace Agreement brokered, in part, by the United States in May of 2006.
4. International companies operating in Sudan bring significant revenue, cover and arms to the Sudanese government while providing little benefit to the majority of Sudan's citizens.
5. Responding to the genocide, nearly 100 universities, cities, states, and private pension plans have divested from companies that do business with the Sudanese government.
6. Investment in companies intimately linked to genocide is not only immoral, it presents a material risk for investors.

(B) PURPOSE—This law is enacted to prevent the state from giving indirect financial support to genocide and to protect the state from undue risk as an investor.

SECTION 3. DIVESTMENT FROM SUDAN

(A) DEFINITION—In this section, "Government of Sudan" does not include the government of South Sudan.

(B) RULES OF DIVESTMENT

1. The assets of a pension or annuity fund under the jurisdiction of the [State Treasurer] shall not be invested in the stocks, securities or other obligations of a company which directly or through a subsidiary is engaged in business in the nation of or with the government of Sudan or its instrumentalities. This prohibition shall not apply to any company whose primary activity in Sudan is to provide products or services clearly intended for the social development of those outside the government of Sudan or its instrumentalities, including the provision of medicine or medical equipment, agricultural supplies or agricultural infrastructure, educational opportunities, journalism-related activities, or spiritual-related activities.

2. The [Treasurer] shall take appropriate action to sell, redeem, divest or withdraw any investment held in violation of paragraph 1. However, paragraph 1 shall not be construed to require the premature or otherwise imprudent sale, redemption, divestment or withdrawal of an investment, but such sale, redemption, divestment or withdrawal shall be completed within the following guidelines:
   a. At least 30 percent of the retirement system's assets in such companies shall be divested within four months after the effective date of this Act.
   b. At least 60 percent of the retirement system's assets in such companies shall be divested within eight months after the effective date of this Act.
   c. One hundred percent of the retirement system's assets in such companies shall be divested within 12 months after the effective date of this Act.
3. Within 60 days of the effective date of this Act, the [Treasurer] shall report to the legislature a list of all investments held as of the effective date of this Act which are in violation paragraph 1. Annually thereafter, the treasurer shall report on all investments sold, redeemed, divested or withdrawn in compliance with this section.
4. If it is determined by the [Treasurer] that a company, which had previously been considered to have been engaged in business directly or through a subsidiary in or with Sudan or its instrumentalities, has ceased business operations with Sudan or its instrumentalities, then the divestiture requirements shall no longer apply to that company.
5. Nothing in this act shall alter or diminish existing fiduciary or statutory obligations and other terms, conditions, and limitations on the investment of retirement system assets for the exclusive interest and benefit of participants and beneficiaries of a retirement system.

(C) EXPIRATION OF DIVESTMENT—In the event that the government of Sudan halts the genocide in Darfur for at least 12 months and the United States federal government revokes all sanctions imposed against Sudan, the provisions of this Act shall expire.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

GLBT Anti-Discrimination

- Seventy-four percent of gay, lesbian or bisexual individuals have been the victims of discrimination based on their sexual orientation.
- In 33 states, individuals can legally be fired from their jobs, or denied access to housing, educational institutions, credit, and public accommodations simply because they are gay, lesbian, bisexual or transgender (GLBT).
- The American business community has widely adopted anti-discrimination policies.
- Americans strongly support laws that prohibit discrimination based on sexual orientation and gender identity or expression.
- More than 30 percent of Americans live in jurisdictions that include "gender identity or expression" in their anti-discrimination laws.
- The GLBT Anti-Discrimination Act amends existing civil rights statutes to include sexual orientation and gender identity or expression.

Seventy-four percent of gay, lesbian or bisexual individuals have been the victims of discrimination based on their sexual orientation.[1]

Thousands of individuals report employment discrimination based on sexual orientation in states that forbid such discrimination.[2] Gay, lesbian and bisexual individuals also experience discrimination in such areas as applying to a college, university or other school; renting an apartment or buying a house; and getting health care or health insurance.[3]

In 33 states, individuals can legally be fired from their jobs, or denied access to housing, educational institutions, credit, and public accommodations simply because they are gay, lesbian, bisexual or transgender (GLBT).

There are no federal laws that explicitly prohibit discrimination against GLBT individuals. Only 17 states (CA, CT, HI, IL, ME, MD, MA, MN, NV, NH, NJ, NM, NY, RI, VT, WA, WI) and the District of Columbia prohibit discrimination based on sexual orientation. Without anti-discrimination laws, GLBT people have no legal recourse when landlords deny housing or employers fire or refuse to hire them.

The American business community has widely adopted anti-discrimination policies.

More than 460 of the Fortune 500 companies and more than 2,600 private companies, colleges and universities, nonprofits and unions in the United States have adopted anti-discrimination policies that cover sexual orientation. One hundred forty-two Fortune 500 companies have adopted their policies since 2003.[4] Anti-discrimination policies do not require employers to hire gay, lesbian, bisexual or transgender individuals. Rather, the policies prevent employers from using sexual orientation or gender identity or expression as the sole basis for refusing to hire, demoting, or discharging an individual.

Americans strongly support laws that prohibit discrimination based on sexual orientation and gender identity or expression.

According to a May 2006 Gallup poll, 89 percent of Americans believe that GLBT individuals should have equal rights in the workplace.[5] A 2001 survey for the Kaiser Family Foundation found that three-quarters of Americans believe there should be laws that protect gays and lesbians from prejudice and discrimination in job opportunities and housing.[6] Sixty-one percent of Americans also favor laws to prevent employment discrimination against transgender people.[7]

More than 30 percent of Americans live in jurisdictions that include "gender identity or expression" in their anti-discrimination laws.

Transgender people—whether they are transsexual or simply do not identify with the gender assigned to them at birth—are often targeted for discrimination. Eight states (CA, HI, IL, ME, MN, NM, RI, WA), the District of Columbia, and more than 84 local jurisdictions have passed laws that explicitly prohibit discrimination based on an individual's gender identity or expression.[8] Just ten years ago, only four percent of Americans lived in jurisdictions that banned discrimination on the basis of gender identity or expression.[9]

The GLBT Anti-Discrimination Act amends existing civil rights statutes to include sexual orientation and gender identity or expression.

This model, which is similar to laws in several states:

* Prohibits discrimination in employment, public accommodations, education, credit or lending, and housing based on sexual orientation and gender identity or expression.
* Creates a private right of action for aggrieved individuals.
* Provides for enforcement through a state agency.

This policy summary relies in large part on information from Human Rights Campaign and the National Gay and Lesbian Task Force.

GLBT Anti-Discrimination Laws and Policies

* 17 states and the District of Columbia
* More than 290 cities or counties
* 462 of the Fortune 500 companies
* More than 2,055 private companies, nonprofit organizations, and labor unions
* More than 562 colleges and universities

Endnotes

1 The Henry J. Kaiser Family Foundation, "Inside-OUT: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation," November 2001.

2 U.S. General Accounting Office, "Sexual Orientation-Based Employment Discrimination," July 9, 2002.

3 "Inside-OUT."

4 Equality Forum, "Fortune 500 Project," September 1, 2006.

5 Gallup poll, May 8-11, 2006.

6 "Inside-OUT."

7 Human Rights Campaign, "Public Perceptions of Transgender People," 2002.

8 National Gay and Lesbian Task Force, "Jurisdictions with Explicitly Transgender-Inclusive Anti-Discrimination Laws," updated November 2006.

9 National Gay and Lesbian Task Force, "Glass Nearly Half Full," January 2005.

GLBT Anti-Discrimination

GLBT Anti-Discrimination Act

Summary: The GLBT Anti-Discrimination Act bans discrimination on the basis of sexual orientation and gender identity or expression.

SECTION 1. SHORT TITLE

This Act shall be called the "GLBT Anti-Discrimination Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Gay, lesbian, bisexual and transgender (GLBT) individuals are often the victims of discrimination. They are fired from jobs, denied access to housing and educational institutions, refused credit, and excluded from public accommodations because of their sexual orientation or gender identity or expression.
2. It is essential that the state of [State] protect the civil rights of all its residents.

(B) PURPOSE—This law is enacted to protect civil rights by prohibiting discrimination against gay, lesbian, bisexual and transgender individuals.

SECTION 3. DEFINITIONS

In section XXX, the following new paragraphs shall be inserted:

"sexual orientation" means an individual's actual or perceived heterosexuality, bisexuality or homosexuality.

"gender identity or expression" means an individual's gender-related identity, appearance, expression or behavior, regardless of that individual's biological sex at birth.

SECTION 4. GLBT ANTI-DISCRIMINATION

In section XXX, after each occurrence of the words, ["race, gender, national origin"—alter to fit state law], following new section XXX shall be inserted:

"sexual orientation, gender identity or expression,"

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Immigrant Assistance in Crime Fighting

- Immigrants have become more wary of police since 9/11.
- Immigrants' fear of police has made our communities less secure.
- When immigrants are afraid of police, the threat of terrorism is increased.
- Public safety suffers when state and local police try to enforce federal immigration law.
- The risk of racial profiling is increased when police try to enforce immigration law.
- State and local police lack the training to enforce the complex web of immigration laws.
- Most police oppose state and local enforcement of federal immigration law.
- Nevertheless, the Bush Administration has pressed hard for state and local enforcement of immigration law, and some states and cities have agreed to it.
- Many states and cities have adopted a "don't ask, don't tell" policy.

Immigrants have become more wary of police since 9/11.

Since the September 11 terrorist attacks, both documented and undocumented immigrants have been more afraid of local law enforcement agents and less likely to report crimes. For example, Arab Americans have become more fearful of racial profiling and immigration investigations, according to a two-year study commissioned by the U.S. Department of Justice.[1] Similarly, Latino immigrants became wary after the Bush Administration encouraged local police to enforce federal immigration law and the U.S. House of Representatives passed legislation that would have compelled state and local police to do so.[2]

Immigrants' fear of police has made our communities less secure.

When they believe that state or local law enforcement agents are involved in the enforcement of federal immigration law, both documented and undocumented immigrants are hesitant to report crimes or assist police in criminal investigations. As the National Council of La Raza reports, "word will spread like wildfire among newcomers that any contact with police could mean deportation for themselves or their family members. Immigrants will decline to report crimes or suspicious activity, and criminals will see them as easy prey..."[3] Criminals who could have been caught remain on the streets—putting all of us at risk of becoming the next victim.

When immigrants are afraid of police, the threat of terrorism is increased.

The government's anti-terrorism initiatives substantially rely on getting residents to report suspicious activity. In fact, immigrants may be the most likely to pick up clues about potential terrorist activity. But many will be less likely to contact police out of fear that their own immigration status will be questioned.[4]

Public safety suffers when state and local police try to enforce federal immigration law.

Local law enforcement agencies rarely have the resources to carry out all the tasks they've already been assigned, such as the investigation of violent crimes and pursuit of perpetrators. Under-resourced and under-staffed police departments should not attempt to take on the additional responsibility of enforcing federal immigration law.

The risk of racial profiling is heightened when police try to enforce immigration law.

Law enforcement agents attempting to identify federal immigration law violators are more likely to look with greater suspicion at certain ethnic groups. Some police officers are bound to stop people based on their apparent ethnicity or accent. Racial profiling is not only a violation of rights, but it further strains the relationship between ethnic groups and police.

State and local police lack the training to enforce the complex web of immigration laws.

There is no bright line between documented and undocumented status. Immigrants can be U.S. citizens, legal permanent residents, hold visas in categories A through V, or be an asylee, temporary resident or have temporary protected status. Further, immigrants may transition from one status to another.[5] The law is so complicated that federal immigration agents undergo 17 weeks of intensive training before they begin to enforce the law. State and local police simply don't have sufficient training to get involved in immigration.

Most police oppose state and local enforcement of federal immigration law.

Because of federal legislation proposed to compel state and local police to enforce immigration law, most law enforcement organizations have taken a stand on the issue—and they are overwhelmingly against it. Opponents include the International Association of Chiefs of Police, the Major City Chiefs Association, the Police Executive Research Forum and the Police Foundation.

Nevertheless, the Bush Administration has pressed hard for state and local enforcement of immigration law, and some states and cities have agreed to it.

In 2002, the U.S. Department of Justice reversed its long-held position that state and local police have no authority to enforce most aspects of immigration law. The Department's new opinion is that local police have "inherent authority" over immigration. At the same time, the U.S. Department of Homeland Security has tried to convince states and localities to sign Memoranda of Understanding (MOUs) through which the federal government deputizes local police to enforce immigration law. Alabama, Arizona, Florida and a number of localities have signed MOUs.[6]

Many states and cities have adopted a "don't ask, don't tell" policy.

States and localities are not required to enforce federal immigration law and are entirely free to direct their law enforcement officers not to inquire into anyone's immigration status. That is the law in Alaska and Maine, and it is the policy of police forces in Baltimore, Chicago, Detroit, Los Angeles, Minneapolis, New York, Philadelphia, San Francisco, Seattle, the District of Columbia, and many other cities. If adopted, the model Immigrant Assistance in Crime Fighting Act would prohibit both state and local law enforcement agents from inquiring into the immigration status of people who are complainants or witnesses to violations of state or local law.

Endnotes

1 Andrea Elliott, "After 9/11, Arab-Americans Fear Police, Study Finds," *New York Times*, June 12, 2006.

2 Appleseed, "Forcing Our Blues into Gray Areas: Local Police and Federal Immigration Enforcement," 2005.

3 National Council of La Raza, "State and Local Police Enforcement of Federal Immigration Laws: A Tool Kit for Advocates," March 2006.

4 Ibid.

5 National Employment Law Project, "More Harm Than Good: Responding to States' Misguided Efforts to Regulate Immigration," March 2006.

6 "Forcing Our Blues into Gray Areas."

Immigrant Assistance in Crime Fighting

Immigrant Assistance in Crime Fighting Act

Summary: *The Immigrant Assistance in Crime Fighting Act prohibits law enforcement agents and other agents of state and local government from inquiring into the immigration status of people who are complainants or witnesses to violations of state or local law.*

SECTION 1. SHORT TITLE

This Act shall be called the "Immigrant Assistance in Crime Fighting Act."

SECTION 2. FINDINGS AND PUPOSE

(A) FINDINGS—The legislature finds that:

1. Over XX percent of the residents of [State] were classified as foreign-born in the 2000 census.
2. The cooperation of all members of the community, regardless of immigration status, is essential to law enforcement.
3. Currently, both documented and undocumented immigrants are less likely to report violations of state and local law because of the fear that complainants and witnesses may be harassed by federal immigration authorities.

(B) PURPOSE—This law is enacted to promote the safety and health of all residents by making it more likely that immigrants will report violations of state and local law.

SECTION 3. IMMIGRANT ASSISTANCE IN CRIME FIGHTING

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITION—In this section:

1. "Immigration status" means questions of United States citizenship, citizenship of any other country, legal right to reside or otherwise be present in the United States, and the time or manner of a person's entry into the United States.
2. "Local government" means the government of cities, municipalities, counties and all other subdivisions of government throughout the state.

(B) PROTECTION OF IMMIGRANT COMPLAINANTS AND WITNESSES

1. No law enforcement or other agent of state or local government shall inquire into the immigration status of any person who complains of, or is a witness to, a violation of state or local law.
2. No law enforcement or other agent of state or local government shall ask a complainant or witness for their social security number or other information that might disclose an individual's immigration status.
3. During the course of any court proceedings, the state or local government shall oppose efforts of any party to discover a complainant's or witness' immigration status and shall seek a protective order or other similar relief.
4. In the rare occasion that an agent of state or local government must know the complainant's immigration status, the agent shall keep that status confidential and not disclose that information to third

parties, including to other government agents, unless required by federal law.

5. Law enforcement officers may inquire into the immigration status of a person when an officer has reasonable grounds to believe that the person:
    a. Has been convicted of a felony criminal law violation;
    b. Was deported or left the United States after the conviction; and
    c. Is again present in the United States.
6. Nothing in this section is intended to prevent government agents from knowing a person's immigration status or viewing a document that might provide evidence of a person's immigration status, as long as the person volunteered the information or document to the government agent.

(C) TRAINING OF LAW ENFORCEMENT AND OTHER GOVERNMENT AGENTS

1. The state and each local government shall train its law enforcement and other government agents to understand and comply with the provisions of this section.
2. The state and each local government shall work closely with organizations that serve the immigrant community in the design of this training.
3. The state and each local government shall make reasonable efforts to work with community-based organizations in order to educate the immigrant community about this policy.

(D) PREEMPTED AND SUPERCEDING LAW

1. This section shall not apply to a circumstance where an inquiry into immigration status is required by federal law.
2. This section shall supersede all conflicting state and local statutes, ordinances, rules, policies and practices.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Marriage Equality

- ✱ State and federal laws discriminate against same-sex couples.
- ✱ There is a fast-growing movement toward marriage equality and civil union equality.
- ✱ Marriage equality would build on America's tradition of advancing civil rights and erasing the inequities of the past.
- ✱ Marriage promotes stable, long-lasting relationships between partners.
- ✱ Marriage strengthens families and safeguards children.
- ✱ No religious institution would be required to perform a ceremony.
- ✱ Marriages—and to a lesser extent, civil unions—protect same-sex couples.
- ✱ States are moving toward equal treatment of same-sex couples.

State and federal laws discriminate against same-sex couples.

The U.S. General Accounting Office lists more than 1,000 federal rights, protections and responsibilities that are automatically granted to married heterosexual couples but denied to same-sex couples.[1] States have similar laws that protect heterosexual married partners but not same-sex partners, including:

- ✱ The right to visit a sick spouse in the hospital;
- ✱ The right to make decisions during a medical emergency;
- ✱ The right to leave work to care for an ill spouse;
- ✱ The right to access social security, workers' compensation, and survivor benefits;
- ✱ The right to sue for wrongful death of a spouse;
- ✱ The right to inherit without a will.

There is a fast-growing movement toward marriage equality and civil union equality.

In 2005, the Massachusetts legislature defeated a constitutional amendment that would have banned same-sex marriage. Same-sex marriages have been performed in Massachusetts since May 17, 2004, after the Supreme Judicial Court ruled the state constitution guarantees "the right to marry the person of one's choice" regardless of gender. Also in 2005, the Canadian Parliament enacted a law that guarantees the right to marriage for same-sex couples in every province. In December 1999, the Vermont Supreme Court ruled that it was unconstitutional to deny marriage licenses to same-sex couples in that state, which led to civil unions. More than 22 nations, including Belgium, Denmark, Germany, Spain, Iceland, Netherlands, Portugal and Sweden, allow same-sex couples to marry or enter into federally-recognized domestic partnerships.

Marriage equality would build on America's tradition of advancing civil rights and erasing the inequities of the past.

Same-sex couples are not the first group of people that has been denied the freedom to marry. African American slaves were not permitted to marry. At one time, Asian Americans were not permitted to marry in some Western states. And not until 1967 did the U.S. Supreme Court strike down Jim Crow state laws that made interracial marriage illegal. Clearly, Americans have the capacity to move beyond discrimination.

Marriage promotes stable, long-lasting relationships between partners.

Marriage equality pertains to more than financial benefits. Couples who enter into marriage assume responsibilities for each other's welfare and the welfare of their dependents. The state has the same interest in family stability for same-sex couples as it has in marriage between men and women. Married couples are viewed and treated differently than single individuals by the state, friends, family and society. Setting aside the issue of discrimination, it is illogical for government to promote marriage for some but not for all.

Marriage strengthens families and safeguards children.

Children are more secure if they are raised in homes with two loving parents who have a legal relationship with each other and their children, and can share the responsibility of parenthood. According to estimates from the 2000 census, there are more than one million children being raised by same-sex couples in the United States.[2] If they are not permitted to establish a legal relationship to both parents, children of same-sex couples are left without important protections, such as survivor benefits. These children should not be penalized just because their parents are of the same sex.

No religious institution would be required to perform a ceremony.

Just as no religious institution can be required by the government to marry an interfaith couple, no religious institution could be required to marry a same-sex couple. Currently, Reform Judaism, Unitarianism, and many United Church of Christ congregations and Quaker meetings do sanction same-sex unions.

Marriages—and to a lesser extent, civil unions—protect same-sex couples.

A state civil union law grants same-sex couples the rights of married couples, but only within that state. When that couple travels to another state, they are legal strangers. A married couple, however, may be recognized as "married" in other states and other countries.

States are moving toward equal treatment of same-sex couples.

Arizona voters rejected a constitutional amendment that would have defined marriage as the union of one man and one woman and dismantled domestic partner benefits programs in November 2006. In October 2006, the New Jersey Supreme Court ruled unanimously that same-sex couples must be afforded all of the rights, protections and responsibilities of marriage. In 2005, Connecticut became the first state to legalize civil unions without a court order, and the Massachusetts legislature voted to keep same-sex marriage legal. Seven states (CA, CT, HI, ME, MA, NJ, VT) formally recognize same-sex couples. Ten states (CA, CT, IA, ME, NM, NY, OR, RI, VT, WA) and the District of Columbia offer domestic partner benefits to the same-sex partners of public employees, as do more than 137 cities and counties.

This policy summary relies in large part on information from the Human Rights Campaign, the National Center for Lesbian Rights, and the National Gay and Lesbian Task Force.

Endnotes

1 U.S. General Accounting Office, "Defense of Marriage Act: Update to Prior Report," January 2004.

2 U.S. Census Bureau, "Married-Couple and Unmarried-Partner Households," 2003.

Marriage Equality

Civil Union Equality Act

Summary: The Civil Union Equality Act allows same-sex couples to enter into civil unions, giving them many of the benefits of marriage.

SECTION 1. SHORT TITLE

This Act shall be called the "Civil Union Equality Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The state has a strong interest in promoting marriage because it encourages close, stable and lasting families, and fosters strong economic and social support systems among all family members.
2. Marriage brings numerous benefits, responsibilities and protections to spouses and their children.
3. Without the protections, benefits and responsibilities associated with marriage, same-sex couples suffer many obstacles and hardships.
4. Although civil unions are not equal to the status of marriage, they significantly improve the legal protections of same-sex couples.

(B) PURPOSE—This law is enacted to provide eligible same-sex couples the opportunity to obtain the benefits, protections, rights and responsibilities afforded to opposite-sex couples by marriage.

SECTION 3. CIVIL UNION EQUALITY

In section XXX, the following new paragraphs shall be inserted:

(A) ELIGIBILITY FOR CIVIL UNION—Two persons may form a civil union if they are of the same sex and otherwise meet the requirements for marriage set forth in section XXX [the section of state law applying to marriage].

(B) RIGHTS AND RESPONSIBILITIES WITHIN A CIVIL UNION

1. A civil union shall provide those joined in it with a legal status equivalent to marriage. All laws of the state, whether they derive from statute, administrative or court rule, policy, common law, or any other source of civil law, that are applicable to marriage shall also be applicable to civil unions.
2. Parties joined in a civil union shall have all the same benefits, protections, rights and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law, or any other source of civil law, as are granted to spouses in a marriage.
3. Parties joined in a civil union shall be included in any definition or use of the terms "spouse," "family," "immediate family," "dependent," "next of kin," "husband," "wife," or other terms that denote the spousal relationship, as those terms are used throughout state law.
4. The term "marriage" as it is used throughout state law, whether in statutes, administrative or court rule, policy, common law, or any other source of civil law, shall be read, interpreted, and understood to include marriage and civil union.

5. Parties to a civil union may modify the terms, conditions, or effects of their civil union in the same manner and to the same extent as married persons who execute a pre-nuptial agreement or other agreement recognized and enforceable under the law, setting forth particular understandings with respect to their union.

(C) ADMINISTRATION AND ENFORCEMENT

1. The [state registry of vital statistics] shall provide civil union license and certificate forms to all city and county clerks, and shall keep a record of all civil unions and the dissolution thereof.
2. The [family courts] shall have jurisdiction over all proceedings that relate to the dissolution of civil unions. The dissolution of civil unions shall follow the same rules and procedures, and be subject to the same substantive rights and obligations, that are involved in the dissolution of marriage.
3. To the extent that state law adopts, refers to, or relies upon provisions of federal law, parties joined in civil unions shall be treated under the law of the state as if federal law recognized a civil union in the same manner as the law of the state.
4. This section shall be construed liberally in order to secure to eligible couples the option of a legal status with all the attributes, effects, benefits and protections of marriage.

SECTION 4. NONCONFORMING SECTIONS

In section XXX, paragraph XXX [any language that blocks civil union equality] is deleted.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

MARRIAGE EQUALITY

Domestic Partnership Act

Summary: The Domestic Partnership Act allows unmarried couples certain specified rights enjoyed by married couples.

SECTION 1. SHORT TITLE

This Act shall be called the "Domestic Partnership Act."

SECTION 2. DOMESTIC PARTNERSHIPS

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Domestic partnership" means the legal relationship that is formed between two individuals who are not married and intend to live together as spouses, if:
    a. Each individual is a mentally competent adult.
    b. The two individuals have been legally domiciled with each other for at least 12 months.
    c. Neither individual is legally married to, or registered in a domestic partnership with, another individual.
    d. The two individuals are not related by blood in a way that would prevent persons from being married in this state.
    e. The two individuals are jointly responsible for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements, or joint ownership of property.
    f. The two individuals have signed and filed in the office of the Secretary of State a notarized affidavit attesting to their domestic partnership.

    A domestic partnership no longer exists if one individual signs and files in the office of the Secretary of State a notarized affidavit attesting to the termination of the domestic partnership.
2. "Domestic partner" means an individual who is part of a domestic partnership.

(B) RIGHTS OF DOMESTIC PARTNERS

For purposes of the following sections of law, the term "spouse" includes a domestic partner and reference to a date of marriage includes the date that a domestic partnership is filed in the office of the Secretary of State:

1. Section [insert citation], referring to interested persons and heirs in decedents' estates.
2. Section [insert citation], referring to the custody of the remains of a deceased person.
3. Section [insert citation], referring to persons who become incapacitated, including hospital visitation.
4. Section [insert citation], referring to sick leave and personal leave for state and local employees.
5. Section [insert citation], referring to legal standing in wrongful death suit.
6. Section [insert citation], referring to victims' rights.

7. [OPTIONAL: Apply to employees of private companies where state law gives such rights to spouses.]
8. [OPTIONAL: many other rights can be added to this legislation, depending on the political climate in your state, such as:
   - Protection under rent control.
   - Ability to authorize medical treatment for a partner's child.
   - Ability to obtain absentee ballot for partner.
   - Privilege for confidential communications between partners.
   - Privilege not to be forced to testify against partner.
   - Visitation privileges for a partner in prison.]

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Racial Profiling

- About 32 million Americans have been victims of racial profiling.
- Racial profiling of African Americans and Latinos is widespread.
- In the aftermath of September 11, racial profiling of Arabs and South Asians has increased.
- Until recently, few states or federal agencies collected data on racial profiling.
- States must end racial profiling to build trust between law enforcement agencies and communities of color.
- In recent years, states have taken action against racial profiling.

About 32 million Americans have been victims of racial profiling.

Studies confirm that law enforcement agencies in communities across the country use race, ethnicity, national origin and religion to determine which individuals to stop and search.[1] According to Amnesty International, 32 million Americans—or 11 percent—have been victims of racial profiling.[2]

Racial profiling of African Americans and Latinos is widespread.

A 2006 report by the U.S. Department of Justice found that among young, male drivers, police were significantly more likely to carry out some type of search on African Americans (22 percent of drivers stopped) and Latinos (17 percent) than whites (eight percent).[3] Another survey found that African Americans and Latinos were three times more likely than whites to experience force or threat of force during a police stop.[4] An August 2005 study in Rhode Island found that minority drivers were twice as likely to be searched during a traffic stop as white drivers—but were less likely to be found with contraband.[5] A 1999 investigation revealed that fully three-fourths of the cars searched by New Jersey state troopers were driven by African Americans or Latinos.[6]

In the aftermath of September 11, racial profiling of Arabs and South Asians has increased.

Over 8,000 Arab men were questioned after the September 11 attack, but this did not lead to the arrest of any suspected terrorists.[7] Arab Americans are three times more likely than whites to have experienced racial profiling since the attacks.[8] Nearly three-quarters of Arab Americans report that they have experienced discrimination more frequently since September 11.[9] Many Arabs and South Asians have been asked to leave airplanes for no reason other than their appearance. In addition, many Sikh Americans have been asked to remove their turbans in airports—a violation of their religious freedom.[10]

Until recently, few states or federal agencies collected data on racial profiling.

The U.S. Department of Justice first issued voluntary guidelines for collection of racial profiling data in 2000. At least 27 states collect such data today.[11]

States must end racial profiling to build trust between law enforcement agencies and communities of color.

Policymakers typically underestimate the burden placed on innocent people stopped by law enforcement officers because of racial profiling. These incidents alienate communities, lead to a reasonable fear of police officers, and undermine law enforcement's ability to solve and reduce crime. Polls have shown that African Americans have significantly less favorable views of local and state law enforcement than whites, and that dissatisfaction with police behavior is twice as high among African Americans as among whites.[12]

In recent years, states have taken action against racial profiling.

In 2006, Maryland extended a study of information on traffic stops to determine the extent and severity of racial profiling within that state. In 2005, Arkansas, Florida, Kansas, Montana, New Jersey and Tennessee adopted or strengthened racial profiling laws. Twenty-seven states (AK, AR, CO, CT, FL, IL, KS, KY, LA, MD, MA, MN, MO, MT, NE, NV, NC, OK, OR, RI, SD, TN, TX, UT, VA, WA, WV) now have laws that require law enforcement agencies to collect information, including the race and gender of each driver stopped by police, and what actions were taken. New Jersey makes racial profiling illegal and collects data on traffic stops by state troopers, but not other law enforcement agencies. In addition, governors in Kentucky, Wisconsin and Wyoming have issued executive orders that ban racial profiling, and police in other states collect traffic stop data voluntarily.[13]

Endnotes

1 Leadership Conference on Civil Rights Education Fund, "Wrong Then, Wrong Now: Racial Profiling Before and After September 11, 2001," February 2003.

2 Amnesty International and New California Media, "Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States," 2004.

3 U.S. Department of Justice, Bureau of Justice Statistics, "Characteristics of Drivers Stopped by Police," June 2006.

4 U.S. Department of Justice, Bureau of Justice Statistics, "Contacts between Police and the Public: Findings from the 2002 National Survey," April 2005.

5 American Civil Liberties Union, "The Persistence of Racial Profiling in Rhode Island: An Update," August 2005.

6 Chad Thevenot, "Crises of the Anti-Drug Effort, 1999," Criminal Justice Policy Foundation, 1999.

7 American Civil Liberties Union, "The USA PATRIOT Act and Government Actions that Threaten our Civil Liberties," 2003.

8 "Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States."

9 Bendixon and Associates, "Multilingual Poll of Arab, Iranian and Pakistani Americans on President Bush's Iraq Policy and Post-9/11 Discrimination," August 26, 2004.

10 American Sikh Council, "Your Sikh Neighbors," 2001.

11 Racial Profiling Data Collection Resource Center at Northeastern University.

12 U.S. Department of Justice, "A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned," November 2000.

13 Racial Profiling Data Collection Resource Center at Northeastern University.

Racial Profiling

Racial Profiling Prevention Act

Summary: The Racial Profiling Prevention Act protects citizens from discriminatory policing.

SECTION 1. SHORT TITLE

This Act shall be called the "Racial Profiling Prevention Act."

SECTION 2. RACIAL PROFILING PREVENTION AND DATA COLLECTION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Law enforcement agency" means the sheriff's office of any county, the police department of any city or municipality, or the state police.
2. "Law enforcement officer" means a sworn officer of a law enforcement agency.
3. "Racial profiling" means the detention, interdiction or other disparate treatment of an individual solely on the basis of their actual or perceived race, color, ethnicity, national origin, age, gender, religion, or sexual orientation.

(B) PROHIBITION AGAINST RACIAL PROFILING

1. No law enforcement officer shall engage in racial profiling.
2. Every law enforcement agency shall adopt a written policy that prohibits the stopping, detention or search of any person when such action is solely motivated by considerations of actual or perceived race, color, ethnicity, national origin, age, gender, religion, or sexual orientation, and the action would constitute a violation of the person's civil rights.

(C) DATA COLLECTION

1. Every law enforcement agency shall, using the form developed by the [Attorney General], record and retain the following information:
    a. The number of people stopped for traffic violations.
    b. Characteristics of race, color, ethnicity, gender, religion and age of anyone stopped for a traffic violation, provided the identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the stop, and the information shall not be required to be provided by the person stopped.
    c. The nature of the alleged traffic violation that resulted in the stop.
    d. The outcome of a stop, be it a warning or citation issued, an arrest made, or a search conducted.
    e. Any additional information that the [Attorney General] deems appropriate.
2. Every law enforcement agency shall promptly provide to the local [State's Attorney], or, in the case of the state police, to the Attorney General:
    a. A copy of each complaint received that alleges racial profiling.
    b. Written notification of the review and disposition of such complaint.

3. Every law enforcement agency shall provide to the [Attorney General] an annual report of the information recorded pursuant to this section, in such a form as the [Attorney General] may prescribe. The [Attorney General] shall compile this information and report it to the governor and legislature, including any observations or recommendations.
4. If a law enforcement agency fails to comply with the provisions of this section, the [Attorney General] may order an appropriate penalty in the form of withholding state funds from such law enforcement agency.

(D) REPORTING FORMS—The [Attorney General] shall develop and prescribe two forms:

1. A form, in both printed and electronic format, to be used by law enforcement officers during a traffic stop to record personal information about the operator of the motor vehicle stopped, the location of the stop, the reason for the stop, and other information that is required by this section.
2. A form, in both printed and electronic format, to be used to report complaints by people who believe they were subjected to a motor vehicle stop by a law enforcement officer solely on the basis of their actual or perceived race, color, ethnicity, national origin, age, gender, or sexual orientation.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2007. The forms described in section (D) shall be developed and distributed by October 1, 2007. The collection of data described in section (C) shall begin when the [Attorney General] certifies that the process is in place, but no later than January 1, 2008.

CIVIL RIGHTS AND LIBERTIES RESOURCES

Divestment to Support Human Rights in Sudan

Public Citizen

Sudan Divestment Task Force

GLBT Anti-Discrimination

Equality Federation

Human Rights Campaign

Lambda Legal Defense and Education Fund

National Center for Lesbian Rights

National Gay and Lesbian Task Force

Immigrant Assistance in Crime-Fighting

International Association of Chiefs of Police

National Council of La Raza

National Immigration Law Center

National Employment Law Project

Marriage Equality

Equality Federation

Human Rights Campaign

Lambda Legal Defense and Education Fund

National Center for Lesbian Rights

National Gay and Lesbian Task Force

Racial Profiling

American Civil Liberties Union

Leadership Conference on Civil Rights

NAACP

North Carolina Department of Crime Control and Public Safety

A full index of resources with contact information can be found on page 291.

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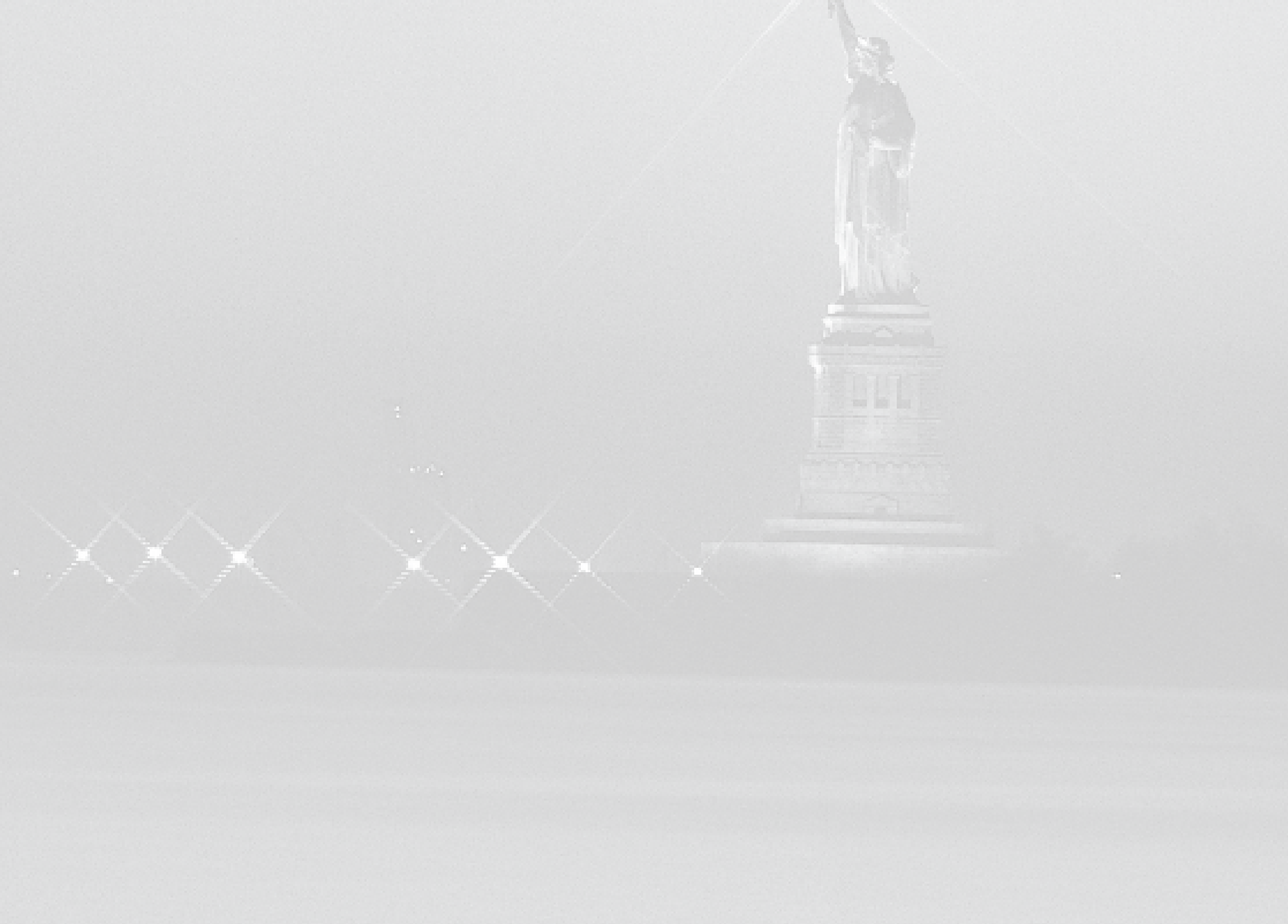

Financial Privacy

- Almost nine million Americans were victims of identity theft in 2006, at a cost of $56.6 billion.
- Financial institutions routinely share private information about their customers, but Americans are largely unaware of the practice.
- The sharing of private information makes individuals vulnerable to identity theft.
- The sharing of private information results in unwanted marketing and consumer profiling.
- Federal law makes it easy for companies to legally sell customers' private financial information.
- States are permitted to regulate the transfer of information from financial institutions to nonaffiliated companies.
- States are acting to protect consumer financial privacy and reduce the incidence of identity theft.
- Financial privacy legislation has strong support among liberals and conservatives.

Almost nine million Americans were victims of identity theft in 2006, at a cost of $56.6 billion.[1]

Between July and December of 2004 alone, 3.6 million households were victims of identity theft.[2] According to a report commissioned by the First Data Corporation, 6.8 percent of adults have been victims of some sort of identity theft, including credit card or bank account fraud, or the creation of new accounts using the victim's personal information.[3] The average victim lost $6,383 and spent 40 hours to resolve the problem.[4]

Financial institutions routinely share private information about their customers, but Americans are largely unaware of the practice.

Seventy-three percent of Americans believe that banks are barred by law from selling personal information without expressed permission.[5] Those Americans are wrong—financial institutions routinely sell private information about their customers.

The sharing of private information makes individuals vulnerable to identity theft.

Easy access to private financial information leads to identity theft. For example, when Charter Pacific Bank sold 3.6 million valid credit card numbers and transaction records without customers' consent, the result was $44 million in fraudulent charges for Internet pornography.[6]

The sharing of private information results in unwanted marketing and consumer profiling.

When financial institutions sell information about clients, those clients are harassed with calls and letters for unwanted services. More insidious is the danger that private information will be used to compile data "profiles" that can be used by marketers to determine prices for goods and services to individual customers. For example, individuals who are profiled—including those with spotless credit records—may be assessed higher interest rates based on financial information that is not included on credit reports.[7]

Federal law makes it easy for companies to legally sell customers' private financial information.

Federal law allows financial institutions to share their customers' nonpublic account information with nonaffiliated companies if they give customers the opportunity to "opt out" of this information sharing. In other words, customers lose their privacy unless they affirmatively sign and return a notice. These "opt out" notices are easily mistaken for junk mail, and are often written in confusing language that encourages customers to take no action, thus allowing their information to be shared.

States are permitted to regulate the transfer of information from financial institutions to nonaffiliated companies.

The financial services industry argues that the Fair and Accurate Credit Transactions Act (FACTA), signed into law by President Bush in December 2003, preempts state financial privacy laws—but that is not true. In 2005, the federal Ninth Circuit Court of Appeals upheld the "opt in" provision of the California Financial Information Privacy Act that requires companies to ask for their customers' explicit written permission before sharing or selling private information with nonaffiliated businesses.[8]

States are acting to protect consumer financial privacy and reduce the incidence of identity theft.

While California's law is the most comprehensive, nine other states (AK, CT, IL, LA, ME, MD, NM, ND, VT) have enacted similar financial privacy "opt in" laws.

Financial privacy legislation has strong support among liberals and conservatives.

Sixty percent of Americans believe that banks and credit card companies pose the greatest threat to personal privacy. Eighty-two percent believe that the right to privacy has been lost or is under serious attack. Eighty-three percent have a negative view of companies collecting personal information about individuals, including what they buy, credit histories, and income. Concern about privacy spans the ideological spectrum—68 percent of conservatives and 69 percent of liberals want the government to do more to address personal privacy issues.[9]

This policy summary relies in large part on information from U.S. PIRG and Consumers Union.

Endnotes

1 Better Business Bureau and Javelin Strategy & Research, "Update to the Federal Trade Commission's Identity Theft Survey Report," January 2006.

2 U.S. Department of Justice, "3.6 Million U.S. Households Learned They Were Identity Theft Victims During a Six Month Period in 2004," April 2006.

3 First Data Corporation, "New Identity Theft Survey Reveals Latest Count of Victims, Need for Greater Protection," May 17, 2005.

4 "Update to the Federal Trade Commission's Identity Theft Survey Report."

5 Joseph Turow, Lauren Feldman, and Kimberly Meltzer, "Open to Exploitation: American Shoppers Online and Offline," Annenberg Public Policy Center of the University of Pennsylvania, June 1, 2005.

6 Congressional Testimony by Edmund Mierzwinski, Consumer Program Director, U.S. Public Interest Research Group, to Senate Banking, Housing and Urban Affairs Committee, June 26, 2003.

7 Ibid.

8 *American Bankers Association v. Gould*, 412 F.3d 1081 (9th Cir. 2005) (Only the sharing-with-affiliates provision was struck down following remand to the U.S. District Court).

9 CBS News/*New York Times,* "Poll: Privacy Rights Under Attack," October 2, 2005.

Financial Privacy

Financial Information Privacy Act

Summary: The Financial Information Privacy Act prohibits financial institutions from sharing private customer information with non-affiliated parties without explicit consent from the customer.

SECTION 1. SHORT TITLE

This Act shall be called the "Financial Information Privacy Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Federal banking law, known as the Gramm-Leach-Bliley Act, makes it likely that the personal financial information of [State] residents will be widely shared among, between and within companies.
2. The Gramm-Leach-Bliley Act explicitly permits states to enact privacy protections that are stronger than those provided in federal law.
3. It is crucial to ensure that residents have the ability to control the disclosure of what the Gramm-Leach-Bliley Act calls nonpublic personal information.
4. This Act is intended to grant reasonable control to consumers by requiring financial institutions that want to share information with unaffiliated companies to use a consumer "opt in" mechanism.

(B) PURPOSE—This law is enacted to protect the privacy of customers of financial institutions, giving those customers notice of, and meaningful choice about, how their personal financial information is shared.

SECTION 3. FINANCIAL INFORMATION PRIVACY

(A) DEFINITIONS—In this section:

1. "Account verification service" means any person or entity that, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of:
   a. Assembling information on the frequency and location of depository account openings or attempted openings by a consumer, or forced closings by a depository institution of accounts of a consumer; or
   b. Authenticating or validating social security numbers or addresses for the purpose of reporting to third parties for use in fraud prevention.
2. "Affiliate" or "affiliated company" means any company that controls, is controlled by, or is under common control with another company as that term is used in Section 1681a(d) of Title 15 of the United States Code.
3. "Credit reporting agency" means any person or entity that for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of reporting to third parties on the credit rating or creditworthiness of any consumer.

4. “Customer” means any person or entity that deposits, borrows or invests with a financial institution, including a surety or a guarantor on a loan.
5. “Financial institution” means any institution, the business of which is engaging in financial activities as described in Section 1843(k) of Title 12 of the United States Code, that does business in this state.
6. “Mercantile agency” means any person or entity that, for monetary fees, dues or on a cooperative non-profit basis, regularly engages in whole or in part in the practice of assembling or evaluating business credit information or other information on businesses for the purpose of reporting to third parties on the credit rating or creditworthiness of any business.
7. “Nonaffiliated party” means any person or entity that is not an affiliate of the financial institution.
8. “Personal financial information” means information that is not widely available to the general public and is an original, or copy of, or information derived from:
    a. A document that grants signature authority over a deposit or share account;
    b. A statement, ledger card, or other record of a deposit or share account that shows transactions in, or with respect to, that deposit or account;
    c. A check, clear draft, or money order that is drawn on a financial institution, or issued and payable by, or through, a financial institution;
    d. Any item, other than an institutional or periodic charge, that is made under an agreement between a financial institution and another person’s deposit or share account;
    e. Any information that relates to a loan account or an application for a loan; or
    f. Evidence of a transaction conducted by electronic or telephonic means.
9. “Secretary” means the Secretary of the Department of [Consumer Protection] and the Secretary’s designees.

(B) PERSONAL FINANCIAL INFORMATION PROTECTED

1. Except as provided in section (C), a financial institution shall not sell, share, transfer or otherwise disclose personal financial information to or with any nonaffiliated party without the explicit prior consent of the consumer to whom the nonpublic personal information relates. This may be called “opt in” consent.
2. Any person or entity that receives personal financial information from a financial institution shall not disclose this information to any other person or entity, unless the disclosure would be lawful if made directly to the other person or entity by the financial institution.
3. The Secretary shall, by regulation, direct the size, typesize and wording of an “opt in” consent form.

(C) EXCEPTIONS—The prohibitions in section (B) shall not apply to:

1. The disclosure of information to the customer after verification of the customer’s identity;
2. Disclosure explicitly authorized by the customer and limited to the scope and purpose authorized;
3. The disclosure of information to agencies of the state or its subdivisions that is authorized by state law;
4. The disclosure of information pursuant to a lawful subpoena or court order;

5. The preparation, examination, handling or maintenance of financial records by any officer, employee or agent of a financial institution that has custody of the records;
6. The examination of financial records by a certified public accountant while engaged by the financial institution to perform an independent audit;
7. The disclosure of information to a collection agency, its employees or agents, or to any person engaged by the financial institution to assist in recovering an amount owed to the financial institution, if the disclosure is made in the furtherance of recovering such amount;
8. The examination of financial records by, or the disclosure of financial records to, any officer, employee or agent of a regulatory agency for use only in the exercise of that person's duties as an officer, employee or agent;
9. The publication of information derived from financial records, if the information cannot be identified to any particular customer, deposit or account;
10. The making of reports, disclosures or returns required by federal or state law;
11. The disclosure of any information permitted to be disclosed under the laws governing dishonor of negotiable instruments;
12. The exchange, in the regular course of business, of credit information between a financial institution and a credit reporting agency; provided that the exchange shall be in compliance with the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.;
13. The exchange, in the regular course of business, of information between a financial institution and an account verification service; provided that the exchange shall be in compliance with the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.;
14. The exchange, in the regular course of business, of information between a financial institution and a mercantile agency; provided that the exchange shall be in compliance with the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.;
15. The exchange of loan information that specifically affects a sale, foreclosure or loan closing; provided that the exchange shall be for the purpose of accomplishing the sale, foreclosure or loan closing;
16. Disclosure of suspected criminal activities to civil or criminal law enforcement authorities for use in the exercise of the authority's duties, or the sharing of information within an industry network; or
17. Disclosure in accordance with regulations adopted by the Secretary to carry out the clear intent of this section, or adopted by the Secretary as a temporary measure until such time as regulations may be adopted.

(D) ENFORCEMENT

1. A person or entity that negligently discloses or shares personal financial information in violation of this division shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for a civil penalty not to exceed $2,500 per violation. However, if the disclosure or sharing results in the release of personal financial information of more than one individual, the total civil penalty awarded pursuant to this subdivision shall not exceed $500,000.
2. A person or entity that knowingly and willfully obtains, discloses, shares or uses nonpublic personal information in violation of this division shall be liable for a civil penalty not to exceed $2,500 per individual violation, irrespective of the amount of damages suffered by the consumer as a result of that violation.

3. In the event a violation of this division results in the identity theft of a consumer, as defined by [citation to state law], the civil penalties set forth in this section shall be doubled.
4. The Secretary shall promulgate regulations necessary to enforce this section.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Gift Card Consumer Protection

- ✱ Gift card purchasers lose billions of dollars each year because of service fees and expiration dates.
- ✱ Gift card service fees are often unreasonably high.
- ✱ Gift card expiration periods are often unreasonably short.
- ✱ Retailers receive substantial benefits from the sale of gift cards without service fees or expiration dates.
- ✱ States are limiting gift card service fees and expiration dates.
- ✱ Three states have strong gift card laws.

Gift card purchasers lose billions of dollars each year because of service fees and expiration dates.

More than 140 million Americans spent over $70 billion on gift cards during the past year.[1] Almost 75 percent of American consumers said they planned on purchasing at least one gift card during the 2005 holiday season, a substantial increase from the previous year.[2] But nearly two-thirds of those consumers were not aware that gift cards may expire before fully used and may contain hidden fees.[3] Because of service fees and expiration dates, consumers lose at least 10 percent of the value of gift cards each year—a loss of more than $7 billion.[4]

Gift card service fees are often unreasonably high.

Many retailers begin to charge service fees between six and 24 months after a gift card is purchased. The fees generally range from $1.50 to $2.50 per month until the card's value is completely extinguished. An estimated 23 percent of retailers issuing gift cards impose such fees, and two-thirds fail to disclose service fees when the cards are purchased.[5]

Gift card expiration periods are often unreasonably short.

Many retailers place expiration dates in fine print on the back of gift cards, cutting off the cards' value after six months or a year. In some states, unused cards are treated as lost property and their value escheats to the state. In other states, retailers can keep customers' money after gift cards expire. For example, the nation's second-largest retailer, Home Depot, announced that it made $43 million in 2005 from the sale of gift cards it did not expect to be redeemed.

Retailers receive substantial benefits from the sale of gift cards without service fees or expiration dates.

Gift cards are now the most common gift purchased in America.[6] They are tremendously beneficial to retailers because they get the money up front—the store can use the funds for some period of time without paying interest. Gift card recipients don't return these gifts, so retailers don't have to worry about refunds. In addition, gift cards guarantee that customers will come into their stores in the future, often visiting for the first time, giving retailers the opportunity to gain long-term clients. And once in a store, half of gift card holders spend more than the amount on the gift card—providing even more profit.[7]

States are limiting gift card service fees and expiration dates.

Six states (CA, CT, ME, MT, RI, WA) have enacted laws which prohibit gift card expiration dates. In addition, 15 states (HI, ID, KS, KY, LA, MA, MD, NJ, NY, ND, OH, OK, SC, TN, VT) have laws that require expiration dates to exceed a minimum period ranging from one to seven years. New Hampshire has no expiration date for gift cards worth less than $100, and a five year minimum expiration period for cards worth more than $100. Nine states (CT, HI, IL, KY, MT, NH, ND, RI, VT) have laws prohibiting any type of service fees, and four states (CA, LA, OK, WA) have such laws with minor exceptions.

Eight states (KS, MD, NJ, NV, NY, OK, TN, TX) have laws preventing fees over a given period. For those states without prohibitions, or with limited prohibitions, some require that gift cards clearly indicate expiration dates (AZ, GA, IL, LA, NE, NJ, NY, SC, TX) and any applicable fees (AZ, GA, IL, ME, NE, NJ, NY, SC).

Three states have strong gift card laws.

California's law prohibits expiration dates and fees, with the exception of dormancy fees after 24 months of inactivity of no more than one dollar. Montana's law prohibits all fees and expiration dates, but limits the definition of gift card to exclude prepaid phone cards and multi-store gift cards. The Rhode Island law concerning consumer protection in gift cards is the strongest. It outlaws both expiration dates and any type of fee, including dormancy fees. This law covers any type of gift card or stored-value card, including pre-paid telephone cards.

States that prohibit gift card expiration dates:
CA, CT, ME, MT, NH (less than $100), RI, WA
States that prohibit gift card service fees:
CA (except dormancy), CT, HI, IL, KY, LA (except one time handling fee of $1), MT, NH, ND, RI, VT, OK (with exception), WA (with exception)
States that limit gift card expiration dates:
HI (2 yrs), ID (5 yrs), KY (1 yr), KS (5 yrs), LA (5 yrs), MD (4 yrs), MA (7 yrs), NH (5 yrs, more than $100), NJ (2 yrs), ND (6 yrs), OH (2 yrs), OK (5 yrs), SC (1 yr), TN (2 yrs), VT (3 yrs)
States that limit gift card service fees:
KS (1 yr), MD (4 yrs), NV (1 yr), NJ (2 yrs, dormancy fees), NY (13 mos), OH (2 yrs), TN (2 yrs), TX (1 yr)
States requiring conspicuous notification of expiration dates:
AZ, GA, IL, LA, NE, NJ, NY, SC (if expiration date is within 1 yr), TX
States requiring conspicuous notification of service fees:
AZ, GA, IL, ME, NE, NJ, NY, SC

Consumer Protection

Endnotes

1 David Weber, "Gift Cards: What Franchisors Should Know," *Franchising World*, July 2006; National Retail Federation, "Gift Card Survey," 2005.

2 "Gift Card Survey."

3 *Consumer Reports*, "The gift of plastic," December, 2004.

4 "Gift Cards: What Franchisors Should Know."

5 Montgomery County, Maryland Office of Consumer Protection, "Consumer Gift Card Report 2005," 2005.

6 Beth McConnell, "Comments before the joint House Consumer Affairs and Finance Committees regarding the use and regulation of consumer gift cards and escheat rules," Pennsylvania Public Interest Research Group, April 20, 2005.

7 "Gift Cards: What Franchisors Should Know."

Gift Card Consumer Protection

Gift Card Consumer Protection Act

Summary: The Gift Card Consumer Protection Act prohibits gift card issuers from charging fees or designating expiration dates.

SECTION 1. SHORT TITLE

This Act shall be called the "Gift Card Consumer Protection Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. While the use of gift cards is growing rapidly, consumers are often unaware of these cards' fees and expiration dates.
2. By having use of funds without the payment of interest, gift card issuers already benefit from outstanding balances. Gift card issuers also benefit by knowing that outstanding balances will eventually be spent in their stores rather than elsewhere in the marketplace.
3. Fundamental fairness requires that customers be allowed to spend their gift card balances without unwarranted fees or expiration dates.

(B) PURPOSE—This law is enacted to ensure a fair marketplace by protecting the interests of the state's consumers.

SECTION 3. GIFT CARD CONSUMER PROTECTION

(A) DEFINITION—In this section, "gift card" means a record evidencing a promise, made for monetary consideration, by a seller or issuer that goods or services will be provided to the owner of the record to the value shown in the record. A "gift card" includes, but is not limited to, a record that contains a microprocessor chip, magnetic strip or other storage medium that is pre-funded and for which the value is adjusted upon each use, a gift certificate, a stored-value card or certificate, a store card, or a prepaid long distance telephone service that is activated by a prepaid card that requires dialing an access number or an access code in addition to dialing the phone number to which the user of the prepaid card seeks to connect.

(B) PROHIBITIONS

1. Except as provided in paragraph 2, it shall be unlawful for any person or entity to:
   a. charge any fee, including a maintenance, service or inactivity fee, on a gift card, or
   b. place an expiration date or otherwise limit the time for the redemption of a gift card.

2. A gift card may contain an expiration date if that date is disclosed clearly and legibly on the gift card and the gift card was:
    a. issued pursuant to an awards or loyalty program where no money or thing of value was given in exchange for the gift card, or
    b. donated to a charitable organization without any money or other thing of value being given in exchange for the gift card.
3. A gift card shall not escheat to the state.

(C) ENFORCEMENT

Any person or entity that violates this section shall be punished by a fine of not more than $1,000 for each violation.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007 and apply to gift cards sold on or after July 1, 2007.

Identity Theft

* Identity theft is one of the fastest growing crimes in America.
* Businesses and consumers alike lose billions of dollars annually to identity theft.
* Security breaches make identity theft possible.
* If notified of security breaches, customers could take precautions to protect their credit.
* If empowered to place a security freeze on their credit records, customers could prevent new account fraud.
* Federal law allows states to protect customers from identity theft.
* States have enacted security breach notification laws.
* States have enacted security freeze laws.
* Identity theft cases have declined for the past three years—an indication that state laws are having an effect.

Identity theft is one of the fastest growing crimes in America.

A 2003 Federal Trade Commission (FTC) survey found that 27.3 million Americans were victims of identity theft in the previous five years.[1] Identity theft complaints to the FTC increased by more than 52 percent from 2002 to 2004.[2]

Businesses and consumers alike lose billions of dollars annually to identity theft.

Identity thieves steal $48 billion from businesses and $5 billion from consumers annually, according to the FTC.[3] Thieves take funds out of a victim's bank account, charge purchases to existing credit accounts, or open new credit card, store, utility or telephone accounts. When the thief fails to pay the bills, the new creditors try to collect from the victim, often damaging the victim's credit. The average victim loses about $6,383—up from $5,249 in 2003—and 40 hours of time trying to resolve the problem.[4]

Security breaches make identity theft possible.

To steal an identity, the thief needs access to personal data, such as social security, bank account, or credit card numbers. In 2005 alone, there were more than 80 major security breaches of personal data involving financial institutions, data brokers, businesses, government agencies, and universities. The personal data of more than 50 million Americans were stolen.[5] For example, in 2005:

* The personal data of 145,000 Americans—including names, addresses, social security numbers and credit reports—were stolen from ChoicePoint, a credential-verification service.
* Bank of America lost a backup tape with the names, addresses, social security numbers and credit account numbers of 1.2 million customers.
* The passwords of 310,000 Lexis-Nexis clients were compromised, giving thieves access to names, addresses, social security numbers and driver's license numbers.
* Time Warner lost backup tapes with personal data on 600,000 current and former employees, including their social security numbers.
* A MasterCard database that contained 40 million credit card records was hacked.

If notified of security breaches, customers could take precautions to protect their credit.

Federal law does not require companies to notify customers when personal data has been lost or stolen. If warned of security breaches, customers could place a fraud alert on their credit reports and take extra care when reviewing account statements. In addition, requiring notification of security breaches gives companies more incentive to guard the security of personal data.

If empowered to place a security freeze on their credit records, customers could prevent new account fraud.

When an identity thief tries to open a new account in the name of a victim, the company that would grant credit first checks the victim's credit record at one of the three major credit bureaus—Experian, Equifax or TransUnion. A security freeze allows customers to obtain a passcode, like an ATM PIN. Credit bureaus are prohibited from releasing credit reports without the passcode, so identity thieves cannot get new accounts approved. The best form of security freeze borrows from the convenience of online banking—the consumer can easily place or lift the freeze using the passcode, with changes taking effect almost immediately.

Federal law allows states to protect customers from identity theft.

The Fair and Accurate Credit Transactions Act (FACTA), enacted in December 2003, did not interfere with most state authority to prevent and mitigate identity theft, to require that personal data be held securely, and to mandate that consumers be notified when there has been a breach in the security of their personal information.

States have enacted security breach notification laws.

Thirty-three states (AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, KS, LA, ME, MN, MT, NE, NV, NH, NJ, NY, NC, ND, OH, OK, PA, RI, TN, TX, UT, WA, WI) have enacted legislation that requires companies to notify individuals when a security breach occurs that makes them susceptible to identity theft. Twelve of these states (AZ, CO, HI, ID, KS, NE, NH, OH, OK, PA, UT, WI) enacted their laws in 2006.

States have enacted security freeze laws.

Twenty-five states (CA, CO, CT, DE, FL, HI, IL, KS, KY, LA, ME, MN, NV, NH, NJ, NY, NC, OK, RI, SD, UT, TX, VT, WA, WI) have versions of security freeze legislation, 13 (DE, FL, HI, KS, KY, MN, NH, NY, OK, RI, SD, UT, WI) enacted them in 2006. Fourteen states (CA, CO, CT, DE, FL, KY, LA, ME, NV, NJ, NY, NC, RI, VT) make the security freeze available to all consumers, which maximizes its value as a preventive tool. Washington offers the freeze to identity theft victims, but uses a broad definition that includes those who have received notice that the security of their personal information has been breached.

Identity theft cases have declined over the past three years—an indication that state laws are having an effect.

In 2003, 10.1 million people reported that they had become victims of identity theft. That number dropped to 9.3 million in 2005 and to 8.9 million in 2006 as states have adopted identity theft protection statutes.[6]

This policy summary relies in large part on information from U.S. PIRG and Consumers Union.[7]

Endnotes

1 Federal Trade Commission, "Identity Theft Survey Report," September 2003.

2 Federal Trade Commission, "National and State Trends in Fraud & Identity Theft: January-December 2004," February 1, 2005.

3 "Identity Theft Survey Report."

4 Better Business Bureau and Javelin Strategy & Research, "Update to the Federal Trade Commission's Identity Theft Survey Report," January 2006.

5 Privacy Rights Clearinghouse, "A Chronology of Data Breaches Reported Since the ChoicePoint Incident," October 19, 2005.

6 "Update to the Federal Trade Commission's Identity Theft Survey Report."

7 For a comprehensive discussion of identity theft and model legislation addressing nine separate topics, see "The Clean Credit and Identity Theft Protection Act: Model State Laws," Public Interest Research Groups and Consumers Union, November 2005.

Identity Theft

Security Breach Notification Act

Summary: The Security Breach Notification Act requires companies to notify customers when personal data has been lost or stolen, making customers susceptible to identity theft.

SECTION 1. SHORT TITLE

This Act shall be called the "Security Breach Notification Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Identity theft is one of the fastest growing crimes in America.
2. Businesses and individuals alike lose billions of dollars each year because of fraud associated with identity theft.
3. Identity theft is made possible by security breaches—most commonly when personal financial data such as social security, bank account, and credit card numbers are lost by, or stolen from, businesses.
4. It is crucial that customers be notified of security breaches so they can take precautions with their credit reports and credit accounts.

(B) PURPOSE—This law is enacted to protect individuals and businesses from crimes resulting from identity theft.

SECTION 3. SECURITY BREACH NOTIFICATION

(A) DEFINITIONS—In this section:

1. "Data collector" means a person, corporation or other entity that handles personal information.
2. "Breach of the security of the data" means unauthorized acquisition of computerized or non-computerized data that compromises the security, confidentiality or integrity of personal information maintained by the data collector. Good faith acquisition of personal information by an employee or agent of the data collector for a legitimate purpose of the data collector is not a breach of the security of the data, provided that the personal information is not used for a purpose unrelated to the data collector or subject to further unauthorized disclosure.
3. "Personal information" means an individual's last name, address or phone number in combination with any of the following data elements, when either the name or the data elements are not encrypted or redacted, or are encrypted with an encryption key that was also acquired:
   a. Social security number.
   b. Driver's license number or state identification card number.
   c. Account number, credit or debit card number, if circumstances exist wherein such a number could be used without additional identifying information, access codes, or passwords.
   d. Account passwords or personal identification numbers (PINs) or other access codes.
   e. Biometric data.

   "Personal information" includes the data elements listed above, when not in connection with the individual's last name, address or phone number, if the information compromised would be sufficient to perform or attempt to perform identity theft against the person whose information was compromised.

"Personal information" does not include information that is lawfully made available to the general public from federal, state or local government records, provided that such publicly available information has not been aggregated or consolidated into an electronic database or similar system by the governmental agency or by another person.

(B) NOTICE OF BREACH

1. A data collector that owns or uses personal information concerning a [State] resident shall, as quickly as possible, notify the resident if there is a breach of the security of the data.
2. The notification required by this section shall be delayed if a law enforcement agency informs the data collector in writing that the notification may seriously impede a criminal investigation.
3. Notice of a breach of the security of the data shall be provided in writing by first-class mail, or by electronic mail if it complies with the requirements of Title 15, Section 7001 of the United States Code.
4. If the data collector demonstrates that the cost of providing notice would exceed $250,000, or that the data collector does not have sufficient contact information to notify affected residents, the data collector shall:
   a. Post the notice conspicuously on the data collector's Internet site; and
   b. Deliver notice by first-class mail to every licensed television and radio station, and every general circulation daily newspaper in the state.
5. The notice of a breach of the security of the data shall include:
   a. A description of the types of information that were, or were reasonably believed to have been, acquired by an unauthorized person, such as social security, driver's license, and credit card numbers;
   b. A toll-free telephone number that residents may use to learn whether their personal information was compromised and what data was lost or stolen; and
   c. The telephone numbers and addresses of the major credit reporting agencies.
6. After a notification of a breach of the security of the data, a data collector shall make available, free of charge to affected residents, credit reports from at least one of the major credit reporting agencies, beginning not later than two months following the breach of security, and continuing on a quarterly basis for a period of two years.

(C) WAIVER—Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

(D) ENFORCEMENT

1. The Department of [Consumer Affairs] shall promulgate such regulations as are necessary to enforce this section.
2. A resident of [State] injured by a violation of this section may initiate a civil action to recover damages.
3. A data collector that violates, proposes to violate, or has violated this section may be enjoined.

4. The rights and remedies available under this section do not preempt any other rights and remedies available under law.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Security Freeze Identity Protection Act

Summary: The Security Freeze Identity Protection Act protects consumers from identity theft by giving them control over the release of their credit reports.

SECTION 1. SHORT TITLE

This Act shall be called the "Security Freeze Identity Protection Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Identity theft is one of the fastest growing crimes in America.
2. Businesses and individuals alike lose billions of dollars each year because of fraud associated with identity theft.
3. If empowered to place a security freeze on their credit reports, customers could prevent new account fraud.

(B) PURPOSE—This law is enacted to protect individuals and businesses from crimes resulting from identity theft.

SECTION 3. SECURITY FREEZE IDENTITY PROTECTION

(A) DEFINITIONS—In this section:

1. "Credit reporting agency" means a person, corporation or other entity that regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing credit reports to third parties.
2. "Credit report" means information that bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used, or serves as a factor, in establishing a consumer's eligibility for credit or insurance.
3. "Security freeze" means a consumer's directive that prohibits a credit reporting agency from releasing any part of the consumer's credit report or any information derived from it to a third party without prior express authorization from the consumer.

(B) SECURITY FREEZE

1. A consumer may direct a credit reporting agency to place a security freeze on his or her credit report. Such a directive may be delivered to the credit reporting agency in writing, by telephone, or through a secure Internet connection. By January 1, 2007, credit reporting agencies shall make a secure Internet connection available to customers for this purpose.
2. A credit reporting agency shall implement the customer's security freeze no later than five business days after it receives a directive in writing or by telephone, and no later than three business days after it receives a directive through a secure Internet connection. By July 1, 2007, a credit reporting agency shall implement a customer's security freeze no later than three business days after it receives a directive in writing or by telephone, and no later than one business day after it receives a directive through secure Internet connection. By July 1, 2008, a credit reporting agency shall implement a consumer's security freeze no later than one business day after it receives a directive in writing, by telephone, or through a secure Internet connection.
3. No later than five business days after it implements a security freeze, a credit reporting agency shall send to the consumer, by first-class mail, a unique personal identification number or password to be used by the consumer to authorize the release of his or her credit record. By July 1, 2007, a credit reporting agency shall send the unique personal identification number or password no later than one business day after it implements a security freeze.
4. After a security freeze is implemented, the consumer may authorize release of his or her credit report by contacting a credit reporting agency in writing, by telephone, or through a secure Internet connection and providing:
   a. The consumer's name, address and date of birth;
   b. The consumer's unique personal identification number or password; and
   c. Instructions that specify: the third party that is to receive the credit report, a limited time period during which the credit report shall be available to any user of credit reports, or that the security freeze is permanently removed. No fewer than five days before a security freeze is permanently removed, the credit reporting agency shall notify the consumer, by first-class mail, of the impending removal.
5. A credit reporting agency shall release a consumer's credit report no later than three business days after a consumer authorizes the release. By July 1, 2007, a credit reporting agency shall release a consumer's credit report no later than one business day after a consumer authorizes the release. By July 1, 2008, a credit reporting agency shall release a consumer's credit report no later than 15 minutes after a consumer authorizes the release.
6. A credit reporting agency shall not state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report or rating.
7. This section shall not apply to the receipt of a credit report by:
   a. A person, corporation or other entity, or its subsidiary, affiliate, agent or assignee, that is a creditor of the consumer and that is receiving the credit report for the purpose of reviewing an existing account or collecting an existing financial obligation.
   b. A subsidiary, affiliate, agent or assignee of a third party that was authorized by the consumer to receive his or her credit report pursuant to paragraph 4.
   c. A person acting pursuant to a court order, warrant or subpoena.

d. A state or local agency which administers a program to establish and enforce child support obligations.

e. The [State health department] or its agents or assignees acting to investigate fraud.

f. The [State tax authority] or its agents or assignees acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

g. A person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act.

h. A person who administers a credit file monitoring subscription service to which the consumer has subscribed.

i. A person for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

8. A consumer shall not be charged for any services associated with a security freeze, except the replacement of a unique personal identification number or password, for which the customer may be charged not more than five dollars.

9. If a credit reporting agency wrongly releases information that is subject to a security freeze, the credit reporting agency shall notify the affected consumer within five business days, and shall specify the information that was released and the third party that received it.

(C) NOTICE OF RIGHTS—At any time that a consumer is required to receive a summary of rights under Section 609 of the federal Fair Credit Reporting Act or under [cite state law], the following notice shall be included:

"[State] Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your credit report at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a security freeze on your credit report pursuant to [cite state law].

The security freeze will prohibit a credit reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans and services from being approved in your name without your consent. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the security freeze on your credit report or to temporarily authorize the release of your credit report to a specific party or for a specific period of time after the freeze is in place. To provide that authorization, you must contact the credit reporting agency and provide all of the following:

1. The unique personal identification number or password provided by the credit reporting agency.
2. Proper identification to verify your identity.
3. Proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for account review, collection, fraud control or similar activities.

If you are actively seeking a new credit, loan, utility, telephone, or insurance account, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze—either completely or specifically for a certain creditor—with enough advance notice before you apply for new credit for the lift to take effect. Until July 1, 2008, you should lift the freeze at least three business days before applying; between July 1, 2008 and July 1, 2009 you should lift the freeze at least one business day before applying; and after July 1, 2009 you should lift the freeze at least 15 minutes before applying for a new account.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report."

(D) ENFORCEMENT

1. The Secretary of the [Department of Consumer Affairs] shall promulgate such regulations as are necessary to enforce this section. Regulations shall include procedures to receive, investigate and attempt to resolve complaints; issue civil penalties when warranted, not to exceed $10,000 for each violation; and bring actions for damages and injunctive relief, when necessary, in any court of competent jurisdiction.
2. An aggrieved consumer may bring a private cause of action for damages caused by violation of this section, and injunctive relief from future violations. If the consumer wins damages or injunctive relief, he or she may be awarded reasonable attorney's fees, investigative expenses, and court costs.
3. Each violation of a security freeze shall be counted as a separate incident for purposes of imposing penalties under this section.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Payday Lending

- Every year, over five million families are victimized by predatory payday lending.
- Payday lenders make most of their profits by trapping borrowers in a cycle of revolving debt.
- Predatory payday lending disproportionately impacts women and African Americans.
- In recent years, the payday lending industry has quadrupled in size.
- State laws generally fail to stop predatory payday lending practices.
- Thirteen states prohibit payday loans with increasingly effective enforcement.
- The federal government has taken action on payday loans to military families.
- Georgia's model law has cleared its last legal hurdle.

Every year, over five million families are victimized by predatory payday lending.[1]

Payday loans are short-term loans for immediate cash, typically secured by a borrower's post-dated check or authorization for automatic withdrawal from the borrower's bank account on a certain date. In exchange for a post-dated $300 check, a consumer typically pays $45 in fees and receives $255 in cash. The annual percentage rate (APR) for an initial payday loan usually ranges from 391 percent to 443 percent. The charges often result in a loan's renewal—which means the borrower pays additional fees on the same loan.

Payday lenders make most of their profits by trapping borrowers in a cycle of revolving debt.

Because payday loans are typically due within two weeks, many borrowers find they cannot repay them on time. To avoid default, they must renew the loan and pay another high fee. Pressures to renew the loan include the prospect of multiple bounced check fees from the bank and the lender—who may pass the check through the borrower's account several times—and the explicit or implicit threat of prosecution for writing a bad check. Borrowers get caught up in "loan flipping," a cycle of expensive refinancing of loans. In fact, 91 percent of payday loans are made to borrowers who take out five or more such loans per year. Thirty-one percent of payday borrowers receive 12 or more loans per year. Only one percent of payday loans go to first-time borrowers. Predatory payday lending fees—those extracted from borrowers caught in a cycle of repeated transactions—cost American families at least $5 billion each year.[2]

Predatory payday lending disproportionately impacts women and African Americans.

A national survey found that two out of three payday borrowers were women.[3] An Illinois study found that over 60 percent of payday borrowers sued by a major payday lender were women.[4] An industry newsletter describes the customer base as being over 60 percent women.[5] In fact, one payday lender's business plan declares that "welfare-to-work mothers" are an "excellent opportunity for check cashing and cash advance businesses."[6] A March 2005 study found that African American neighborhoods in North Carolina had three times as many payday lending stores per capita as white neighborhoods—even when income and other demographic factors were controlled.[7] Another North Carolina study found that African American households are almost twice as likely as white households to borrow from a payday lender.[8]

In recent years, the payday lending industry has quadrupled in size.

Payday lending sales volume grew from $10 billion in 2000 to more than $40 billion in 2003. By 2004, approximately 22,000 payday offices generated 100 million transactions. *Sixty Minutes* reported that across the nation, payday lending shops now outnumber McDonald's restaurants.

State laws generally fail to stop predatory payday lending practices.

Thirty-five states (AL, AR, AZ, CA, CO, DE, FL, HI, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NH, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VA, WA, WY) have laws or regulations that specifically permit payday loans. In addition, Wisconsin has no small loan usury caps that apply to payday loans, effectively authorizing payday lending practices. Of the states that allow payday lending, only seven (CA, CO, IN, LA, MT, OK, VA) have statutes that prohibit local companies from partnering with out-of-state banks to evade state restrictions.[9]

Thirteen states prohibit payday loans with increasingly effective enforcement.

Thirteen states (AK, CT, GA, ME, MD, MA, MI, NJ, NY, NC, PA, VT, WV) prohibit payday loans through interest rate caps, usury laws, or specific prohibitions on check cashing.[10] However, most of these states still have some payday lending, largely due to local companies that partner with out-of-state banks to evade prohibitions. In March 2005, the Federal Deposit Insurance Corporation (FDIC) cracked down on the practice by forbidding payday lenders and their partner banks from making payday loans to customers who have had such loans outstanding from any lender for more than three of the previous 12 months. Subsequently, banks ended a substantial number of their partnerships.

The federal government has taken action on payday loans to military families.

A study for the Center for Responsible Lending found that military personnel are three times more likely than civilians to be payday borrowers.[11] Another study found that payday lending stores were clustered around military bases.[12] In response, the 2007 Defense Authorization bill, passed in September 2006, contained strong limits on payday loans, including a 36 percent cap on interest.

Georgia's model law has cleared its last legal hurdle.

Georgia's law caps small loans at 60 percent APR, prescribes harsh penalties for violators, and explicitly bars non-bank lenders from partnering with out-of-state institutions in order to avoid the state usury limit. Soon after the law's 2004 enactment, several payday lenders and their bank partners sued the state, claiming it was unconstitutional. However, their effort failed and the 11th Circuit Court of Appeals eliminated the last legal threat to the Georgia law in April 2006.

This policy summary was based in large part on information from the Center for Responsible Lending.

Consumer Protection

Endnotes

1 Keith Ernst, John Farris and Uriah King, "Quantifying the Economic Cost of Payday Lending," Center for Responsible Lending, February 2004.

2 Ibid.

3 Patricia Cirillo, "Payday Advance Consumer Satisfaction Survey," Cypress Research Group, May 2004.

4 Monsignor John Egan Campaign for Payday Loan Reform, "Greed: An In-depth Study of the Debt Collection Practices, Interest Rates, and Customer Base of a Major Illinois Payday Lender," March 2004.

5 Trihouse Enterprises, "Payday Loan Industry Newsletter," Issue 3-10, 2003.

6 "A Business Plan for The Cash Exchange," on file with the Center for Responsible Lending.

7 Uriah King, Wei Li, Delvin Davis and Keith Ernst, "Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina," Center for Responsible Lending, March 22, 2005.

8 Michael Stegman and Robert Faris, "Payday Lending: a Business Model that Encourages Chronic Borrowing," Center for Community Capitalism, University of North Carolina, 2003.

9 Jean Ann Fox, "Unsafe and Unsound: Payday Lenders Hide Behind FDIC Bank Charters to Peddle Usury," Consumer Federation of America, March 2004.

10 Ozlem Tanik, "Payday Lenders Target the Military; Evidence Lies in Industry's Own Data," Center for Responsible Lending, September 30, 2005..

11 Steven Graves and Christopher Peterson, *Predatory Lending and the Military*, March 2005.

12 "Unsafe and Unsound."

Payday Lending

Payday Lending Prohibition Act

Summary: The Payday Lending Prohibition Act protects consumers from unfair tactics by payday lenders.

SECTION 1. SHORT TITLE

This Act shall be called the "Payday Lending Prohibition Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Payday lenders typically charge effective interest rates of over 400 percent per annum.
2. Payday lenders make most of their profits by trapping borrowers in a cycle of revolving debt.
3. Payday lenders have created schemes to disguise these transactions so that they appear to be made by a financial institution chartered in another state.
4. Predatory payday lending has increased rapidly over the last several years.

(B) PURPOSE—This law is enacted to protect consumers from predatory terms and tactics employed in the lending and collection of payday loans.

SECTION 3. PAYDAY LENDING REFORM

After section XXX, the following new section XXX shall be inserted:

(A) PAYDAY LENDING PROHIBITED

1. It shall be unlawful for any person to engage in any business that consists in whole or in part of making, offering, arranging or acting as an agent in the making of loans of $3,000 or less unless:
   a. The lender is a bank regulated by [insert citation to state law], a credit union regulated by [citation], or a residential mortgage lender regulated by [citation]; or
   b. The loan is a credit card charge regulated by [citation], a retail installment loan regulated by [citation], a loan for the purchase of a motor vehicle regulated by [citation], a tax refund anticipation loan regulated by [citation], or a pawnbroker's loan regulated by [citation].
2. It is a violation of this section to purport to be the agent of an entity that is permitted to make such loans if the purported agent, instead of the entity, holds, acquires or maintains the predominant economic interest in the revenues generated by the loan.
3. If the loan is a tax refund anticipation loan, it must be issued using a borrower's filed tax return and the loan amount cannot exceed the amount of the borrower's anticipated tax refund. Tax returns that are prepared but not filed with the proper government agency will not qualify for a loan exemption under this paragraph.
4. No loan transaction shall include the deferred presentment of a check or other negotiable instrument; the selling or providing of an item, service or commodity incidental to the advance of funds; or any other element introduced to disguise the true nature of the transaction as an extension of credit.
5. This section shall not apply to persons who do not hold themselves out to the public as being in the business of making loans.

(B) ENFORCEMENT

1. Any person who violates this section shall be guilty of a [Class A misdemeanor], punishable by imprisonment for not more than one year or by a fine not to exceed $10,000, or both. Each loan transaction shall be deemed a separate violation of this section.
2. If a person has been convicted of violations of this section on two prior occasions, then all subsequent convictions shall be considered felonies punishable by imprisonment for up to five years or a fine not to exceed $100,000, or both.
3. A civil action may be brought on behalf of an individual borrower or on behalf of an ascertainable class of borrowers. In a successful action to enforce the provisions of this chapter, a court shall award a borrower, or class of borrowers, costs including reasonable attorneys' fees.
4. The Department of [Finance] shall promulgate such regulations as are necessary to enforce this section.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall become effective on July 1, 2007.

CONSUMER PROTECTION RESOURCES

Financial Privacy

Consumer Federation of California Education Foundation

Consumers Union

Electronic Privacy Information Center

U.S. PIRG

Gift Card Consumer Protection

Consumers Union

U.S. PIRG

Identity Theft

Consumers Union

U.S. PIRG

Payday Lending

Center for Responsible Lending

Consumer Federation of America

National Consumer Law Center

A full index of resources with contact information can be found on page 291.

Criminal Justice

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Electronic Recording of Interrogations

- ✱ Every year, hundreds of innocent Americans are convicted of crimes because of false confessions.
- ✱ Many more innocent Americans are imprisoned because of false confessions and later released.
- ✱ There are many reasons why innocent people "confess," ranging from exhaustion to mental illness.
- ✱ Electronic recording of interrogations helps to protect the innocent and convict the guilty.
- ✱ Seven states and many cities and counties require electronic recording of interrogations.
- ✱ Law enforcement agencies that use electronic recording have proven its value.
- ✱ The cost of electronic recording is more than offset by savings.

Every year, hundreds of innocent Americans are convicted of crimes because of false confessions.

Of the first 142 DNA exonerations of wrongfully convicted persons, 35 of them—nearly one in four—had made false confessions.[1] At least 300 innocent people are convicted of major crimes each year as a result of false confessions.[2]

Many more innocent Americans are imprisoned because of false confessions and later released.

It is impossible to count how many people have been charged based on false confessions but released after exonerating evidence is discovered. A *Washington Post* investigation into one jurisdiction—Prince George's County, Maryland—described four egregious cases of homicide detectives who coerced confessions that were proven false, which resulted in charges being dropped before a trial.[3] The *Chicago Tribune* conducted a similar study that found 247 instances in which a defendant's self-incriminating statements were thrown out by a court or found insufficiently convincing by a jury.[4]

There are many reasons why innocent people "confess," ranging from exhaustion to mental illness.

Psychologists report that standard police interrogation tactics regularly elicit false confessions from the mentally retarded, mentally ill, juveniles and other suspects who may not understand the legal system.[5] Suspects who suffer from alcohol or drug problems are especially susceptible to psychologically powerful interrogation tactics. Isolation and sleep deprivation can lead to confusion, temporary psychosis and even hallucinations. After 28 hours in an interrogation room, Keith Longtin began to believe police suggestions that he had a split personality and that his "other self" had murdered his wife. He spent eight months in jail until DNA evidence fingered the real killer.[6]

Electronic recording of interrogations helps to protect the innocent and convict the guilty.

When interrogations are audio- or videotaped, police and prosecutors have a permanent record of a suspect's statements and gestures. Aside from its investigative value, the recording can also verify that officers treated suspects fairly. As a result:

- ✱ Voluntary confessions are indisputable. Recordings allow officers to defend themselves against unwarranted claims of abusive conduct while deterring investigators from using improper tactics to elicit confessions.
- ✱ Officers can concentrate on a suspect's demeanor and statements without the distraction of detailed note-taking. Recordings mean officers don't have to struggle to recall details of interviews weeks or months after they occur.
- ✱ Review of recordings allows officers to retrieve leads and identify inconsistent statements that were overlooked during interviews.
- ✱ Recordings are valuable for training new officers in proper interrogation techniques.
- ✱ Electronic recording boosts public confidence in police practices.[7]

Seven states (AK, IL, ME, MN, NJ, NM and WI) and many cities and counties require electronic recording of interrogations.

In 2003, Illinois became the first state to enact legislation that requires electronic recording. The Maine and New Mexico legislatures followed suit in 2004 and 2005. The Wisconsin Supreme Court ordered electronic recording of all juvenile interrogations and the New Jersey Supreme Court ordered it for homicide investigations in 2005 and 2006. The Supreme Courts of Minnesota and Alaska were far ahead of the trend, mandating the electronic recording of custodial interrogations in 1984 and 1985.[8] Other major jurisdictions that require electronic recording include Austin, Dallas and Houston, Texas; Denver, Colorado; San Diego County, California; and Broward County, Florida.

Law enforcement agencies that use electronic recording have proven its value.

Ninety-seven percent of police departments that have videotaped suspects' statements found the practice useful, according to a U.S. Department of Justice study.[9] A 2004 survey of 238 law enforcement agencies that currently record custodial interrogations found that "virtually every officer with whom [they] spoke, having given custodial recordings a try, was enthusiastically in favor of the practice."[10] Judges favor electronic recording because it streamlines the judicial process, and prosecutors and police argue that it helps to disprove phony claims of misconduct. In jurisdictions that tape custodial interrogations, motions by the defense to suppress a confession have declined, and guilty pleas have increased.

The cost of electronic recording is more than offset by savings.

The only real argument against electronic recording is that cameras are costly to taxpayers. However, such technology—especially when purchased in bulk—has become quite inexpensive. Additionally, electronic recording saves tax money because it reduces multi-million dollar awards in false arrest and police misconduct lawsuits, dramatically lowers the number of time-consuming evidence suppression hearings, and encourages more plea agreements before trial. Electronic recording also helps to prevent crimes by keeping police focused on the guilty rather than the innocent. For example, in the case of Keith Longtin, cited above, the real killer sexually assaulted seven more women while Longtin languished in jail. These crimes could have been prevented if law enforcement officers had kept working to solve the case.

This policy summary relies in large part on information from the Innocence Project.

Endnotes

1 Steven Drizin and Marissa Reich, "Heeding the Lessons of History: The Need for Mandatory Recording of Police Interrogations to Accurately Assess the Reliability and Voluntariness of Confessions," *Drake Law Review*, 2004.

2 Richard P. Conti, "The Psychology of False Confessions," *The Journal of Credibility Assessment and Witness Psychology*, 1999.

3 April Witt, "Allegations of Abuses Mar Murder Cases," *Washington Post*, June 3, 2001.

4 Ken Armstrong, Steve Mills and Maurice Possley, "Coercive and illegal tactics torpedo scores of Cook County murder cases," *Chicago Tribune*, December 16, 2001.

5 Saul Kassin and Gisli Gudjonsson, "Mandatory Videotaping of All Police Interviews and Interrogations May Decrease False Confessions," *Psychological Science in the Public Interest*, 2005.

6 "Allegations of Abuses Mar Murder Cases."

7 Thomas Sullivan, "Electronic Recording of Custodial Interrogations: Everybody Wins," *Journal of Criminal Law and Criminology*, 2005.

8 *Minnesota v. Scales*, 518 N.W.2d 587 (Minn. 1984); *Stephan v. State*, 711 P.2d 1156 (Alaska 1985).

9 William Geller, "Police Videotaping of Suspect Interrogations and Confessions," Report to the National Institute of Justice, 1992.

10 Thomas Sullivan, "Police Experiences with Recording Custodial Interrogations," Northwestern University School of Law, Center on Wrongful Convictions, 2004.

Electronic Recording of Interrogations

Electronic Recording of Interrogations Act

Summary: The Electronic Recording of Interrogations Act requires that any custodial interrogation conducted by police must be electronically recorded in its entirety.

SECTION 1. SHORT TITLE

This Act shall be called the "Electronic Recording of Interrogations Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Every year, innocent people are jailed because of false confessions during custodial interrogations.
2. Electronic recording of interrogations helps to protect the innocent and convict the guilty.
3. Law enforcement agencies that use electronic recording have proven its value.

(B) PURPOSE—The purpose of this Act is to require the creation of an electronic record of an entire custodial interrogation in order to eliminate disputes about interrogations, thereby improving prosecution of the guilty while affording protection to the innocent.

SECTION 3. ELECTRONIC RECORDING OF INTERROGATIONS

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Custodial interrogation" means an interview that occurs while a person is in custody in a place of detention and involves a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses.
2. "Electronic recording" means an audio and visual recording that is an authentic, accurate, unaltered record.
3. "Place of detention" means a jail, police or sheriff's station, correctional or detention facility, holding facility for prisoners, or other place where persons are held in connection with juvenile or criminal charges.
4. "In its entirety" means a record that begins with and includes a law enforcement officer's advice to the person in custody of that person's constitutional rights, ends when the interview has completely finished, and clearly shows both the interrogator and the person in custody throughout.

(B) ELECTRONIC RECORDING OF INTERROGATIONS REQUIRED

1. During the prosecution of a class [insert as appropriate] felony and during any proceeding in juvenile court, an oral, written, non-verbal or sign language statement of a defendant or juvenile made in the course of a custodial interrogation shall be presumed inadmissible as evidence against the defendant or juvenile unless an electronic recording is made of the custodial interrogation in its entirety.
2. If the court finds that the defendant or juvenile was subjected to a custodial interrogation that was not electronically recorded in its entirety, then any statements made by the defendant or juvenile following that custodial interrogation, even if otherwise in compliance with this section, are also pre-

sumed inadmissible.

3. The state may rebut a presumption of inadmissibility through clear and convincing evidence that the statement was both voluntary and reliable, and that law enforcement officers had good cause for failing to electronically record the entire interrogation. Examples of good cause include that:
   a. The interrogation took place in a location other than a police station, correctional facility, or holding facility for prisoners and where the requisite recording equipment was not readily available;
   b. The accused refused to have his or her interrogation electronically recorded, and the refusal itself was electronically recorded; or
   c. The failure to electronically record an entire interrogation was the result of equipment failure and obtaining replacement equipment was not feasible.
4. Nothing in this section precludes the admission of:
   a. A statement made by the accused in open court at his or her trial, before a grand jury, or at a preliminary hearing;
   b. A spontaneous statement that is not made in response to a question;
   c. A statement made after questioning that is routinely asked during the processing of the arrest of the suspect;
   d. A statement made during a custodial interrogation that is conducted out-of-state;
   e. A statement obtained by a federal law enforcement officer in a federal place of detention;
   f. A statement given at a time when the interrogators are unaware that the person is suspected of a class [insert as appropriate] felony; or
   g. A statement, otherwise inadmissible under this section, that is used only for impeachment and not as substantive evidence.
5. The state shall not destroy or alter any electronic recording made of a custodial interrogation until such time as the defendant's conviction for any offense relating to the interrogation is final and all direct and *habeas corpus* appeals are exhausted, or the prosecution of that offense is barred by law.

SECTION 4. GRANTS FOR ELECTRONIC RECORDING EQUIPMENT

From appropriations made for that purpose, the Secretary of [Public Safety] shall make grants to local law enforcement agencies for the purchase of equipment for electronic recording of interrogations. The Secretary shall promulgate rules to implement this paragraph.

SECTION 5. TRAINING OF LAW ENFORCEMENT OFFICERS

From appropriations made for that purpose, the Secretary of [Public Safety] shall initiate, administer and conduct training programs for law enforcement officers and recruits on the methods and technical aspects of electronic recording of interrogations.

SECTION 6. EFFECTIVE DATE

Sections 4 and 5 of this Act shall take effect on July 1, 2007. Section 3 of this Act shall take effect on July 1, 2008.

Eyewitness Identification

* Every year, thousands of Americans are accused or convicted of serious crimes because of mistaken eyewitness identification.
* Studies suggest that more than one in four individuals identified as the culprit are innocent.
* Mistaken police lineup identifications distract law enforcement agencies from apprehending perpetrators.
* Law enforcement experts now recognize the problem of mistaken identifications and recommend solutions.
* Four strategies substantially improve eyewitness identifications: “blind” lineup administrators, specific instructions to witnesses, collection of confidence statements, and proper composition of lineup members.
* States and localities have adopted eyewitness identification reforms.

Every year, thousands of Americans are accused or convicted of serious crimes because of mistaken eyewitness identification.

An estimated 4,500 innocent people are convicted in the United States each year because of mistaken eyewitness identification.[1] Researchers have long known that mistaken eyewitness identification is the leading cause of wrongful convictions.[2] But the use of DNA evidence has led to a new focus on eyewitness identification by police, prosecutors and judges. Of more than 180 individuals who were convicted of crimes and subsequently exonerated by DNA evidence, more than 75 percent involved mistaken eyewitness identification.[3]

Studies suggest that more than one in four individuals identified as the culprit are innocent.

A series of experimental studies have found that when the perpetrator is in a traditional police lineup, witnesses correctly pick that individual about 50 percent of the time and incorrectly pick someone else about 25 percent of the time. When the perpetrator is absent from the lineup and the witness is presented with a selection of innocent individuals, witnesses identify one of the innocents as the perpetrator about 50 percent of the time.[4] These rates of false eyewitness identifications remain roughly the same whether a lineup is in-person or an array of photographs.

Mistaken police lineup identifications distract law enforcement agencies from apprehending perpetrators.

Erroneous eyewitness identifications unintentionally divert police and prosecutors’ attention away from the true culprit. They also undercut the credibility of witnesses and force innocent people to defend themselves from criminal charges.

Law enforcement experts now recognize the problem of mistaken identifications and recommend solutions.

Over the past 25 years, a large body of peer-reviews, scientific research and practice shows that simple and easily implemented systemic changes in administering eyewitness identification procedures can greatly improve the accuracy of eyewitness identifications. The U.S. Department of Justice, the American Bar Association, and states across the nation have endorsed or adopted such reforms.

Four strategies substantially improve eyewitness identifications: “blind” lineup administrators, specific instructions to witnesses, collection of confidence statements, and proper composition of lineup members.

In addition to electronically recording identification procedures, the following strategies are recommended:

★ **"Blind" lineup administrators—**The most important reform is to ensure that the person who conducts a lineup does not know the suspect's identity. Commonly, the person who administers a lineup is the case detective who, of course, knows the identity of the suspect. It is well-established by psychologists that a lineup administrator who knows the suspect's identity will give inadvertent verbal or nonverbal cues that influence the witness.[5] The preferred practice is also known as "double blind," referring to the fact that neither the administrator nor the witness know who police suspect.

★ **Specific instructions—**The rate of inaccurate identifications is strongly affected by whether witnesses have been warned prior to viewing a lineup that the culprit might or might not appear. Witnesses tend to assume that the perpetrator must be one of the individuals presented, which is one reason 50 percent of eyewitnesses single out an innocent person when the lineup is entirely comprised of innocents. One study found the "might or might not be present" instruction reduced mistaken identifications by 42 percent.[6] Witnesses should also be instructed that the lineup administrator does not know the identity of the suspect, so witnesses do not look for non-verbal cues from the administrator.

★ **Confidence Statements—**A confidence statement is a declaration provided by the eyewitness immediately upon identification and before any feedback is provided, in which he articulates in his own words the level of confidence he has in the identification he has made. It is critical that the eyewitness not be provided any information concerning the selection he has made before a confidence statement is obtained.

★ **Proper composition of line-up members—** Non-suspect (or "filler") lineup members should be selected based on their resemblance to the description provided by the witness, yet should not stand out unduly from the suspect. Also, it is generally accepted that photographic lineups should contain at least six photographs and live lineups should contain at least five individuals.

States and localities have adopted eyewitness identification reforms.

New Jersey has adopted this reform package as standard lineup procedure. North Carolina and Wisconsin encourage law enforcement to voluntarily adopt these procedures as well. A number of cities and counties have also implemented these eyewitness identification reforms, including Boston, MA, Minneapolis-St. Paul, MN, Winston-Salem, NC, and Madison, WI.

This policy summary relies in large part on information from the Innocence Project.[8]

Endnotes

1 Brian Cutler and Steven Penrod, *Mistaken Identification: The Eyewitness, Psychology and the Law*, 1995.

2 Gary Wells et al., "Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads," *Law and Human Behavior*, 1998.

3 Innocence Project, "Eyewitness Identification Reform," 2006.

4 Steven Penrod, "Eyewitness Identification Evidence: How Well Are Witnesses and Police Performing?" *Criminal Justice*, American Bar Association Criminal Justice Section, Spring 2003; Gary Wells and Elizabeth Olson, "Eyewitness Testimony," *Annual Review of Psychology*, 2003.

5 "Eyewitness Testimony."

6 Ibid.

7 Ibid.

8 The Innocence Project has a variety of model bills addressing eyewitness identification.

Eyewitness Identification

Eyewitness Identification Reform Act

Summary: The Eyewitness Identification Reform Act improves the reliability of eyewitness identification by requiring police to adopt a series of lineup reforms.

SECTION 1. SHORT TITLE

This Act shall be called the "Eyewitness Identification Reform Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Many innocent people are accused or convicted of serious crimes because of mistaken eyewitness identification.
2. Mistaken police lineup identifications distract law enforcement agencies from apprehending perpetrators.
3. Reports of the U.S. Department of Justice, the American Bar Association, twenty-five years of peer-reviewed scientific research, and the experiences of practitioners across the country indicate that the accuracy of eyewitness identification can be greatly enhanced by the use of "blind" administrators, instructions to the witness, confidence statements and the proper composition of lineups.

(B) PURPOSE—This law is enacted by the legislature to help convict the guilty and exonerate the innocent in criminal proceedings by improving procedures for eyewitness identification of suspects.

SECTION 3. EYEWITNESS IDENTIFICATION REFORM

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Eyewitness" means a person whose identification of another person may be relevant in a criminal proceeding.
2. "Filler" means a person or a photograph of a person who is not suspected of an offense and is included in a lineup.
3. "Photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.
4. "Live lineup" means a procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.
5. "Lineup" means a photo lineup or live lineup.
6. "Lineup administrator" means the person who conducts a lineup.

(B) EYEWITNESS IDENTIFICATION PROCEDURES—Lineups conducted by state, county and local law enforcement officers shall meet the following requirements:

1. The lineup administrator shall be a person who does not know which person in the lineup is the suspect.
2. Before a lineup, the eyewitness shall be instructed that the perpetrator might or might not be presented in the lineup, that the lineup administrator does not know the suspect's identity, that the eyewitness should not feel compelled to make an identification, that it is as important to exclude innocent persons as it is to identify the perpetrator; and that the investigation will continue whether or not an identification is made.
3. In a photo lineup, the photograph of the suspected perpetrator shall be contemporary and shall resemble his or her appearance at the time of the offense.
4. The lineup shall be composed so that the fillers generally resemble the eyewitness's description of the suspected perpetrator, while ensuring that the suspect does not unduly stand out from the fillers. In addition:
    a. All fillers selected shall resemble the eyewitness's description of the perpetrator in significant features (i.e. face, weight, and build), including any unique or unusual features (i.e. scar, tattoo, etc.).
    b. At least five fillers shall be included in a photo lineup, in addition to the suspected perpetrator.
    c. At least four fillers shall be included in a live lineup, in addition to the suspected perpetrator.
    d. If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the suspected perpetrator participates shall be different from the fillers used in any prior lineups.
5. If there are multiple eyewitnesses, the suspect shall be placed in a different position in the lineup or photo array for each eyewitness.
6. In a lineup, no writings or information concerning any previous arrest, indictment or conviction of the suspected perpetrator shall be visible or made known to the eyewitness.
7. In a live lineup, any identifying actions, such as speech, gestures or other movements, shall be performed by all lineup participants.
8. In a live lineup, all lineup participants must be out of view of the eyewitness prior to the lineup.
9. The suspected perpetrator shall be the only suspected perpetrator included in the lineup.
10. Nothing shall be said to the eyewitness regarding the suspected perpetrator's position in the lineup or regarding anything that might influence the eyewitness's identification.
11. The lineup administrator shall seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified a given lineup is the perpetrator.
12. If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning such person before the lineup administrator obtains the eyewitness's confidence statement about the selection.

13. Unless it is not practical, a video record of the identification procedure shall be made. If a video record is not practical, the reasons shall be documented and an audio record shall be made. If neither a video nor audio record are practical, the reasons shall be documented and the lineup administrator shall make a written record of the lineup. Whether video, audio, or in writing, the record shall include the following information:

    a. All identification and non-identification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's confidence statement.

    b. The names of all persons present at the lineup.

    c. The date, time and location of the lineup.

    d. The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty of identification.

    e. Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.

    f. The sources of all photographs or persons used.

    g. In a photo lineup, the photographs themselves.

    h. In a live lineup, a photo or other visual recording of the lineup that includes all persons who participated in the lineup.

(C) REMEDIES FOR NONCOMPLIANCE

1. Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress eyewitness identification.
2. Failure to comply with any of the requirements of this section shall be admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible.
3. When evidence of noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of noncompliance to determine the reliability of eyewitness identifications.

(D) TRAINING OF LAW ENFORCEMENT OFFICERS—The Secretary of [Public Safety] shall create educational materials and conduct training programs to instruct law enforcement officers and recruits how to conduct lineups in compliance with this section.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Criminal Justice

For policy toolkits covering more than 125 state issues, visit our website:

www.stateaction.org

Human Trafficking

- ✱ About 15,000 women and girls are trafficked into the United States each year for coerced labor and sexual exploitation.
- ✱ International trafficking is fueled by the extreme poverty faced by so many women and children around the world.
- ✱ The federal Trafficking Victims Protection Act created a new federal criminal offense and provided protections for victims of trafficking.
- ✱ Without additional state intervention, current laws are insufficient to prevent and penalize human trafficking.
- ✱ Twenty-five states have criminalized human trafficking.

About 15,000 women and girls are trafficked into the United States each year for coerced labor and sexual exploitation.[1]

Trafficked women and girls may be forced into prostitution, the production of pornography, or other forms of commercial sexual activity—including exploitative marriages. They may be compelled by threat of violence to labor in sweatshops, households, agricultural fields, or other workplaces. Women and girls who are trafficked for exploitative labor are almost always subject to sexual violence.[2] Yet they are virtually invisible in our communities—to neighbors, community groups and policymakers alike.

International trafficking is fueled by the extreme poverty face by so many women and children around the world.

Trafficked women come into the United States from desperately impoverished communities in Asia, Eastern Europe, Africa and Latin America. Severe economic hardship encourages women, girls and their families to believe traffickers' false promises of jobs and opportunities in wealthy countries such as the United States.[3]

The federal Trafficking Victims Protection Act created a new federal criminal offense and provided protections for victims of trafficking.

Before the passage of the federal law in 2000, victims who came forward were often deported to their home countries because of their undocumented immigration status—a practice which frequently resulted in brutal retaliation from their traffickers and eventual re-trafficking into a new situation. The federal law created the T Nonimmigrant Visa (T Visa), which permits women and girls who have been trafficked and who are willing to assist local, state or federal law enforcement "in every reasonable way" to remain legally in the United States and be joined by their families. The law was reauthorized in 2003 and 2005.

Without additional state intervention, current laws are insufficient to prevent and penalize human trafficking.

Given the extent of the problem facing the United States, the federal anti-trafficking law is insufficient. There is a major role for state policy and a major need for strengthened state-federal partnerships. States can:

* Criminalize the activities of traffickers without penalizing their victims.
* Identify the elements of force, threat, deceit and fraud that characterize the traffickers' ability to recruit and control victims.
* Extend criminal penalties to all individuals who participate in the offense of human trafficking—recruiters, transporters and those who confine victims, as well as others who benefit from the trafficking of another person.
* Prohibit traffickers' use of the victims' alleged "consent" as a defense.
* Require restitution to help victims recover financially and allow them to sue traffickers for compensatory and punitive damages.
* Allow law enforcement officials to seize assets resulting from the trafficking.
* Ensure that state and local law enforcement personnel are trained to enforce anti-trafficking laws.
* Provide funding to programs that offer services for victims of trafficking, including mental and physical health care, safe and secure housing, economic assistance, legal aid, education and job training.[4]

Twenty-five states have criminalized human trafficking.

AK, AZ, AR, CA, CO, CT, FL, GA, ID, IL, IN, IA, KS, LA, MI, MN, MS, MO, NE, NJ, NC, PA, SC, TX and WA have enacted laws that criminalize human trafficking.[5] Twelve states enacted their laws in 2006.

This policy summary relies in large part on information from the Center for Women Policy Studies.[6]

Endnotes

1 U.S. Department of State, "Ambassador John R. Miller Briefing on the Fifth Annual Trafficking in Persons Report," June 3, 2005.

2 Center for Women Policy Studies, "Resource Guide for State Legislators: Model Provisions for State Anti-Trafficking Laws," July 2005.

3 U.S. Department of State, "The 2006 Trafficking in Persons Report," June 2006.

4 "Resource Guide for State Legislators."

5 Center for Women Policy Studies, "Fact Sheet on State Anti-Trafficking Laws," October 2006.

6 The Center for Women Policy Studies has a comprehensive model state anti-trafficking law.

Human Trafficking

Human Trafficking Prevention Act

Summary: The Human Trafficking Prevention Act establishes the crime of human trafficking and provides legal protections and social services for victims.

SECTION 1. SHORT TITLE

This Act shall be called the "Human Trafficking Prevention Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. At least 15,000 women and girls are trafficked into the United States each year for forced labor.
2. Trafficked women come into the United States from desperately impoverished communities in Asia, Eastern Europe, Africa and Latin America.
3. Traffickers employ a variety of deceptions to lure desperately poor women with false promises of jobs and opportunities in the United States.
4. Human trafficking for forced sexual or labor exploitation takes a variety of forms—forced prostitution, forced participation in the production of pornography and other forms of commercial sexual activity, forced labor in sweatshops, households, agricultural fields and other workplaces, and commercial or exploitative marriages.
5. Women and girls who are trafficked for exploitive labor, as domestic workers in private homes and as laborers in sweatshops or agricultural fields, are almost always subject to sexual violence.

(B) PURPOSE—This law is enacted to prevent human trafficking, and to provide assistance to the victims of human trafficking.

SECTION 3. PREVENTION OF HUMAN TRAFFICKING AND PROTECTION OF VICTIMS

After section XXX, the following new section XXX shall be inserted:

(A) CRIME OF HUMAN TRAFFICKING

1. It shall be unlawful for any person to recruit, harbor, transport or obtain a person for the purpose of forced labor or forced sexual exploitation by:
    a. Causing or threatening to cause serious harm to any person;
    b. Physically restraining or threatening to physically restrain another person;
    c. Abusing or threatening to abuse the law or legal process;
    d. Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; or
    e. Blackmail.

2. Any person who violates this section shall be guilty of the crime of human trafficking, which is a [Class B felony] punishable by imprisonment for not more than [five] years or by a fine not to exceed [$500,000], or both.
3. The court shall order restitution to victims of human trafficking, including the value to the offender of the victim's labor or services.
4. In any civil action by a victim of human trafficking against violators of this section, the court may award attorney's fees and costs, and impose punitive damages.

(B) LEGAL PROTECTIONS FOR VICTIMS

1. In a criminal prosecution, the defendant may offer as an affirmative defense or a mitigating factor that the defendant participated in the crime because he or she was the victim of human trafficking.
2. The victims of human trafficking shall be eligible, without regard to their immigration status, for benefits available through the [crime victims' fund].

(C) HELPING VICTIMS OBTAIN T-VISAS

1. Within 15 business days of the first encounter with a victim of human trafficking, law enforcement agents shall provide the victim with a completed Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (LEA Declaration) in accordance with 8 C.F.R. § 214.11(f)(1).
2. Where state law enforcement agencies find the grant of an LEA Declaration is inappropriate for a trafficking victim, the agency shall within 15 days provide the victim with a letter explaining the grounds of the denial of the LEA Declaration. The victim may submit additional evidence to the law enforcement agency, which must reconsider the denial of the LEA Declaration within seven days of the receipt of additional evidence.

SECTION 4. ADMINISTRATION

(A) SOCIAL SERVICES FOR TRAFFICKING VICTIMS

1. The Secretary of the Department of [Social Services] shall convene and chair a work group to develop written protocols for delivery of services to human trafficking victims. In addition to the Secretary, the work group shall include senior representatives from the Departments of [Health, Public Safety, Labor, and Education, the Attorney General, and five representatives from nonprofit organizations that provide assistance to trafficking victims].
2. The protocols shall set forth guidelines for providing for the social service needs of human trafficking victims, including housing, food, health and mental health care, English language classes, job training and placement. These services shall be available to victims of human trafficking without regard to their immigration status.
3. The work group shall finalize the protocols and submit them with a report to the legislature and the governor on or before July 1, 2008.

(B) LAW ENFORCEMENT TRAINING

1. On or before October 1, 2007, the Attorney General shall establish training standards for law enforcement officers on the subject of human trafficking. The course of instruction, learning and performance objectives, and training standards shall be developed by the Attorney General in consultation with experts in the field of human trafficking.
2. The training shall be compulsory for all state and local law enforcement officers and shall include:
   a. Identification of human trafficking;
   b. Communicating with traumatized persons;
   c. Appropriate investigative techniques;
   d. Collaboration with federal law enforcement officials;
   e. Rights and protections afforded to victims;
   f. Provision for documentation that satisfies the I-914 Supplement B Declaration of Law Enforcement Officer for Victim of Trafficking in Persons required by federal law; and
   g. Availability of community resources to assist trafficking victims.
3. Where appropriate, the training presenters shall include human trafficking experts with experience in the delivery of services to victims of human trafficking.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Criminal Justice

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Innocence Protection

- Every year, thousands of innocent Americans are convicted of serious crimes.
- Exonerations through DNA evidence have shaken the public's faith in the criminal justice system.
- When an innocent person is convicted, the criminal remains free to commit more crimes.
- Access to post-conviction DNA testing protects the innocent.
- Federal law gives states a financial incentive to offer post-conviction DNA testing.
- Most states provide at least some access to post-conviction DNA testing.
- Several states have created Innocence Commissions to study wrongful convictions.
- States have set up procedures to handle claims for compensation from innocent people who have been wrongfully convicted.

Every year, thousands of innocent Americans are convicted of serious crimes.

According to a study based on interviews with judges, prosecutors, public defenders and law enforcement agents, about 10,000 Americans are wrongfully convicted of serious crimes each year.[1] Another study estimated that 4,500 innocent people are convicted each year because of mistaken eyewitness identification.[2] A third report found that, every year, hundreds of innocent people are convicted of major crimes as the result of false confessions.[3] In sexual assault and murder cases alone, DNA evidence exonerates 26 percent of the accused—which suggests that where no DNA evidence exists, the number of people unjustly convicted is extraordinarily high.[4]

Exonerations through DNA evidence have shaken the public's faith in the criminal justice system.

Since the advent of advanced DNA testing, 184 innocent people who had been convicted of serious crimes have been exonerated by DNA evidence. Fifteen of them were on death row.[5] More than 75 percent of these cases involved mistaken eyewitness identifications.[6] Nearly one in four involved false confessions.[7] Because of exonerations by DNA evidence, nearly three-quarters of Americans believe that at least one innocent person has been executed during the past five years.[8]

When an innocent person is convicted, the criminal remains free to commit more crimes.

The wrongful conviction of an innocent American is doubly tragic. Not only must the innocent person endure prison and the tarnishing of his or her name, but the public is endangered by the criminal who remains at large. For example, an Ohio man named William Jackson was convicted of a series of rapes. After five years, it was determined that the serial rapist was actually another man who was similar in appearance and had the same last name.[9] How many others were victimized during those five years because the criminal justice system convicted the wrong man?

Access to post-conviction DNA testing protects the innocent.

Sophisticated DNA testing has become available only recently, and in many cases, state legal processes have not caught up to the technology. It is all too common that innocent people have exhausted every possible appeal without being allowed access to DNA evidence in their cases. It is not unusual that DNA evidence available years before—even during the trial—was never tested, or that outdated DNA testing methods yielded unreliable results. In some cases, DNA evidence wasn't discovered until after the trial was over. For each of these scenarios, justice demands a route to post-conviction DNA testing without a costly, protracted legal battle to allow it—and thus, to allow the truth to be known.

Federal law gives states a financial incentive to offer post-conviction DNA testing.

States are eligible for grants under the federal Justice for All Act of 2004 if they allow inmates reasonable access to DNA testing in order to establish their innocence.[10] The Act authorizes $25 million for the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program—named for the first death row inmate to be exonerated by DNA testing.

Most states provide at least some access to post-conviction DNA testing.

Seven states (AZ, CA, IL, MI, NE, NC, TX) have strong laws guaranteeing access to post-conviction DNA testing and mandating the preservation of DNA evidence. Thirty-four other states (AR, CO, CT, DE, FL, GA, HI, IA, ID, IN, KS, KY, LA, MD, ME, MN, MO, MT, NV, NH, NJ, NM, NY, ND, OH, OR, PA, RI, TN, UT, VA, WA, WV, WI) have DNA testing laws that are limited in scope and substance. Nine states (AL, AK, MA, MS, OK, SC, SD, VT, WY) do not have any post-conviction DNA testing law at all.

Several states have created Innocence Commissions to study wrongful convictions.

At least eight states (AZ, CA, CT, IL, NC, TX, VA, WI) have formed commissions to study the causes of and remedies for wrongful convictions. These commissions have differed widely in makeup, mandate and effectiveness. The North Carolina Actual Innocence Commission provides a good model for other states. It includes the Chief Justice of the state Supreme Court, the state attorney general, prosecutors, public defenders, law professors, judges and law enforcement officials. The panel reviews mistaken convictions—usually post-conviction DNA exonerations— identifies errors, and recommends procedures to avoid similar mistakes in the future.

States have set up procedures to handle claims for compensation from innocent people who have been wrongfully convicted.

About 20 states have procedures to compensate the wrongfully convicted, although in many cases the compensation is very small. There is a recent trend toward more adequate compensation encouraged by the federal Justice for All Act of 2004. States have a solemn responsibility to help the innocent restore their lives.

This policy summary relies in large part on information from the Innocence Project.[11]

Endnotes

1 C. Ronald Huff, *Convicted But Innocent: Wrongful Conviction and Public Policy*, 1996.

2 Brian Cutler and Steven Penrod, *Mistaken Identification: The Eyewitness, Psychology and the Law*, 1995.

3 Richard P. Conti, “The Psychology of False Confessions,” *The Journal of Credibility Assessment and Witness Psychology*, 1999.

4 Barry Scheek, “The Case for Innocence,” *Frontline*, October 2000.

5 Death Penalty Information Center, “Cases of Innocence 1973-Present,” updated November 17, 2006.

6 Innocence Project, “Eyewitness Identification Reform,” 2006.

7 Steven Drizin and Marissa Reich, “Heeding the Lessons of History: The Need for Mandatory Recording of Police Interrogations to Accurately Assess the Reliability and Voluntariness of Confessions,” *Drake Law Review*, 2004.

8 Gallup poll, May 2003.

9 *Convicted But Innocent: Wrongful Conviction and Public Policy*.

10 Public Law 108-405, signed October 30, 2004.

11 The Innocence Project has developed a series of model bills for state legislators.

Innocence Protection

Innocence Protection Act

Summary: The Innocence Protection Act ensures that all convicted persons have access to forensic testing that could prove their innocence.

SECTION 1. SHORT TITLE

This Act shall be called the "Innocence Protection Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Deoxyribonucleic acid (DNA) testing has emerged as the most reliable forensic technique for identifying criminals when biological materials are left at a crime scene. Because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a judge or jury.
2. While DNA testing is increasingly commonplace in pretrial investigations today, it was not widely available in cases tried prior to 1994. Moreover, new forensic DNA testing procedures have made it possible to obtain results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce. Consequently, convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results.
3. In the past decade, there have been more than 100 post-conviction exonerations in the United States based upon DNA testing.
4. In at least 14 cases, post-conviction DNA testing that exonerated a wrongly convicted person also provided evidence that led to the apprehension of the actual perpetrator, thereby enhancing public safety.

(B) PURPOSE—This law is enacted by the legislature to protect public safety and guarantee the right of persons wrongfully convicted of crimes to prove their innocence.

SECTION 3. DNA TESTING

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITION—In this section, the term "biological evidence" means the contents of a sexual assault examination kit and any item that contains blood, semen, hair, saliva, skin tissue, or other identifiable biological material, whether that material is catalogued separately (for example, on a slide, swab, or in a test tube) or is present on other evidence, including but not limited to clothing, ligatures, bedding or other household material, drinking cups, or cigarettes.

(B) PETITION FOR POST-CONVICTION DNA TESTING—A person convicted of a crime may at any time file a petition that requests the forensic DNA (deoxyribonucleic acid) testing of any evidence that was secured in relation to the investigation or prosecution that resulted in the judgment of conviction, and that may contain biological evidence. The petitioner shall serve a copy of such petition upon the attorney for the state. The state shall file its response within 30 days of the receipt of service. The court shall hear the petition no later than 90 days after it is filed.

(C) ORDER FOR POST-CONVICTION DNA TESTING—The court shall order DNA testing if it finds that:

1. A reasonable probability exists that the petitioner would not have been convicted, or would have received a lesser sentence, if favorable results had been obtained through DNA testing at the time of the original prosecution;
2. One or more of the items of evidence that the petitioner seeks to have tested is still in existence;
3. The evidence to be tested was secured in relation to the offense that is the basis of the challenged conviction, and was not previously subjected to DNA testing or can be subjected to additional DNA testing that provides a reasonable likelihood of more probative results;
4. The chain of custody of the evidence to be tested establishes that the evidence has not been tampered with, replaced or altered in any material respect or, if the chain of custody does not establish the integrity of the evidence, the testing itself has the potential to establish the integrity of the evidence. Evidence that has been in the custody of law enforcement, other government officials, or a public or private hospital shall be presumed to satisfy the chain-of-custody requirement of this subsection, absent specific evidence of material tampering, replacement, or alteration; and
5. The application for testing is made for the purpose of demonstrating innocence or the appropriateness of a lesser sentence, and not to unreasonably delay the execution of sentence or the administration of justice.

(D) COUNSEL

1. The court may, at any time, appoint counsel for an indigent petitioner.
2. If the petitioner has filed *pro se*, the court shall appoint counsel upon a showing that DNA testing may be material to the petitioner's claim of wrongful conviction.
3. The court, in its discretion, may refer *pro se* requests for DNA testing to qualified parties for further review, including, but not limited to, indigent defense organizations or clinical legal education programs, without appointing the parties as counsel at that time.
4. If the petitioner has retained private *pro bono* counsel (including, but not limited to, counsel from a nonprofit organization that represents indigent persons), the court may, in its discretion, award reasonable attorney's fees and costs at the conclusion of the litigation.

(E) DISCOVERY

1. At any time after a petition has been filed, the court may order the state to locate and provide the petitioner with any documents, notes, logs, or reports relating to items of physical evidence collected in connection with the case, or otherwise assist the petitioner in locating items of biological evidence that the state contends have been lost or destroyed. The court may further order the state to take reasonable measures to locate biological evidence that may be in its custody, or to assist the petitioner in locating evidence that may be in the custody of a public or private hospital, public or private laboratory, or other facility.

2. If evidence was previously subjected to DNA testing, the court may order production of laboratory reports prepared in connection with the DNA testing, as well as the underlying data, and the laboratory notes.
3. If any DNA or other biological evidence testing was previously conducted by either the prosecution or defense without knowledge of the other party, such testing shall be revealed in the motion for testing or response, if any.
4. If the court orders DNA testing in connection with this section, the court shall order the production of any laboratory reports prepared in connection with the DNA testing, and may in its discretion order production of the underlying data, bench notes, or other laboratory notes.
5. The results of any post-conviction DNA testing conducted pursuant to this section shall be disclosed to the prosecution, the petitioner, and the court.

(F) PRESERVATION OF EVIDENCE

1. All appropriate governmental entities shall retain all items of physical evidence that contain biological material which is secured in connection with a criminal case for the period of time that any person remains incarcerated, on probation or parole, civilly committed, or subject to registration as a sex offender in connection with that case. This requirement shall apply with or without the filing of a petition for post-conviction DNA testing, as well as during the pendency of proceedings under this section.
2. In cases where a petition for post-conviction DNA testing has been filed under this section, the state shall prepare an inventory of the evidence related to the case and submit a copy of the inventory to the defense and the court.
3. If evidence is intentionally destroyed after the filing of a petition under this section, the court shall impose appropriate sanctions on the responsible party or parties.

(G) CHOICE OF LABORATORY—If the court orders DNA testing, such testing shall be conducted by a facility mutually agreed upon by the petitioner and by the state and approved by the court. If the parties are unable to agree, the court shall designate the testing facility and provide parties with a reasonable opportunity to be heard on the issue of choice of laboratory. The court shall impose reasonable conditions on the testing to protect the parties' interests in the integrity of the evidence and the testing process.

(H) PAYMENT FOR TESTING—If DNA testing under this section is performed at a state or county crime laboratory, the state shall bear the costs of such testing. If testing is performed at a private laboratory, the court may require either the petitioner or the state to pay for the testing, as the interests of justice require. If the state or county crime laboratory does not have the ability or resources to conduct the type of DNA testing to be performed, the state shall bear the costs of testing at a private laboratory which does have such capabilities.

(I) APPEAL—The petitioner shall have the right to appeal a decision denying post-conviction DNA testing.

(J) SUCCESSIVE PETITIONS—If the petitioner has filed a prior petition for DNA testing, the petitioner may file, and the court shall adjudicate, a successive petition or petitions under this section provided the petitioner asserts new or different grounds for relief, including, but not limited to, factual, scientific, or legal arguments not previously presented, or the availability of more advanced DNA technology. The court may also, in its discretion, adjudicate any successive petition if the interests of justice so require.

(K) ADDITIONAL ORDERS

1. The court may in its discretion make such other orders as may be appropriate. This includes, but is not limited to, designating:
   a. The type of DNA analysis to be used;
   b. The testing procedures to be followed;
   c. The preservation of some portion of the sample for replicating the testing;
   d. Additional DNA testing, if the results of the initial testing are inconclusive or otherwise merit additional scientific analysis; and
   e. The collection and DNA testing of elimination samples from third parties.
2. DNA profile information from biological samples taken from any person pursuant to a motion for post-conviction DNA testing shall be exempt from any law that requires disclosure of information to the public.

(L) PROCEDURE AFTER TESTING RESULTS ARE OBTAINED

1. If the results of forensic DNA testing are favorable to the petitioner, the court shall schedule a hearing to determine the appropriate relief to be granted. Based on the results of the testing and any evidence or other matter presented at the hearing, the court shall thereafter enter any order that serves the interests of justice, including an order:
   a. Setting aside or vacating the petitioner's judgment of conviction, judgment of not guilty by reason of mental disease or defect, or adjudication of delinquency;
   b. Granting the petitioner a new trial or fact-finding hearing;
   c. Granting the petitioner a new sentencing hearing, commitment hearing, or dispositional hearing;
   d. Discharging the petitioner from custody;
   e. Specifying the disposition of any evidence that remains after the completion of the testing;
   f. Granting the petitioner additional discovery on matters related to DNA test results or the conviction or sentence under attack, including, but not limited to, documents that pertain to the original criminal investigation, or the identities of other suspects; and
   g. Directing the state to place any unidentified DNA profile obtained from post-conviction DNA testing into state and federal databases.

2. If the results of the tests are not favorable to the petitioner, the court shall dismiss the petition and may make any further orders that are appropriate, including an order:
    a. Providing that the parole board or a probation department be notified of the test results.
    b. Requesting that the petitioner's DNA profile be added to the state convicted felon database.

(M) CONSENT—Nothing in this section shall be interpreted to prohibit a convicted person and the state from consenting to and conducting post-conviction DNA testing by agreement of the parties and without filing a petition for post-conviction DNA testing. If DNA test results obtained under testing conducted by consent of the parties are favorable to the petitioner, the petitioner may file, and the court shall adjudicate, a motion for post-conviction relief based on the DNA test results under this section.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Innocence Commission Act

Summary: *The Innocence Commission Act establishes a commission to investigate wrongful convictions, determine their cause, and recommend solutions.*

SECTION 1. SHORT TITLE

This Act shall be called the "Innocence Commission Act."

SECTION 2. INNOCENCE COMMISSION

(A) ESTABLISHMENT—There is established a commission to be known as the Innocence Commission. The commission is composed of nine members.

(B) APPOINTMENTS

1. The governor shall appoint two members, one of whom must be a dean of a law school and one of whom must be a law enforcement officer. The Attorney General shall appoint a member who must be an attorney who represents the state in the prosecution of felonies. The chair of the Senate [criminal justice committee] shall appoint one member who may be a member of the legislature. The chair of the House [criminal justice committee] shall appoint one member who may be a member of the legislature. The Chief Justice of the Supreme Court shall appoint one member who must be a member of the judiciary. The Chancellor of the University of [State] shall appoint two members, one of whom must be a law professor and one of whom must work in the field of forensic science. The [State] Criminal Defense Lawyers Association shall appoint one member who must be a criminal defense lawyer.
2. The members of the commission shall be appointed within 90 days of the effective date of this Act.
3. Each member shall serve a two-year term.
4. The governor shall designate a member to serve as the presiding officer.

(C) DUTIES

1. The commission shall thoroughly investigate all post-conviction exonerations, including convictions vacated based on a plea to time served, to:
   a. Ascertain errors and defects in the criminal procedure used to prosecute the defendant's case at issue;
   b. Identify errors and defects in the criminal justice process in this state generally;
   c. Develop solutions and methods to correct the identified errors and defects; and
   d. Identify procedures and programs to prevent future wrongful convictions.
2. The commission may enter into contracts for research services as considered necessary to complete the investigation of a particular case, including forensic testing and autopsies.
3. The commission may administer oaths and issue subpoenas, signed by the presiding officer, to compel the production of documents and the attendance of witnesses as considered necessary to conduct a thorough investigation. A subpoena of the commission shall be served by a peace officer in the manner in which [district court] subpoenas are served. On application of the commission, a district court of [the capital city] shall compel compliance with the subpoena in the same manner as for district court subpoenas.

(D) REPORT

1. The commission shall compile a detailed annual report of its findings and recommendations, including any proposed legislation to implement procedures and programs to prevent future wrongful convictions.
2. The report shall be made available to the public on request.
3. The findings and recommendations contained in the report may not be used as binding evidence in a subsequent civil or criminal proceeding.

(E) SUBMISSION—The commission shall submit the report to the Governor and the legislature not later than December 1 of each even-numbered year.

(F) REIMBURSEMENT—A member of the commission is not entitled to compensation but is entitled to reimbursement for the member's travel expenses as provided by [cite state law].

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Juvenile Transfer Reform

- More than 200,000 children are prosecuted in adult courts each year.
- Many of the young people transferred to adult court are nonviolent offenders who pose little threat to public safety.
- African American youths are transferred to the adult criminal system in disproportionate numbers.
- Children in the adult judicial system tend to become more serious criminals.
- Children held in adult prisons are much more likely to be physically or sexually abused, or to commit suicide.
- Juveniles transferred to adult courts often receive unnecessarily harsh sentences.
- Transferring young people to adult courts strains the resources of correctional facilities and courts.
- Judges are in the best position to decide when to transfer youths to adult courts.

More than 200,000 children are prosecuted in adult courts each year.[1]

From 1992 to 1995, 40 states passed laws that make it easier to try juveniles as adults.[2] Eighteen states further expanded their juvenile transfer laws between 1998 and 2002.[3] The result is a flood of young people being handled by the adult criminal system and, in many cases, being placed in adult prisons. In fact, Nebraska is the only state not to expand the scope or strength of juvenile transfer laws since 1992.[4]

Many of the young people transferred to adult courts are nonviolent offenders who pose little threat to public safety.

The U.S. Department of Justice reports that nearly 40 percent of juveniles incarcerated in adult prisons committed nonviolent offenses, generally drug or property crimes.[5] Minor offenses, including status offenses—running away from home or disobeying parents, for example, which are not illegal for adults—as well as petty shoplifting and failure to pay traffic tickets have resulted in juvenile detention in adult prisons.[6]

African American youths are transferred to the adult criminal system in disproportionate numbers.

Every year from 1990 to 1999, more black youths were transferred to adult court than children of any other racial group.[7] Today, 67 percent of juvenile defendants in adult court are African American, and 77 percent of juveniles sent to adult prison are racial minorities.[8]

Children in the adult judicial system tend to become more serious criminals.

There is convincing evidence that juvenile transfers lead to increased recidivism. For example, a Florida study found that 49 percent of youths transferred to adult courts were arrested for future crimes, compared to 37 percent of those retained in the juvenile justice system. Twice as many youths transferred to the adult system as youths retained in the juvenile system were rearrested for more serious crimes.[9] Studies in New Jersey and New York generated similar results, and also found that, on average, transferred youths were rearrested sooner after release.[10]

Children held in adult prisons are much more likely to be physically or sexually abused, or to commit suicide.

Youths held in adult jails are eight times more likely to commit suicide, five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent more likely to be assaulted with a weapon than youth in juvenile facilities.[11] Subjecting children to these conditions not only jeopardizes their safety, but it makes their rehabilitation almost impossible.

Juveniles transferred to adult courts often receive unnecessarily harsh sentences.

One study found that juveniles in adult courts receive sentences that are 83 percent more severe than adults in similar cases, concluding that "judges may assign greater levels of culpability and dangerousness to transferred juveniles than to young adult offenders."[12]

Transferring young people to adult courts strains the resources of correctional facilities and courts.

The Office of Juvenile Justice and Delinquency Prevention found that the increased transfer of juveniles to the adult corrections system strained already-overburdened criminal courts and jails. Sending juveniles to adult prisons also creates costly logistical, programming and security concerns for corrections administrators. All of these factors put public safety at risk.

Judges are in the best position to decide when to transfer youths to adult courts.

The American Bar Association (ABA) recommends that a judge make the decision to transfer a youth to adult court—only after finding probable cause to believe the juvenile has committed the offense, and determining that the juvenile court system cannot properly handle him or her. But only five states (HI, KS, ME, MO, NH) follow the ABA standard. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Twenty-nine states (AL, AK, AZ, CA, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. And three states (CT, NY, NC) have lowered the age at which children are considered adults in the criminal system, transferring all crimes by 16- or 17-year-olds to adult courts.[13]

This policy summary relies in large part on information from the National Juvenile Defender Center.

Endnotes

1 Patricia Allard and Malcolm Young, "Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners," Sentencing Project, 2002.

2 Patrick Griffin, Patricia Torbet and Linda Szymanski, "Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions," Office of Juvenile Justice and Delinquency Prevention, 1998.

3 Patrick Griffin, "National Overviews," National Center for Juvenile Justice, 2003.

4 Marilyn Elias, "Is Adult Prison Best for Juveniles?" *USA Today*, September 20, 2006.

5 J. Steven Smith, "Adult Prisons: No Place for Kids," *USA Today Magazine*, July 2002.

6 Building Blocks for Youth, "Children in Adult Jails," 2006.

7 Office of Juvenile Justice and Delinquency Prevention, *Juvenile Court Statistics*, 1999.

8 Bureau of Justice Statistics, "Juvenile Felony Defendants in Criminal Courts," 1998, quoted in Malcolm Young and Jenni Gainsborough, "Prosecuting Juveniles in Adult Court, An Assessment of Trends and Consequences," January 2000.

9 Florida Department of Juvenile Justice, "Trends in Transfer of Juveniles to Adult Criminal Court," Management Report No. 02-03, January 2002.

10 "Children in Adult Jails."

11 Jeffrey Fagan, M. Frost and T.S. Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," *Juvenile and Family Court*, 1989.

12 Megan Kurlychek and Brian Johnson, "The Juvenile Penalty: A Comparison of Juvenile and Young Adult Sentencing Outcomes in Criminal Court," 2004.

13 Patrick Griffin, "Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws," National Center for Juvenile Justice, October 2003.

Juvenile Transfer Reform

Juvenile Transfer Reform Act

Summary: The Juvenile Transfer Reform Act allows judges to transfer defendants from juvenile to adult courts based only upon consideration of specific criteria.

SECTION 1. SHORT TITLE

This Act shall be called the "Juvenile Transfer Reform Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Each year in [State], more than [insert number] children are prosecuted in adult courts, and many of them are nonviolent offenders.
2. When children are handled in adult courts, they are more likely to become long-term criminals, and if held in adult prisons, are much more likely to be physically or sexually abused, or to commit suicide.
3. Judges are in the best position to decide whether a youth should be tried in adult courts.

(B) PURPOSE—This law is enacted to promote public safety, reduce recidivism, and improve the handling of children in the criminal justice system.

SECTION 3. JUVENILE TRANSFERS

After section XXX, the following new section XXX shall be inserted:

(A) COURT HEARING—When a juvenile is charged with committing an act which would be a [Class A, B or C/serious felony] if committed by an adult, upon request of the prosecuting attorney, the court shall hold a hearing to determine whether the case should be transferred from the jurisdiction of Juvenile Court to the [Superior/adult] Court.

(B) RIGHTS ADVISED—The court shall advise the juvenile and his or her parents, guardian or legal custodian of the possible consequences of a transfer, the right to be represented by counsel, and other constitutional and legal rights.

(C) FACTORS FOR TRANSFER—The court shall transfer the case from the jurisdiction of the Juvenile Court to the [Superior/adult] Court if it finds that the state has established by a preponderance of the evidence that such transfer is appropriate, based upon consideration of the following factors:

1. **Seriousness of the crime—**the nature and seriousness of the offense, with greater weight being given to offenses against a person than against property; whether the offense was committed in an aggressive, violent, premeditated or intentional manner.
2. **Characteristics of the juvenile—**the record and previous history of the juvenile; the age of the juvenile; the juvenile's emotional attitude and pattern of living.

3. **Public safety—**whether the protection of the community requires commitment of the juvenile for a period longer than the greatest commitment authorized by juvenile criminal law; whether the protection of the community requires commitment of the juvenile to a facility that is more secure than any available in the juvenile correctional system.

4. **Rehabilitation—**whether future criminal conduct by the juvenile is more likely to be deterred by programs and services available in the juvenile correctional system or in the adult correctional system.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

CRIMINAL JUSTICE RESOURCES

Electronic Recording of Interrogations

Campaign for Criminal Justice Reform
Innocence Project
National Association of Criminal Defense Lawyers

Eyewitness Identification

Brennan Center for Justice
Innocence Project

Human Trafficking

Center for Women Policy Studies

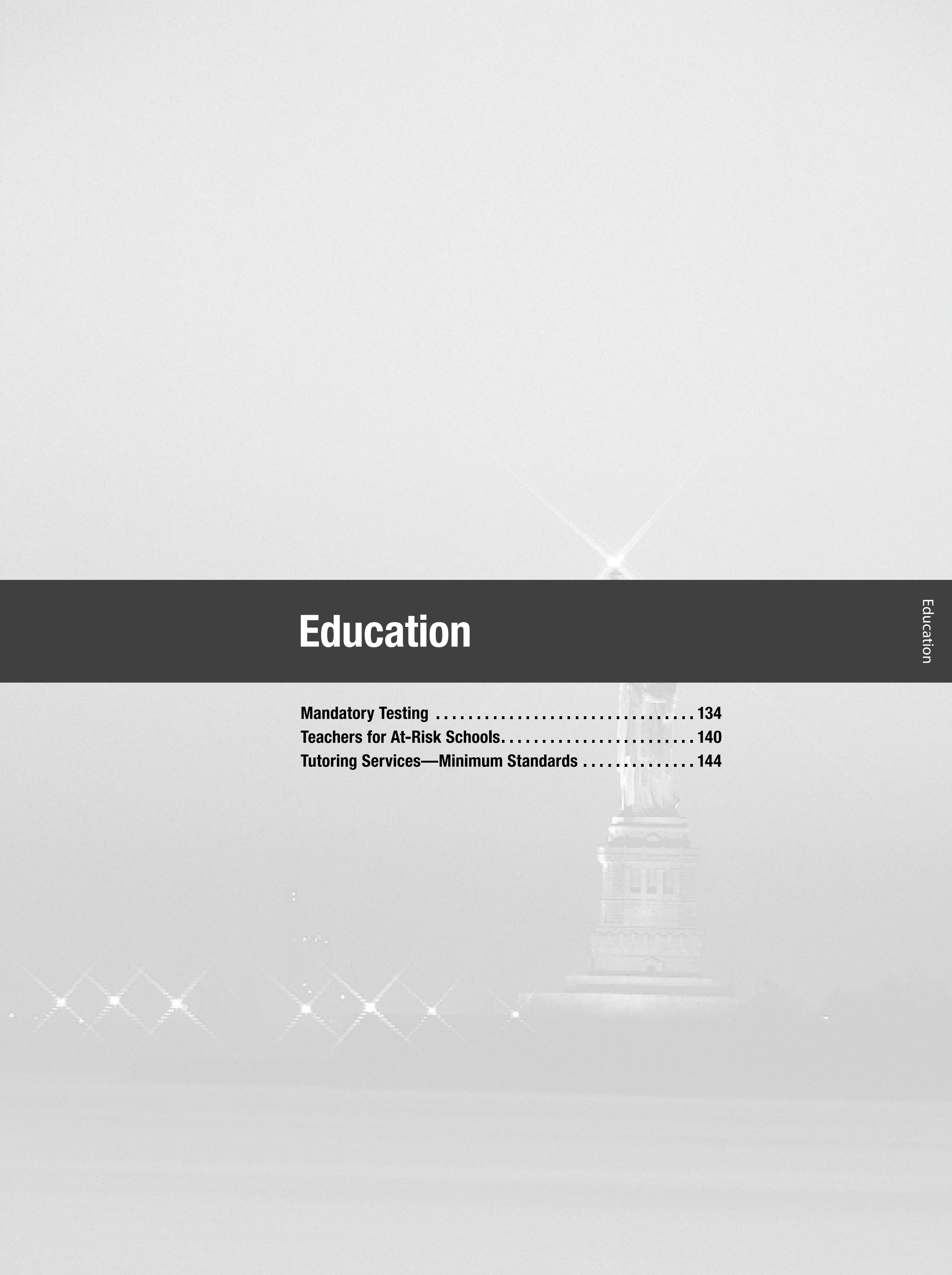
Innocence Protection

American Bar Association
American Civil Liberties Union
Death Penalty Information Center
The Innocence Project

Juvenile Transfer Reform

American Bar Association Juvenile Justice Center
Coalition for Juvenile Justice
National Juvenile Defender Center
Office of Juvenile Justice and Delinquency Prevention

A full index of resources with contact information can be found on page 291.



Education

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Mandatory Testing

- ✱ The federal No Child Left Behind Act of 2001 dramatically increases the use and importance of standardized tests.
- ✱ Standardized tests are poor measurements of student achievement.
- ✱ An emphasis on standardized testing causes "teaching to the test."
- ✱ An emphasis on standardized testing drives quality teachers out of the profession.
- ✱ Since standardized test scores can fluctuate rapidly, they are virtually useless for comparing a school's progress from one year to the next.
- ✱ The Comprehensive School Assessment Act reduces the state's reliance on standardized testing.
- ✱ The School Testing Right to Know Act highlights the primary causes of low student achievement.

The federal No Child Left Behind Act of 2001 dramatically increases the use and importance of standardized tests.

President Bush's No Child Left Behind Act of 2001 requires annual "assessments" of all students in grades three through eight in reading and math. Periodic science assessments will be added in the 2007-08 school year. These assessments are used to measure each school's adequate yearly progress (AYP) toward the goal of making every public school student "proficient" in these subjects within 12 years. Schools that fail to make the required progress are declared "low performing" and are subject to sanctions.

Standardized tests are poor measurements of student achievement.

Standardized tests reward the ability to quickly answer questions that do not require critical thinking or genuine analysis. They cannot measure writing, mathematical, scientific or reasoning skills, or gauge a student's grasp of social science concepts. They cannot adequately assess thinking skills or predict what students can do when presented with real-world tasks.

An emphasis on standardized testing causes "teaching to the test."

Schools in low-income areas are under the most pressure to increase test scores. To raise scores, schools may drop entire subjects, like art, foreign languages, music and drama. They may abandon instruction of skills that tests don't measure, such as research or laboratory experiments. Instead of aiming for actual reading comprehension and literacy, lessons begin to consist of short passages followed by multiple-choice questions. Writing becomes a series of lessons to master the "five-paragraph essay," a form useless outside of standardized tests. Incessant drills and practice tests waste time that should be devoted to increasing students' real knowledge and skills. Library budgets are spent on test prep materials. The major consequence of teaching to the test is that students are, in fact, left behind—they are not taught the knowledge and skills required to be successful in life.

An emphasis on standardized testing drives quality teachers out of the profession.

Good teachers are often discouraged, even disgusted, by an overemphasis on testing. Teachers are converted to test-taking coaches, giving tips like "what to do with only one minute left." Professional development is reduced to training teachers to be better test coaches. It is absurd to believe that the "best and brightest" will want to become teachers when teaching is reduced to test prep.

Since standardized test scores can fluctuate rapidly, they are virtually useless for comparing a school's progress from one year to the next.

Even at the very best schools, standardized test scores do not consistently rise every year. They fluctuate from year to year based on any number of factors, including student turnover, new teachers or even a bad flu season. An in-depth study of test scores in North Carolina elementary schools found, for example, that 70 percent of the year-to-year change in average test scores was caused by external factors rather than actual changes in student performance.[1] At the same time, a growing number of research studies have shown that the scores used to judge schools are often inaccurate because of statistical margins of error. This means that some satisfactory schools are punished for inaccurate bad scores while some unsatisfactory schools are rewarded for inaccurate good scores.

The Comprehensive School Assessment Act reduces the state's reliance on standardized testing.

The No Child Left Behind Act does not specifically mandate annual statewide standardized tests. It requires "yearly student academic assessments."[2] The model Comprehensive School Assessment Act is similar to Nebraska's School-based Teacher-led Assessment and Reporting System (STARS), which complies with No Child Left Behind without overrelying on standardized tests. The model act holds the state Board of Education responsible for defining the core body of knowledge and skills that students should acquire. It directs local school boards to create assessment systems that meet the needs of their student populations and provide fair and comprehensive measurements of student learning. Each assessment system must be approved by the state education authorities and be consistent with uniform statewide standards.

The School Testing Right to Know Act highlights the primary causes of low student achievement.

Despite overwhelming evidence to the contrary, President Bush's No Child Left Behind Act is based on the assumption that student achievement is primarily the result of the instruction children receive in their current school. This premise focuses the blame for low-performing schools on teachers and school administrators, and distracts attention from the major causes of low student achievement: the special challenges faced by low-income students and a lack of resources available to meet those challenges. The School Testing Right to Know Act requires that whenever a government entity releases standardized test scores, it must simultaneously release school-specific data on the percentage of students who qualify for free or reduced-price meals, per-pupil expenditures, and average class size. With this information, policymakers and the public will have a more accurate idea of the real problems that must be addressed to ensure that our schoolchildren can succeed.

This policy summary relies in part on information from the National Center for Fair & Open Testing.

Endnotes

1 Monty Neill, Lisa Guisbond and Bob Schaeffer, "Failing our Children: How No Child Left Behind Undermines Quality and Equity in Education," National Center for Fair and Open Testing, May 2004.

2 20 U.S.C. § 6311(a)(3) 2006.

Mandatory Testing

Comprehensive School Assessment Act

Summary: The Comprehensive School Assessment Act allows local school boards to create student assessment systems that do not unduly rely on standardized tests.

SECTION 1. SHORT TITLE

This Act shall be called the "Comprehensive School Assessment Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The federal No Child Left Behind Act requires "yearly student academic assessments" in public school grades three through eight. The Act does not specifically mandate annual statewide standardized tests.
2. An emphasis on standardized testing results in teaching to the test, skews school programs and priorities, and discourages quality teachers—sometimes driving them out of the profession. As a result, it will inhibit, rather than support, high-quality learning, and may well cause more students to be left behind.
3. The best, most accurate school assessment system is one that is locally created and operated following established guidelines for the development and use of multiple assessment measures.

(B) PURPOSE—This law is enacted to meet the requirements of federal law while providing [State] schools and schoolchildren with the highest quality assessment system.

SECTION 3. COMPREHENSIVE SCHOOL ASSESSMENT

After section XXX, the following new section XXX shall be inserted:

(A) COMPREHENSIVE ASSESSMENTS BASED ON STATEWIDE STANDARDS

1. The state [Board of Education] shall adopt statewide academic standards embodied in curriculum frameworks in the areas of English, mathematics, science and technology, history and social science, foreign languages, and the arts. Such standards shall delineate essential knowledge and skills, that, taken as a whole will not require more than [one half/two-thirds] of typical instructional time to enable students to meet, thereby allowing time and opportunity for individual student interests and school or district standards designed to meet special interests (e.g., an arts school) or local interests (e.g., agricultural science). State standards and frameworks for each subject area shall be approved by the relevant professional body of educators.
2. Each school district shall develop and adopt a system for assessing on an annual basis the extent to which the district, and every public school within the district, succeeded in improving or failed to improve student performance. Student performance shall be measured as the acquisition of the skills, competencies and knowledge called for by the statewide academic standards and curriculum frameworks, as well as local school and district standards and expectations, and the assessment of student progress toward areas of their own particular interest.
3. Each assessment system shall be designed to fairly and comprehensively measure outcomes and results regarding student performance, including complex and higher order thinking and applica-

tion, and extended student work, and to improve the effectiveness of curriculum and instruction. In its design and application, each assessment system shall employ a variety of assessment instruments, including classroom-based and teacher-made assessments, using either comprehensive or statistically valid sampling. Each school or district shall include in its plan a description of how it will use assessment information to improve teaching and guide professional development, and how information will be summarized for public reporting purposes.

4. Instruments used as part of the assessment system shall be criterion referenced, assessing whether students are meeting the statewide academic standards. Such instruments shall include work samples, projects, and portfolios based on regular student classroom work to facilitate authentic and direct gauges of student performance.
5. The state [Board of Education] shall provide technical assistance to schools and school districts to design and implement the evaluation systems required by this section, including the development of models for local evaluation systems.

(B) STATE APPROVAL OF ASSESSMENT SYSTEMS

Every school district shall submit a written description of its proposed assessment system to the state [Board of Education] for review and approval prior to implementation. Each assessment system shall include data on student achievement based on state standards that can be compared from district to district and reported in a uniform manner on forms designed by the state [Board of Education]. The state [Board of Education] shall not approve an assessment system unless it meets or exceeds the requirements of Section 1111(a)(3) of the federal No Child Left Behind Act of 2001, 20 U.S.C. Sec. 6311(a)(3).

(C) PUBLIC REPORTING OF ASSESSMENT RESULTS

Each school district shall annually report to the public how its students performed under the assessment system established by the district. The report shall be in a format approved by the state [Board of Education], and shall break down the data by school, race, gender, special education, or transitional bilingual education status and such other categories as are required by the state [Board of Education], provided that data will not allow identification of individual students.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

MANDATORY TESTING

School Testing Right to Know Act

Summary: The School Testing Right to Know Act requires that the release of any school test scores must be accompanied by other relevant information.

SECTION 1. SHORT TITLE

This Act shall be called the "School Testing Right to Know Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The federal No Child Left Behind Act aims to dramatically increase the use and importance of primary and secondary school standardized tests.
2. However, standardized test scores do not accurately assess the causes of low student achievement. Instead, they distract attention from the major causes of low academic performance: poverty and the lack of resources available to meet low-income students' needs.
3. When standardized test scores are released to the public, policymakers, parents and taxpayers have the right to know all relevant data relating to these scores.

(B) PURPOSE—This law is enacted to provide policymakers and the public with accurate information with which to make future decisions about the direction of education policy in this state.

SECTION 3. SCHOOL TESTING RIGHT TO KNOW

After section XXX, the following new section XXX shall be inserted:

No agency of the state, or any governmental entity within the state, shall release any school-by-school or district-by-district listing of primary or secondary school standardized test scores to the public without simultaneously listing the following information for the same schools or districts:

1. Percentage of students who qualify for free or reduced-price meals.
2. Student mobility rate—that is, a measure of students who enter or leave a school during the school year.
3. Per-student expenditure by school, not including district-wide administrative costs.
4. Average class size.
5. For students who enter a school after grade three, the percentage whose skills are assessed at below basic upon entering the school.
6. Percentage of students who qualify for special education services.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Education

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Teachers for At-Risk Schools

- Millions of schoolchildren in at-risk schools are taught by less-qualified, less-experienced teachers.
- At-risk schools have a hard time attracting and retaining well-qualified teachers.
- The No Child Left Behind Act does not solve the problem.
- Without effective teachers, the 13 million children who grow up in poverty will be left behind.
- Financial incentives can help attract well-qualified teachers to at-risk schools.
- Americans strongly support financial incentives to bring well-qualified teachers to at-risk schools.
- States are using financial incentives to attract and retain well-qualified teachers.

Millions of schoolchildren in at-risk schools are taught by less-qualified, less-experienced teachers.

By any measure, schools in high-poverty areas employ fewer well-qualified teachers than schools in more affluent areas.[1] For example, only 19 percent of National Board Certified Teachers (NBCT) work at schools in the bottom third of performance for their state and only 12 percent of NBCTs work in schools where more than 75 percent of students receive free or reduced-price lunches.[2] "Overwhelmingly, the teachers in at-risk schools tend to have temporary or emergency certification, teach in fields for which they lack strong subject-matter preparation ('out-of-field'), or are in their first year or two of their teaching careers," according to the National Partnership for Teaching in At-Risk Schools.[3]

At-risk schools have a hard time attracting and retaining well-qualified teachers.

Although there are many excellent teachers at schools in high-poverty areas, the best teachers tend to go elsewhere. Many of the most promising teachers who begin their careers in at-risk schools burn out and transfer after a few years.[4] The most common reasons for these transfers are desire for a higher salary, smaller class sizes, better student discipline, and greater faculty authority—all available in more affluent areas.[5]

The No Child Left Behind Act does not solve the problem.

The federal No Child Left Behind Act (NCLB) declared that by the end of the 2005-06 school year, 100 percent of teachers of core academic classes must be "highly qualified" in their content area. Not a single state met that deadline. Instead, the federal Department of Education is requiring each state to submit a plan that explains how it will supply "highly qualified" teachers to every classroom. But experts have roundly criticized NCLB's definition of "highly qualified." The major organizations that study teacher quality—including the Education Trust, Education Commission of the States, the Center on Education Policy and the National Center on Teacher Quality—report that state rules are so full of loopholes that the NCLB standard is meaningless.[6]

Without effective teachers, the 13 million children who grow up in poverty will be left behind.

NCLB is based upon the conceit that better teachers can help all low-income children to become high-performing students. Children who grow up in poverty suffer from poor nutrition, substandard housing, inadequate health and dental care, danger from drugs and violence, limited adult support and few opportunities for cultural enrichment.[7] NCLB cannot overcome—and does not attempt to address—the non-school factors that keep poor children from achieving academic success.[8] Yet there is no doubt that teachers can make an enormous difference in children's lives, and that the best teachers are most needed to meet the enormous challenges in at-risk schools. If we don't improve the quality of teaching in at-risk schools, few of those children will be able to escape a life of poverty.

Financial incentives can help attract well-qualified teachers to at-risk schools.

While school districts in at-risk areas can improve recruitment, training and mentoring programs to attract and retain teachers, states can make the biggest difference in one area: funding. There is no doubt that financial incentives bring high-quality teachers to high-poverty areas—where they are most needed.[9]

Americans strongly support financial incentives to bring well-qualified teachers to at-risk schools.

Seventy-six percent of Americans and 77 percent of public school teachers support offering higher salaries to teachers who are willing to work in high-poverty schools, according to recent surveys by Hart Research and Harris Interactive.[10]

States are using financial incentives to attract and retain well-qualified teachers.

California, Hawaii, Maryland, Nevada, North Carolina and North Dakota offer signing bonuses to teachers who excelled in college, or provide mortgage assistance to teachers who buy homes in high-risk areas. Fourteen other states (AR, CO, CT, DE, GA, LA, MI, MS, NM, OR, PA, TX, VA, WV) provide some type of financial incentive to bring well-qualified teachers to hard-to-staff schools.[11]

Endnotes

1 The Teaching Commission, "Teaching at Risk: A Call to Action," 2004.

2 Barnett Berry and Tammy King, "Recruiting and Retaining National Board Certified Teachers for Hard-to-Staff, Low-Performing Schools," Southeast Center for Teaching Quality, 2005.

3 National Partnership for Teaching in At-Risk Schools, "Qualified Teachers for At-Risk Schools: A National Imperative," 2005.

4 Ibid.

5 Richard Ingersoll, "Why Do High-Poverty Schools Have Difficulty Staffing Their Classrooms with Qualified Teachers?" Renewing Our Schools, Securing Our Future: A National Task Force on Public Education, Center for American Progress and Institute for America's Future, November 2004.

6 Kati Haycock, Director of The Education Trust, Testimony before the U.S. House Education and Workforce Committee, September 29, 2005.

7 "Qualified Teachers for At-Risk Schools."

8 Richard Rothstein, *Class and Schools*, 2004.

9 Richard Rothstein, "Teacher shortages vanish when the price is right," *New York Times*, September 25, 2002.

10 The Teaching Commission, "Poll Shows Strong Support for Combining Better Teacher Pay with Market Incentives, Rewards for Achievement Gains, New Accountability," April 6, 2005.

11 Education Commission of the States, "Recruitment and Retention: State Policy," 2005.

Teachers for At-Risk Schools

Teachers for At-Risk Schools Act

Summary: The Teachers for At-Risk Schools Act helps attract and retain well-qualified teachers for at-risk schools by providing matching funds for teacher incentive programs.

SECTION 1. SHORT TITLE

This Act shall be called the "Teachers for At-Risk Schools Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Schools in high-poverty areas employ fewer well-qualified teachers than schools in more affluent areas.
2. Teachers can make an enormous difference in children's lives, and the best teachers are needed to meet the enormous challenges in at-risk schools.
3. Financial incentives bring high-quality teachers to the high-poverty areas where they are most needed.

(B) PURPOSE—This law is enacted to improve the quality of education in at-risk schools.

SECTION 3. TEACHERS FOR AT-RISK SCHOOLS

After section XXX, the following new section XXX shall be inserted:

(A) A classroom teacher shall receive a bonus from the state in an amount equal to any local school board's bonus, up to a maximum of $2,000 per teacher per year, if the teacher:

1. Teaches in a public school identified by the State Board of Education as a [school in corrective action, a school in restructuring, or a challenge school] or a school in which more than 75 percent of students qualify for free or subsidized school lunch; and
2. Is a National Board Certified Teacher, holds a Master's or Doctorate degree in education or in the subject they teach, or graduated from an accredited institution of higher education with a grade point average of 3.5 or above on a 4.0 scale or its equivalent.

(B) An individual who receives a bonus under this section shall not be deemed an employee of the state.

(C) The employer of an individual who receives a bonus under this section shall be responsible for any increase in fringe benefit costs associated with the bonus.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Education

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Tutoring Services—Minimum Standards

* The No Child Left Behind Act (NCLB) compels struggling school systems to divert hundreds of millions of dollars to independent tutoring services.
* Private tutoring companies are draining Title I school funds.
* There is scant evidence that tutoring company services actually increase academic achievement.
* NCLB provides no minimum standards for tutoring company programs.
* Tutoring companies are not held accountable for their services.
* States can set their own minimum standards for tutoring services.
* States should require that tutoring companies coordinate with classroom teachers, employ well-qualified tutors, and demonstrate their effectiveness through state-approved tests.

The No Child Left Behind Act (NCLB) compels struggling school systems to divert millions of dollars to independent tutoring services.

Under NCLB, schools that receive Title I funding and fail to achieve "adequate yearly progress" (AYP) for two consecutive years must allow students to transfer to other schools. Schools that fail to meet AYP targets for a third year must offer "supplemental services"—afterschool tutoring—to students from low-income families. School districts must set aside up to 20 percent of their Title I budgets to pay for transfers and tutoring.[1] During the 2004-05 school year, school districts around the country spent about a half-billion dollars to provide services to 430,000 students.[2]

Private tutoring companies are draining Title I school funds.

Three-fourths of the approximately 1,700 tutoring providers that receive Title I funds are for-profit companies like Sylvan Learning, Edison Schools and Princeton Review.[3] For these companies—which charge up to $40 per hour per student—business is booming. Enrollment with the tutoring company Platform Learning, for example, skyrocketed from 1,000 students in 2003 to 50,000 in 2005.[4] Because only about ten percent of students eligible for paid tutoring are actually enrolled, these companies' potential profits are enormous.[5]

There is scant evidence that tutoring company services actually increase academic achievement.

Although it is widely accepted that after-school programs benefit students, there is little or no empirical evidence that the tutoring services required by NCLB increase low-income students' scores on standardized tests or otherwise improve academic achievement.[6]

NCLB provides no minimum standards for tutoring company programs.

Standards have been touted as a vital component of NCLB—but there are no meaningful federal standards for tutoring services. In fact, these programs are often inadequately staffed and poorly designed. NCLB required that all teachers be "highly qualified" by September 2006, but tutors need not be qualified at all.[7] A study by The Civil Rights Project at Harvard University found that most tutoring programs are not integrated with classroom curricula and that very few tutors communicate effectively with teachers.[8] NCLB doesn't even require that tutors communicate with students face-to-face—online tutoring is permitted, and some companies may soon outsource NCLB tutoring to India.[9]

Tutoring companies are not held accountable for their services.

A study by the U.S. Government Accountability Office (GAO) found that few school districts have evaluated the quality of the tutoring services they buy; those that have attempted evaluations generally relied on faulty information.[10] For example, many school districts allow private tutoring companies to assess their own effectiveness based on internal tests, not the standardized tests required by NCLB.

States can set their own minimum standards for tutoring services.

Federal law explicitly authorizes states to "develop and apply objective criteria" for tutoring services "based on a demonstrated record of effectiveness in increasing the academic proficiency of students in subjects relevant to meeting" NCLB standards.[11] State education agencies have used this authority to mandate some minimum standards, but most states stand aside as hundreds of companies with questionable records take advantage of lucrative tutoring contracts at the expense of low-income at-risk children.

States should require that tutoring companies coordinate with classroom teachers, employ well-qualified tutors, and demonstrate their effectiveness through state-approved tests.

Illinois has implemented strong standards for tutoring services. Other states should follow Illinois' lead and require:

- **Coordination—**Tutoring providers should clearly demonstrate that their programs are aligned with state learning standards and coordinated with classroom instruction.
- **Qualifications—**At a minimum, tutors should meet NCLB requirements for paraprofessionals—that is, a high school diploma or equivalent and the completion of two years of college-level study. In addition, tutors who teach more than five students at a time should have experience in classroom management.
- **Effectiveness—**Tutoring companies should provide evidence that their students achieve significant improvements on the state tests used as assessments for NCLB, compared against an appropriate control group.

Endnotes

1 No Child Left Behind Act, § 1116(e), enacted 2001.

2 U.S. Government Accountability Office, "No Child Left Behind Act: Education Actions Needed to Improve Local Implementation and State Evaluation of Supplemental Education Services," August 2006.

3 Center on Education Policy, "From the Capital to the Classroom: Year 3 of the No Child Left Behind Act," March 2005, figure 5-A (excluding school districts which do not qualify for these funds).

4 "Tutoring Services See Business Boom," *District Administration: The Magazine for K-12 Education Leaders*, September 2005.

5 Ibid.

6 Gail Sunderman and Jimmy Kim, "Increasing Bureaucracy or Increasing Opportunities? School District Experience with Supplemental Services," The Civil Rights Project, Harvard University, February 2004.

7 Susan Saulny, "A Lucrative Brand of Tutoring Grows Unchecked," *New York Times*, April 4, 2005.

8 "Increasing Bureaucracy or Increasing Opportunities?"

9 Anupreeta Das and Amanda Paulson, "Need a Tutor? Call India," *Christian Science Monitor*, May 23, 2005; Greg Toppo, "Offshore learning online: Overseas tutors help students in USA," *USA Today*, August 30, 2005.

10 "No Child Left Behind Act: Education Actions Needed to Improve Local Implementation and State Evaluation of Supplemental Education Services."

11 No Child Left Behind Act, § 1116(e)(4), enacted 2001.

Tutoring Services—Minimum Standards

Minimum Standards for Tutoring Services Act

Summary: The Minimum Standards for Tutoring Services Act ensures that tutoring services required by the No Child Left Behind Act be high-quality and cost-effective.

SECTION 1. SHORT TITLE

This Act shall be called the "Minimum Standards for Tutoring Services Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Because of the federal No Child Left Behind Act, school systems are compelled to spend millions of dollars on independent tutoring services.
2. In many cases, tutoring services are paid millions of dollars with little or no accountability.
3. The No Child Left Behind Act empowers states to apply their own minimum standards for tutoring services.

(B) PURPOSE—This law is enacted to improve public education by placing minimum standards on for-profit and nonprofit entities that provide supplemental educational services pursuant to Section 1116(e) of the federal No Child Left Behind Act.

SECTION 3. MINIMUM STANDARDS FOR TUTORING SERVICES

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Department" means the state Department of [Education].
2. "Provider" means a for-profit or nonprofit entity that provides or seeks to provide supplemental educational services pursuant to Section 1116(e) of the federal No Child Left Behind Act.

(B) COORDINATION STANDARDS

1. To qualify for state approval, providers must clearly demonstrate how their programs are aligned with state learning standards and local curricula, how they will communicate and coordinate with students' teachers, and how they will link tutoring content to the academic programs their students experience in school.
2. Any contract for supplemental educational services shall be revoked if a provider fails, in practice, to meet the coordination standards in paragraph (B)(1).

(C) QUALIFICATION STANDARDS

1. To qualify for state approval, providers must clearly demonstrate that each tutor meets the minimum requirements for paraprofessionals under the federal No Child Left Behind Act, and that each tutor who teaches more than five students at a time has prior experience in managing a classroom of primary or secondary school students.

2. Any contract for supplemental educational services shall be revoked if a provider fails, in practice, to meet the qualification standards in paragraph (C)(1).

(D) EFFECTIVENESS STANDARDS

1. To qualify for state approval, providers must clearly demonstrate that their program has improved student achievement for students previously served, by providing evidence that those students achieved significant improvements, compared to an appropriate control group, on the [specify the state tests used as assessments for NCLB].
2. Any contract for supplemental educational services shall be revoked if a provider fails, in practice, to meet the effectiveness standards in paragraph (D)(1), as measured each year.

(E) INTERNET TUTORING PROHIBITED

1. Providers must provide their tutoring services in-person. Providers shall not be paid for electronic tutoring via the Internet, an intranet or other electronic network, or educational software run on individual computers.
2. Paragraph (E)(1) does not prohibit providers from offering electronic tutoring as an additional resource for students.

(F) ENFORCEMENT

1. The Department shall promulgate regulations to enforce this section.
2. The Department shall create a complaint process for parents, students, teachers, local school boards, and others to determine whether providers are in compliance with this section.
3. The Department shall investigate the allegations set forth in any complaint and make an independent determination as to whether the allegations warrant further action.
4. The Department may conduct on-site visits to ensure compliance with this section or to investigate any issues raised by a complaint. The on-site investigation team may examine any provider's records and conduct interviews to determine whether there has been a violation.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

EDUCATION RESOURCES

Mandatory Testing

American Federation of Teachers

National Center for Fair & Open Testing

National Education Association

Public Education Network

Teacher for At-Risk Schools

Learning Point Associates

National Education Association

Tutoring Services—Minimum Standards

American Federation of Teachers

Association of Community Organizations for Reform Now

Education Commission of the States

National Education Association

A full index of resources with contact information can be found on page 291.

Elections

Voter Identification and Integrity 150
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Voter Identification and Integrity

- The 2000 election severely damaged public confidence in the integrity of our voting systems.
- A failure in voter identification, however, was not part of the problem in the 2000 election.
- Voter fraud is exceptionally rare.
- Existing criminal penalties successfully deter voter fraud.
- Restrictive voter identification requirements don't solve voter fraud.
- Restrictive voter identification requirements make election officials' jobs harder.
- Restrictive voter identification requirements disfranchise millions of legitimate voters.
- Restrictive voter identification requirements disproportionately impact seniors.
- Some voter identification requirements have been found unconstitutional.
- The real electoral integrity issue in America is mismanagement of voter registration lists.

The 2000 election severely damaged public confidence in the integrity of our voting systems.

A healthy democracy relies upon citizens' confidence that elections are fair and untainted by fraud, misconduct or mistake. The fiasco in November 2000 rightly pushed election reform to the top of the public policy agenda.

A failure in voter identification, however, was not part of the problem in the 2000 election.

Voter fraud—the casting of ballots in the names of deceased or fictitious people, the casting of multiple ballots, or the casting of ballots by persons ineligible to vote—was simply not a problem in 2000 or any election since.[1]

Voter fraud is exceptionally rare.

There is no evidence of widespread identity fraud among voters at the polls. Indeed, an extensive inquiry into election fraud from 1992 to 2002 found that it is extremely rare.[2] An exhaustive hunt in 2004 for "thousands" of fraudulent voters in Washington state succeeded in uncovering only six instances of double voting.[3] And a 2005 survey of Ohio's 88 counties cosponsored by the League of Women Voters found just four instances of ineligible or fraudulent voting in the state's 2002 and 2004 general elections—out of nine million ballots cast.[4] From October 2002 to January 2005 only 52 individuals were convicted of any type of federal election fraud, while 196,139,871 ballots were cast in federal general elections.[5]

Existing criminal penalties successfully deter voter fraud.

Voter fraud is rare because the risk of criminal penalties—which often include both hefty fines and prison—far outweighs the benefit of voting twice.

Restrictive voter identification requirements don't solve voter fraud.

If there are anecdotal incidences of voter fraud, additional voter identification requirements don't address them. Identity cards don't prevent felons from voting. They don't prevent individuals from voting twice. They don't ensure that the address that appears on the card is accurate and up to date.

Restrictive voter identification requirements make election officials' jobs harder.

Such requirements create additional administrative burdens for poll workers: they are forced to interpret the accuracy and authenticity of each identity card and determine whether individuals lacking required identification fall into an area of exemption or if their ballots should be marked and treated as provisional. As a result, voters wait in longer lines at polling places.

Restrictive voter identification requirements disfranchise millions of legitimate voters.

Approximately eight percent of the voting population—15 million Americans—do not have a driver's license or other state-issued identification.[6] The Justice Department concluded in a 1994 study of Louisiana that blacks were four to five times less likely than whites to have a driver's license or other photo identification.[7] According to disability advocates, nearly ten percent of the 40 million Americans with disabilities do not have any form of state-issued photo identification.

Restrictive voter identification requirements disproportionately impact seniors.

In Georgia, AARP reports that 36 percent of seniors over age 75 do not have a driver's license.[8] In Wisconsin, 23 percent of seniors aged 65 and older do not have a driver's license.[9] The governor of Wisconsin vetoed a 2005 photo identification bill because it would have disfranchised nearly 100,000 elderly citizens.[10]

Some voter identification requirements have been found unconstitutional.

In both 2005 and 2006, a United States District Court barred Georgia from enforcing laws that would require voters to display government-issued photo identification.[11] The court's 2005 ruling, which was upheld by the 11th Circuit Court of Appeals, declared that the law violates the U.S. Constitution's Equal Protection Clause. The photo identification requirement is both discriminatory and unnecessary, the court found. The Missouri Supreme Court issued a similar ruling.

The real electoral integrity issue in America is mismanagement of voter registration lists.

In November 2000, between 1.5 and three million votes were lost or not cast because of problems with registration processes and voter lists.[12] Eligible voters in at least 25 states arrived at the polls and were unable to vote because their names had been illegally purged from the voter rolls or had not been added in time for Election Day.[13]

Endnotes

1 Dēmos, "Securing the Vote: An Analysis of Election Fraud," 2003.

2 Ibid.

3 Oral decision of Judge John E. Bridges in *Borders v. King County*, Case No. 05-2-00027-3, June 6, 2005.

4 League of Women Voters and Coalition on Homelessness and Housing in Ohio, "Let the People Vote—A Joint Report on Election Reform Activities in Ohio," June 14, 2005.

5 Office of the Clerk, U.S. House of Representatives, "Election Statistics," 2005.

6 U.S. Department of Transportation Federal Highway Administration, "Highway Statistics 2003, Section III: Driver Licensing, Table DL-20," November 2004. The Department of Transportation previously estimated that four percent of Americans have a state identification card for non-drivers.

7 Alan Elsner, "Millions Blocked from Voting in U.S. Election," *Reuters*, Sept. 27, 2004.

8 Deanna Wrenn, "Three States Debate Requiring Voters to Show ID," *Ventura County Star*, March 31, 2005.

9 John Pawasarat, "The Driver License Status of the Voting Age Population in Wisconsin," Employment and Training Institute, University of Wisconsin-Milwaukee, June 2005.

10 Governor Jim Doyle, Message Vetoing SB 63, April 29, 2005.

11 *Common Cause/Georgia v. Billups*, U.S. Dist. Ct., Northern Dist. of Georgia (Rome), Case 4:05-CV-201-HLM.

12 Caltech-MIT Voting Technology Project, "Voting—What Is, What Could Be," July 2001.

13 Democratic Investigative Staff, U.S. House Committee on the Judiciary, "How to Make a Million Votes Disappear: Electoral Sleight of Hand in the 2000 Presidential Election," August 20, 2001.

Voter Identification and Integrity

Voter Integrity Act

Summary: The Voter Integrity Act creates a uniform, accurate list of registered voters.

SECTION 1. SHORT TITLE

The Act shall be called the "Voter Integrity Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. To preserve the integrity of the voting process, the state must guarantee to its citizens that their right to cast a ballot in local, state and national elections is unfettered by administrative errors.
2. Accurate record keeping by election administrators is essential to ensure electoral integrity, eliminate duplicate registrations, and to ensure that address information is up to date.
3. The National Voter Registration Act (NVRA) of 1993 declared that unfair or discriminatory registration rules and procedures have a damaging effect on voter participation.
4. The Help America Vote Act (HAVA) of 2002 requires states to implement interactive computerized statewide registration lists that are accessible to state and local election officials.

(B) PURPOSE—This law is enacted to guarantee citizens' right to vote by making this state's voter registration lists more technologically sophisticated and accurate.

SECTION 3. ACCURATE VOTER ROLLS

(A) STATEWIDE VOTER REGISTRATION SYSTEM—The system for recording and managing the rolls of qualified voters shall:

1. Be uniform throughout the state.
2. Use information gathered by executive departments, state agencies, and county, city, township and village clerks to ensure that records are current.
3. Electronically connect between the office of the [State Board of Elections] and the offices of each [local election supervisor] in real time.
4. Electronically connect with the [Department of Corrections] to send and receive information regarding the eligibility to vote of persons with felony convictions; and the [Department of Motor Vehicles] and social service and disability agencies to send and receive voter registration applications electronically in compliance with the National Voter Registration Act of 1993.

(B) STANDARDS FOR PURGING VOTERS—The [State Board of Elections] shall create and implement a system to:

1. Use change of address information supplied by the United States Postal Service or other reliable sources to identify registered voters whose addresses change.
2. Cross-check names on the voter registration database with death records to verify voter eligibility.

3. Ensure that no individual shall be removed from the voter registration list unless such individual is provided with a notice consistent with the requirements of the National Voter Registration Act of 1993.
4. Use a codified, non-discriminatory minimum set of standards in the matching process before purging voter rolls. This process shall include an exact match of: first, last and middle names; the social security number or other unique identification number; date of birth; and gender.

(C) COMPLIANCE WITH NVRA—Notwithstanding another provision of law to the contrary, a person who is qualified to vote and who registers in a manner consistent with the National Voter Registration Act of 1993 shall be considered a registered voter.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Voter Protection

- ✱ Millions of Americans are prevented from exercising their right to vote because of voter intimidation or suppression, or because of mistakes by election officials.
- ✱ Voter intimidation tactics are employed across the nation.
- ✱ Voter suppression through lies and deception is even more common.
- ✱ Americans are also denied the right to vote by preventable mistakes on the part of election officials.
- ✱ The federal Voting Rights Act does not adequately protect voters.
- ✱ States can adopt the Voter Protection Act.

Millions of Americans are prevented from exercising their right to vote because of voter intimidation or suppression, or because of mistakes by election officials.

The 2000 presidential race exposed serious flaws in our nation's election system. In the aftermath of that election, studies found that as many as four million registered voters who wanted to vote were turned away or discouraged from voting.[1] Although some Election 2000 concerns have been addressed, widespread problems were again reported in 2004. For example, one volunteer election protection hotline handled 125,000 calls in the fall of 2004—75,000 of them on Election Day.[2]

Voter intimidation tactics are employed across the nation.

Almost 40 years after the historic Voting Rights Act was enacted, many Americans are still subjected to threats and intimidation when they try to exercise their right to vote. For example:

✱ In Milwaukee, Wisconsin, flyers were circulated under the banner "Milwaukee Black Voters League" which warned that, anyone who had voted earlier in the year was ineligible to vote in the presidential election, residents who had been convicted of any offense and their families were ineligible to vote, and that violation could result in ten years imprisonment and the voters' children being taken away.[3]

✱ In Columbia, South Carolina, a letter purporting to be from the NAACP threatened that voters with outstanding parking tickets or unpaid child support would be arrested.[4]

✱ In Philadelphia, Pennsylvania, voters in African American communities were systematically challenged by men carrying clipboards who drove a fleet of some 300 sedans with magnetic signs designed to look like law enforcement insignia.[5]

Voter suppression through lies and deception is even more common.

The use of tricks designed to fool Americans into staying home on Election Day is even more widespread than outright intimidation. For example:

✱ In Orange County, California, 14,000 registered voters received a letter in Spanish that warned that it was illegal for immigrants to vote. The letter also stated that immigrants who voted could go to prison.[6]

✱ In Lake County, Ohio, newly-registered voters received a fake letter that appeared to come from the Lake County Board of Elections. The letter said that voter registrations gathered by Democratic campaigns or the NAACP were illegal and that those voters would not be allowed to vote.[7]

✱ In Orlando, Florida, a first-time voter was visited by a woman with a clipboard who asked how she was going to vote. When the voter replied that she preferred Kerry, the visitor told the voter that she needn't go to the polls because her vote had been recorded on the clipboard. This same tactic was repeated throughout Florida.[8]

✱ In Allegheny County, Pennsylvania, a flyer designed to look like an official announcement from McCandless Township claimed that, because of expected "immense voter turnout," the 2004 election would be conducted over two days. The flyer requested that Republicans vote on November 2, while Democrats should vote on November 3.[9]

Americans are also denied the right to vote by preventable mistakes on the part of election officials.

In 2000, a million more votes would have been cast or counted if voters and precinct officials had understood basic election rules.[10] Mistakes about voters' rights continued in 2004. For example:

★ In Ames, Iowa, an election official prevented nearly 100 university students from voting by instructing polling places to close at the scheduled time despite the fact that people were still waiting in line.[11]

★ In south Florida, eligible voters were turned away because election officials misinterpreted the laws governing photo identification.[12]

The federal Voting Rights Act does not adequately protect voters.

Voter intimidation is a federal crime under the Voting Rights Act of 1965. But most violators are never punished because federal prosecutors are unable or unwilling to pursue these cases. Further, while federal law applies to intimidation, it does not prohibit willfully fraudulent voter suppression tactics. Federal law also does nothing to prevent mistakes by election officials.

States can adopt the Voter Protection Act.

The Voter Protection Act combines the best practices of laws in California, Connecticut and Illinois. It employs three avenues to ensure that every eligible voter is allowed to vote:

★ **Penalties for intimidation and suppression**—Heavy penalties would be imposed for both voter intimidation and suppression. Most states currently prohibit voter intimidation but not fraudulent suppression. Many state voter intimidation laws also have inadequate penalties.

★ **Voter's Bill of Rights**—Every polling place would be required to post a Voter's Bill of Rights. Seven states (CA, CT, FL, IN, MN, NV, NJ) currently have a Voter's Bill of Rights.

★ **Election Day Manual of Procedures**—A book that clearly sets out election rules would be available to both voters and officials at the polls. In 2005, New Jersey and Washington enacted laws requiring an election manual.

Endnotes

1 Caltech/MIT Voting Technology Project, "Voting: What Is, What Could Be," July 2001.

2 People for the American Way, "Election Protection Had Powerful Impact, But Election System Still Fails Voters," November 5, 2004.

3 People For the American Way, "Run-Up to Election Exposes Widespread Barriers to Voting," November 2004.

4 Associated Press, "Bogus Letter Circulating in South Carolina Warns of Arrests of Deadbeat Voters," October 30, 2004.

5 People For the American Way Foundation and NAACP, "The Long Shadow of Jim Crow: Voter Intimidation and Suppression in America Today," 2004.

6 Aurelio Rojas, "Officials probe mailer that warns Latino voters," *The Sacramento Bee*, October 18, 2006.

7 Jay Maynor, "Phony letters tell people they cannot vote," WKYC-TV, October 28, 2004.

8 David Karp, Michael Sandler and Tamara Luch, "Dirty tricks litter path to election," *St. Petersburg Times*, October 29, 2004.

9 "Run-Up to Election Exposes Widespread Barriers to Voting."

10 "Voting: What Is, What Could Be."

11 "Voters Turned Away in Ames," *Des Moines Register*, October 22, 2004.

12 "Voter ID Problems in Florida," *New York Times*, October 7, 2004.

Voter Protection

Voter Protection Act

Summary: The Voter Protection Act bans voter intimidation and voter suppression, establishes a Voter's Bill of Rights, and requires the creation of a Manual of Election Procedures.

SECTION 1. SHORT TITLE

This Act shall be called the "Voter Protection Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The 2000 election exposed serious flaws in our nation's voting systems. Across the nation, as many as four million registered voters who wanted to vote were turned away or discouraged from voting. The pattern of turning away or discouraging voters continued in 2004, due to voter intimidation and suppression tactics, as well as through communications failures and mistakes.
2. In [State], as many as XX registered voters were discouraged from voting in November 2004.
3. In order to protect the right to vote for all its citizens, the state must ban voter intimidation and voter suppression, establish a Voter's Bill of Rights, and provide election officials and voters a Manual of Election Procedures.

(B) PURPOSE—This law is enacted to protect and enhance the most basic right in a democracy—that all qualified adults are guaranteed the right to vote.

SECTION 3. VOTER PROTECTION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Board" means the State [Board of Election Supervisors]. (NOTE: Where appropriate, the Secretary of State's office can be designated as the administering agency.)
2. "Election" means any federal, state or local election held in the state.
3. "Local election supervisor" means a person or group of persons directing the conduct of elections for any city or county.
4. "Election official" means a person or group of persons directing the conduct of elections at the precinct, county or statewide level.

(B) VOTER INTIMIDATION AND SUPPRESSION

1. **Voter Intimidation.** A person is guilty of voter intimidation if he or she uses or threatens force, violence or any tactic of coercion or intimidation to induce or compel any other person to:
   a. Vote or refrain from voting;
   b. Vote or refrain from voting for any particular candidate or ballot measure; or
   c. Refrain from registering to vote.

2. **Voter Suppression.** A person is guilty of voter suppression if he or she knowingly attempts to prevent or deter another person from voting or registering to vote based on fraudulent, deceptive or spurious grounds or information. Voter suppression includes:
   a. Challenging another person's right to register or vote based on knowingly false information;
   b. Attempting to induce another person to refrain from registering or voting by providing that person with knowingly false information; or
   c. Attempting to induce another person to refrain from registering or voting at the proper place or time by providing that person with knowingly false information about the date, time, place or manner of the election.

(C) VOTER'S BILL OF RIGHTS

1. **Creation and Posting of Voter's Bill of Rights.** Local election supervisors must post a Voter's Bill of Rights at every polling place, include it with every distribution of official sample ballots, and offer it to voters at polling places, in accordance with procedures approved by the Board. The text of this document will be:

   "VOTER'S BILL OF RIGHTS

   Every registered voter in this state has the right to:

   1. Inspect a sample ballot before voting.
   2. Cast a ballot if he or she is in line when the polls are closing.
   3. Ask for and receive assistance in voting, including assistance in languages other than English where required by federal or state law.
   4. Receive a replacement ballot if he or she makes a mistake prior to the ballot being cast.
   5. Cast a provisional ballot if his or her eligibility to vote is in question.
   6. Vote free from coercion or intimidation by election officials or any other person.
   7. Cast a ballot using voting equipment that accurately counts all votes."

2. **Language Minorities.** In any political subdivision or precinct where federal or state law requires the ballot to be made available in a language other than English, the Voter's Bill of Rights will also be made available in such language or languages.

(D) MANUAL OF ELECTION PROCEDURES

The Board will create a manual of uniform polling place procedures and adopt the manual by regulation. Local election supervisors will ensure that the manuals are available in hard copy or electronic form at every precinct in the supervisors' jurisdictions on Election Day. The manual will guide local election officials in the proper implementation of election laws and procedures. The manual will be indexed by subject and written in clear, unambiguous language. The manual will provide specific examples of common problems encountered at the polls on Election Day, and detail specific procedures for resolving those problems. The manual will include, but not be limited to, the following:

a. Regulations governing solicitation by individuals and groups at the polling place.

b. Procedures to be followed with respect to voters whose names are not on the precinct register.

c. Proper operation of the voting system.

d. Ballot handling procedures.

e. Procedures governing spoiled ballots.

f. Procedures to be followed after the polls close.

g. Rights of voters at the polls.

h. Procedures for handling emergency situations.

i. Procedures for handling and processing provisional ballots.

j. Security procedures.

(E) ENFORCEMENT

1. Whoever commits voter intimidation or conspires to commit voter intimidation will be guilty of a felony, punishable by up to three years in prison and a fine of up to $100,000.
2. Whoever commits voter suppression or conspires to commit voter suppression will be guilty of a felony, punishable by up to two years in prison and a fine of up to $50,000.
3. Any person who willfully violates any other part of this section will be guilty of a misdemeanor, punishable by up to one year in prison, a fine of up to $10,000, or both.
4. The Board will promulgate regulations necessary to enforce this section.
5. In addition to criminal and regulatory sanctions, this section may be enforced by a private cause of action under [appropriate section of state statutes]. In a successful action, the court shall award the plaintiff costs and attorney's fees.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Voting Machine Security

- ✱ There is widespread distrust of the accuracy of voting machines.
- ✱ Encouraged by the Help America Vote Act (HAVA), states dramatically changed voting technology between 2000 and 2006.
- ✱ Modern voting systems remain vulnerable to election fraud.
- ✱ Modern voting systems remain vulnerable to error.
- ✱ It is crucial for all states to mandate that voting systems include a voter-verified paper trail and that elections officials conduct regular audits of these paper ballots.
- ✱ States are adopting voter-verified paper records and audit requirements.

There is widespread distrust of the accuracy of voting machines.

In November 2000, about 1.5 million Americans' votes for president were not counted because of hanging chads, misaligned machines, or other flaws in voting technologies.[1] Billions of dollars have been spent since then to ensure that every vote cast is counted. Still, an October 2006 survey by the Pew Research Center found that one in eight American voters—and three in ten African American voters—were not confident that their ballots would be counted in the November election.[2] Even Maryland Governor Robert Ehrlich suggested that voters should cast absentee ballots to ensure they were counted—and Marylanders responded by voting absentee in record numbers.[3]

Encouraged by the Help America Vote Act (HAVA), states dramatically changed voting technology between 2000 and 2006.

In 2000, about 36 percent of Americans voted with punchcards, 18 percent used mechanical lever machines, 35 percent used optical scan technology, and 14 percent used direct recording electric (DRE) machines. HAVA, enacted by Congress in 2002, provided grants to help states switch to modern voting equipment—optical scanners and DRE machines. That law was very effective. By the 2006 election, about 90 percent of Americans voted with those two types of equipment.[4]

Modern voting systems remain vulnerable to election fraud.

The Brennan Center for Justice issued a comprehensive report which detailed 120 possible ways to tamper with DRE and optical scanner systems.[5] A Johns Hopkins University study also revealed numerous techniques that could be used to change votes.[6] The easiest and most successful schemes would alter the software of DREs or scanners. An employee of the voting machine manufacturer, an employee of the board of elections, a computer hacker armed with a specially-designed virus, or any person who could get their hands on a voting machine for one minute or less could carry out an attack on the integrity of a voting machine. Such a vote-switching scheme would also modify records, audit logs and counters inside the machines, making even a careful forensic examination of records futile.

Modern voting systems remain vulnerable to error.

Mistakes are all too common. According to the Brennan Center, "votes have been miscounted or lost as a result of defective firmware (coded instructions in a computer system's hardware), faulty machine software, defective tally server software, election programming errors, machine breakdowns, malfunctioning input devices, and pollworker error."[7] For example:

✱ Diebold Election Systems discovered a screen-freeze problem in several Maryland voting machines, yet the company did not fully inform the state and took three years to replace the flawed machines.[8]

✱ The California Secretary of State banned one model of Diebold machines after finding that the machine disenfranchised voters during the 2004 presidential primary. Diebold machines were recertified in California only after the firm paid a fine of $2.6 million.[9]

✱ In November 2006, iVotronic touchscreen machines in Sarasota County, Florida, registered 18,000 ballots cast without a vote for Congress in a hotly contested race. Sarasota's undervote was far higher than in neighboring counties—raising the likelihood that an error caused the results.[10]

It is crucial for all states to mandate that voting systems include a voter-verified paper trail and that elections officials conduct regular audits of these paper ballots.

The Association of Computing Machinery surveyed its members and found that 95 percent expressed concern about the security of electronic voting systems and endorsed the use of voter-verified paper records.[11] Where there is a voter-verified system, each voter views and approves a paper copy of his or her ballot before leaving the polls. Afterwards, election officials audit the results by counting paper ballots in a small number of randomly-selected precincts and comparing them to the computer-generated totals. This procedure catches both fraud and mistakes, and if a recount is needed, the paper ballots are the final word.

States are adopting voter-verified paper records and audit requirements.

Currently, only 13 states (AK, AZ, CA, CO, CT, HI, IL, MN, NM, NY, NC, WA, WV) require both voter-verified paper records and regular audits of the paper ballots. Twenty-two states (AL, ID, ME, MA, MI, MS, MO, MT, NE, NV, NH, NJ, ND, OH, OK, OR, RI, SD, UT, VT, WI, WY) use machines that leave a voter-verified paper trail but do not require regular audits. The remaining 15 states (AR, DE, FL, GA, IN, IA, KS, KY, LA, MD, PA, SC, TN, TX, VA) do not require voter-verified paper records or audits.

Endnotes

1 Caltech/MIT Voting Technology Project, "Voting—What Is, What Could Be," July 2001.

2 Pew Research Center for the People and the Press, "November Turnout May Be High," October 11, 2006.

3 Christian Davenport, "Democrats Blast Ehrlich's Absentee-Voting Initiative," *Washington Post*, September 22, 2006.

4 Michael Duffy, "Can This Machine Be Trusted?" *Time Magazine*, October 29, 2006.

5 Brennan Center for Justice, "The Machinery of Democracy: Protecting Elections in an Electronic World," 2006.

6 Tadayoshi Kohno et al., "Analysis of an Electronic Voting System," *IEEE Symposium on Security and Privacy*, 2004.

7 "The Machinery of Democracy."

8 Associated Press, "Diebold Makes Fixes on the QT," *Wired News*, October 27, 2006.

9 Associated Press, "Diebold to Settle E-Voting Suit," *Wired News*, November 10, 2004.

10 Marc Caputo, "18,000 votes in House race may be lost," *Sarasota Herald-Tribune*, November 9, 2006.

11 Association for Computing Machinery, "ACM Recommends Integrity, Security, Usability in E-voting," September 28, 2004.

Voting Machine Security

Voting Systems Reform Act

Summary: The Voting Systems Reform Act requires all jurisdictions in the state to use modern vote counting technology that produces voter-verified paper records. The Act also creates an Election Review Commission to study election procedures and recommend future reforms, sets forth rules for provisional ballots and voter purges, and requires a statewide voter registration system.

SECTION 1. SHORT TITLE

This Act shall be called the "Voting Systems Reform Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The 2000 and 2004 elections exposed serious flaws in our nation's voting systems. In 2000, more than 1.5 million Americans cast ballots that went uncounted because of faulty or obsolete systems, and as many as four million registered voters were turned away or discouraged from voting.
2. In 2000 and 2004, [insert state data] voters' ballots for president were invalidated because voting machines recorded overvotes or undervotes. Even more ballots were invalidated for lower offices.
3. To protect the right to vote for all citizens, the state must mandate that every jurisdiction in the state use modern, accurate and auditable vote counting technology and must create an Election Review Commission to study election procedures and recommend future reforms.

(B) PURPOSE—This law is enacted to protect and enhance the most basic right in a democracy—the right to vote for all qualified adults—and ensure that all legal votes are counted.

SECTION 3. VOTING REFORM

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—in this section:

1. "Board" means the State [Board of Election Supervisors]. (NOTE: Where appropriate, the Secretary of State's office can be designated as the administering agency.)
2. "Election" means any federal, state or local election held in the state.
3. "Local election supervisor" means a person or group of persons directing the conduct of elections for any city or county.
4. "Election official" means a person or group of persons directing the conduct of elections at the precinct, county or statewide level.
5. "Vote counting system" means the system used by a local election supervisor to examine and count election ballots, either by machine or by hand.

(B) MODERN ELECTION TECHNOLOGY

1. **Modern vote counting system required.** Local election supervisors must use a vote counting system approved by the Board. The Board will only approve the use of electronic devices that directly record voters' choices or optical scanning devices that scan marked paper ballots at each polling place. Such devices must also meet the following requirements:
   a. The voting system will permit the voter to verify his or her selections and correct any errors before the ballot is counted.
   b. If the voter selects more than one candidate for a single office, the voting system will notify the voter and permit the voter to correct his or her selections before the ballot is counted.
   c. If the voter selects fewer than the number of candidates for which votes may be cast, the voting system will notify the voter and permit the voter to alter his or her selections before the ballot is counted.
   d. The voting system will produce a record with an audit capacity for each ballot cast. Until the Board rules otherwise, for a direct recording electric voting system, an audit capacity requires that the system generate a paper record of each individual vote cast, which shall be maintained in a secure fashion and serve as a backup record for recounts. Such paper record must be viewable by the voter before the vote is cast electronically, and the system must allow the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast. Only after the Board rules that there is clear and convincing evidence that a secure and highly reliable audit and recount capacity can be achieved using a backup system other than paper records, the Board may promulgate rules that permit another audit system for direct recording electric voting systems.
   e. The voting system will be accessible to individuals with disabilities and other special needs, and will be capable of providing ballots in languages other than English where required by federal or state law.
   f. The voting system will provide accuracy, reliability, security from fraud, and ease of use.
2. **Exceptions.** For absentee ballots, provisional ballots, and for counties with fewer than 10,000 registered voters, the Board may approve the use of hand-counted or optical scan-counted paper ballots which do not comply with subsection (1).
3. **Audits.** For each election, the local election supervisor shall conduct a hand count of at least two percent of the precincts in that city or county, or two precincts, whichever is greater. The precincts shall be selected by lot without the use of a computer, and the order of selection by the county political party chairmen shall also be by lot. The unofficial vote totals from all precincts shall be made public before selecting the precincts to be hand counted.
4. **Uniform ballot designs.** The Board will designate and graphically depict uniform primary and general election ballot designs for each approved vote counting system. Local election supervisors must follow these uniform ballot designs.

(C) PROVISIONAL BALLOTS

1. **Issuance.** Any person who claims to be registered to vote, but is not listed on the voter registration list on the day of the election, shall be issued a provisional ballot.
2. **Determination of eligibility.** The determination of eligibility to vote shall be made without regard to the location at which the voter cast the provisional ballot or any requirement to present identification.
3. **Use as a registration form.** The Board shall design the provisional ballot so that it conforms to the requirements of a voter registration application. If an individual who submits a provisional ballot is determined not to be a registered voter, the provisional ballot shall act as a voter registration application valid for future elections.

(D) STANDARDS FOR PURGING VOTERS

1. **Public Notice.** Not later than 90 days prior to any federal or state election, the Board shall provide public notice of all names that have been removed from the voter registration list since the most recent election or the date of the most recent previous public notice provided under this section, and the criteria, processes, and procedures used to determine which names were removed.
2. **Individual Notice.** No individual shall be removed from the voter registration list unless such individual is provided with a notice consistent with the requirements of the National Voter Registration Act of 1993.
3. **Non-discriminatory standards.** The Board shall develop a codified, non-discriminatory minimum set of standards in the matching process before purging. This process shall include an exact match of:
   a. First, last, middle names,
   b. The social security number or other unique identification number,
   c. Date of birth, and
   d. Gender.

(E) STATEWIDE VOTER REGISTRATION SYSTEM

1. **Minimum requirements regarding connectivity.** The state's voter registration systems shall be, at minimum:
   a. Connected between the office of the Board and the offices of each local election supervisor, in real time,
   b. Interoperable with the [Department of Corrections] to both send and receive information regarding the eligibility to vote of persons with felony convictions; and the [Department of Motor Vehicles] and social service and disability agencies to send and receive voter registration applications electronically in compliance with the National Voter Registration Act of 1993.
2. **Connectivity at the polls.** The Board shall research and implement a statewide voter registration system that can be accessed on Election Day at each polling place.

(F) ENFORCEMENT

Any person who willfully violates this section will be guilty of a misdemeanor, punishable by up to one year in prison, a fine of up to $10,000, or both.

SECTION 4. ELECTION REVIEW COMMISSION

(A) Election review commission established. There is established a permanent state commission known as the Election Review Commission.

(B) Commission membership. The Commission will be composed of nine members, including the Chair appointed by the governor, and two members recommended by each of the following: the Senate President, Senate Minority Leader, House Speaker, and House Minority Leader. Of the nine members, at least five will not be government officials or employees and will represent academia, nonprofit organizations, the faith community, labor unions, or industry.

(C) Duties of the commission. Following each general election, the Commission will conduct a study of the administration of elections to:

1. Determine if state election laws and regulations were followed in the prior election cycle, and if not, why they were not followed.
2. Determine the number and percentage of overvotes and undervotes in the prior elections, along with the reasons for these overvotes and undervotes.
3. Determine if precincts had adequate facilities for the number of voters served.
4. Examine what election practices or proposals increase or diminish voter participation.
5. Recommend how election procedures can and should be improved.

(D) Report. The Election Review Commission will report its findings and recommendations to the legislature on or before February 1 following each general election.

SECTION 5. COMPLIANCE WITH EXISTING LAW

Nothing in this Act may be construed to authorize or require conduct prohibited under the following laws:

(A) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).

(B) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(C) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ff et seq.).

(D) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).

(E) The Americans with Disabilities Act of 1990 (42 U.S.C. 1994 et seq.).

SECTION 6. FUNDING

The Board shall apply for all available federal grants to fund the requirements of this Act.

SECTION 7. EFFECTIVE DATE

Local election supervisors must use a vote counting system approved by the Board for all elections held after January 1, 2008. All other provisions shall take effect on July 1, 2007.

Voting Rights Restoration

- An estimated 5.3 million Americans—one in 41 adults—are barred from voting because of a felony conviction.
- Approximately two million of those barred from voting have completed their sentences.
- African American and Latino communities are disproportionately affected by the disfranchisement of criminal offenders.
- Restoring the right to vote helps reintegrate people with criminal records into society and strengthens democracy by increasing voter participation.
- The United States is the only democracy in the world where convicted offenders who have served their sentences are disfranchised for life.
- Americans strongly support the restoration of voting rights to people with convictions.
- States are moving to restore voting rights to many citizens with felony convictions.
- To fully restore the right to vote to people with felony convictions, legislation should include several key provisions.

An estimated 5.3 million Americans—one in 41 adults—are barred from voting because of a felony conviction.[1]

The number of disfranchised citizens is greater than the entire population of Louisiana. Among these 5.3 million are more than two million white Americans (Hispanic and non-Hispanic), 677,000 women, and 585,000 military veterans.[2]

Approximately two million of those barred from voting have completed their sentences.[3]

Eleven states permanently deny the right to vote to at least some citizens even after they have completed their sentences. Of these, three (FL, KY, VA) permanently disfranchise everyone with a felony conviction. Only Maine and Vermont never strip voting rights from their citizens, even when they are incarcerated.

African American and Latino communities are disproportionately affected by the disfranchisement of criminal offenders.

About 1.4 million African American men are barred from voting. Their 13 percent disfranchisement rate is seven times the national average. In six states, more than one in four African American men are permanently disfranchised. Given current rates of incarceration, three in ten of the next generation of black men are expected to be disfranchised at some point in their lives.[4]

Restoring the right to vote helps reintegrate people with criminal records into society and strengthens democracy by increasing voter participation.

Voting is integral to the fabric of our democracy—permanently disfranchised Americans can hardly feel a part of the process. Restoration of voting rights helps people with criminal records become productive members of society and strengthens our institutions by increasing participation in the democratic process.

The United States is the only democracy in the world where convicted offenders who have served their sentences are disfranchised for life.

Many countries, including the Czech Republic, Denmark, France, Germany, Israel, Japan, Peru, Poland, Romania, Sweden and Zimbabwe allow some or all incarcerated individuals to vote. In fact, German law obliges corrections officials to encourage prisoners to vote.

Americans strongly support the restoration of voting rights to people with convictions.

A 2002 Harris Interactive poll found that 80 percent of Americans believe that citizens who have completed sentences for felony convictions should be allowed to vote. More than 60 percent favor re-enfranchising those on parole or probation.[5]

States are moving to restore voting rights to many citizens with felony convictions.

Across the country, there has been significant momentum for reform of disfranchisement policies. Since 1997, 16 states have reformed their laws or policies to reduce barriers to voting by people with criminal records.[6] In November 2006, Rhode Island became the first state to approve restoration of voting rights by referendum.

To fully restore the right to vote to people with felony convictions, legislation should include several key provisions.

- **Restoration of Rights—**Clearly identify at what point voting rights are restored to people with convictions.
- **Notice—**Ensure that criminal defendants are informed before conviction and sentencing that they may lose their voting rights, and at the point of restoration that they are again eligible to register and vote.
- **Voter Registration—**The government agency that has contact with people at the point of restoration should be responsible for assisting them with voter registration.
- **Statewide Voter Registration Database—** Ensure that names are properly removed and then restored to the state's computerized list of registered voters.
- **Education—**Hold the state's chief election official responsible for educating other government agencies and the public about the legislation.

This policy summary relies in large part on information from the Brennan Center for Justice.

State Disfranchisement Laws[7]
Prisoners permitted to vote: **ME, VT**
Voting restored after release from prison: **HI, IL, IN, MA, MI, MT, NH, ND, OH, OR, PA, RI, UT**
Voting restored after release from prison and completion of parole (probationers may vote): **CA, CO, CT, NY, SD**
Voting restored after completion of sentence, including parole and probation: **AK, AR, DE*, GA, ID, IA**, KS, LA, MN, MO, NE***, NJ, NM, NC, OK, SC, TX, WA, WV, WI, WY***
Voting restored after completion of sentence for first felony, permanently disfranchised for at least some second felonies: **AZ, MD**
Voting restored for certain ex-offenders convicted of felonies, others permanently disfranchised: **AL, MS, NV, TN**
All convicted of felonies permanently disfranchised unless rights are restored through a lengthy pardon, appeal or clemency process: **FL, KY, VA**
* Reenfranchised five years after completion of sentence. ** Only by Executive Order; underlying state law has not been changed. *** Reenfranchised two years after completion of sentence.

Elections

Endnotes

1 Dēmos, "Challenges to Fair Elections," October 2006.

2 The Sentencing Project, "Felony Disenfranchisement Laws in the United States," August 2006; The Sentencing Project, "Disenfranchised Veterans In the United States," 2004.

3 "Challenges to Fair Elections."

4 "Felony Disenfranchisement Laws in the United States."

5 Jeff Manza, Clem Brooks and Christopher Uggen, "Public Attitudes Toward Felon Disenfranchisement in the United States," *Public Opinion Quarterly*, 2004.

6 "Felony Disenfranchisement Laws in the United States."

7 Ibid.

Voting Rights Restoration

Restoration of Voting Rights Act

Summary: The Restoration of Voting Rights Act allows persons who were disfranchised because of felony convictions to regain their right to vote after being discharged from a correctional institution.

SECTION 1. SHORT TITLE

This Act shall be called the "[State] Restoration of Voting Rights Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. [State] currently denies the right to vote to people convicted of a felony, not only while they are in prison, but also while they are living in the community under the supervision of parole or probation officers [or insert different language applicable to the state].
2. The current disfranchisement law has a disproportionate impact on minorities, especially African American and Latino men.
3. Voting is both a fundamental right and a civic duty. Restoring the right to vote strengthens our democracy by increasing voter participation and helps people who have completed their incarceration to reintegrate into society. Voting is an essential part of reassuming the duties of full citizenship.

(B) PURPOSE—This law is enacted to strengthen democratic institutions by increasing participation in the voting process, to help people who have completed their incarceration to become productive members of society, and to streamline procedures for restoring their right to vote.

SECTION 3. RESTORATION OF VOTING RIGHTS

In Chapter XXX, Sections XXX are deleted and the following are inserted in lieu thereof:

(A) A person shall forfeit the right to vote in a federal, state or municipal election upon conviction of a felony and confinement to a federal or state correctional institution in the United States.

(B) A person who has been convicted of a felony and confined to a federal or state correctional institution in the United States shall be restored the right to vote in a federal, state or municipal election when that person has been discharged from confinement. [NOTE: A less inclusive standard would be, "…has been discharged from confinement, and parole has been completed.]

(C) When a person is restored the right to vote, the [Department of Corrections] shall provide that person with a voter registration form, assistance in filling out the form, and a document certifying the person is eligible to vote. The [Department of Corrections] shall deliver completed voter registration forms to the [appropriate registration agency].

(D) The [Department of Corrections] shall, on or before 15th day of each month, transmit to the [Secretary of the State] a list of persons convicted of a felony who, during the preceding period, have become ineligible to vote; and a list of persons convicted of a felony who, during the preceding period, have become eligible to vote. The list shall contain each person's name, date of birth, date of entry of judgment of conviction, sentence, and last four digits of social security number, or driver's license number, if available.

SECTION 4. NOTIFICATION IN COURT

Before accepting a plea of guilty or *nolo contendere* to a felony, and before imposing a felony sentence after trial, the court shall notify the defendant that conviction will result in loss of the right to vote as long as the person is confined and that voting rights are restored upon discharge [or until the person completes the sentence].

SECTION 5. RECORD KEEPING

(A) The [Secretary of State] shall ensure that the statewide voter registration database is purged of the names of persons who are ineligible to vote because of a felony conviction and shall likewise ensure that the names of persons who are eligible and registered to vote following restoration of voting rights are added to the statewide voter registration database in the same manner as all other names are added to that database.

(B) The [Secretary of State] shall ensure that persons whose voting rights have been restored face no continued barriers to registration or voting.

(C) The [Secretary of State] shall develop and implement a program to educate attorneys, judges, election officials, corrections officials including parole and probation officers, and members of the public about the requirements of this section, ensuring that:

1. Judges are informed of their obligation to notify criminal defendants of the potential loss and restoration of their voting rights.
2. The [Department of Corrections] is prepared to assist people with registration to vote, including forwarding their completed voter registration forms to the [appropriate registration agencies].
3. The language on voter registration forms makes clear that people who have been disqualified from voting because of felony convictions regain the right to vote when they are discharged from incarceration [or complete their sentences].
4. The [Department of Corrections] is prepared to transmit lists of persons eligible and not eligible to vote to the [Secretary of State].
5. Probation and parole officers are informed of the change in the law and are prepared to notify probationers and parolees that [or when] their right to vote is restored.
6. Accurate and complete information about the voting rights of people who have been charged with or convicted of crimes, whether disfranchising or not, is made available through a single publication to government officials and the public.
7. Pre-trial detainees who are eligible to register and vote are given the opportunity and assistance to do so, including assistance in securing and casting absentee ballots.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on July 1, 2007. Voting rights shall be restored to all residents who have completed their confinement [or sentence], whether the completion occurred before or after July 1, 2007.

ELECTIONS RESOURCES

Voter Identification and Integrity

Common Cause

Dēmos

League of Women Voters

Voter Protection

Caltech-MIT Voting Technology Project

Common Cause

Election Protection Coalition

People for the American Way

Voting Machine Security

Brennan Center for Justice

Common Cause

Dēmos

League of Women Voters

Voting Rights Restoration

Advancement Project

American Civil Liberties Union

American Civil Liberties Union of Florida

Brennan Center for Justice

DemocracyWorks

Dēmos

Georgia Rural Urban Summit

New Jersey Policy Perspective

Progressive Leadership Alliance of Nevada

Racial Fairness Project

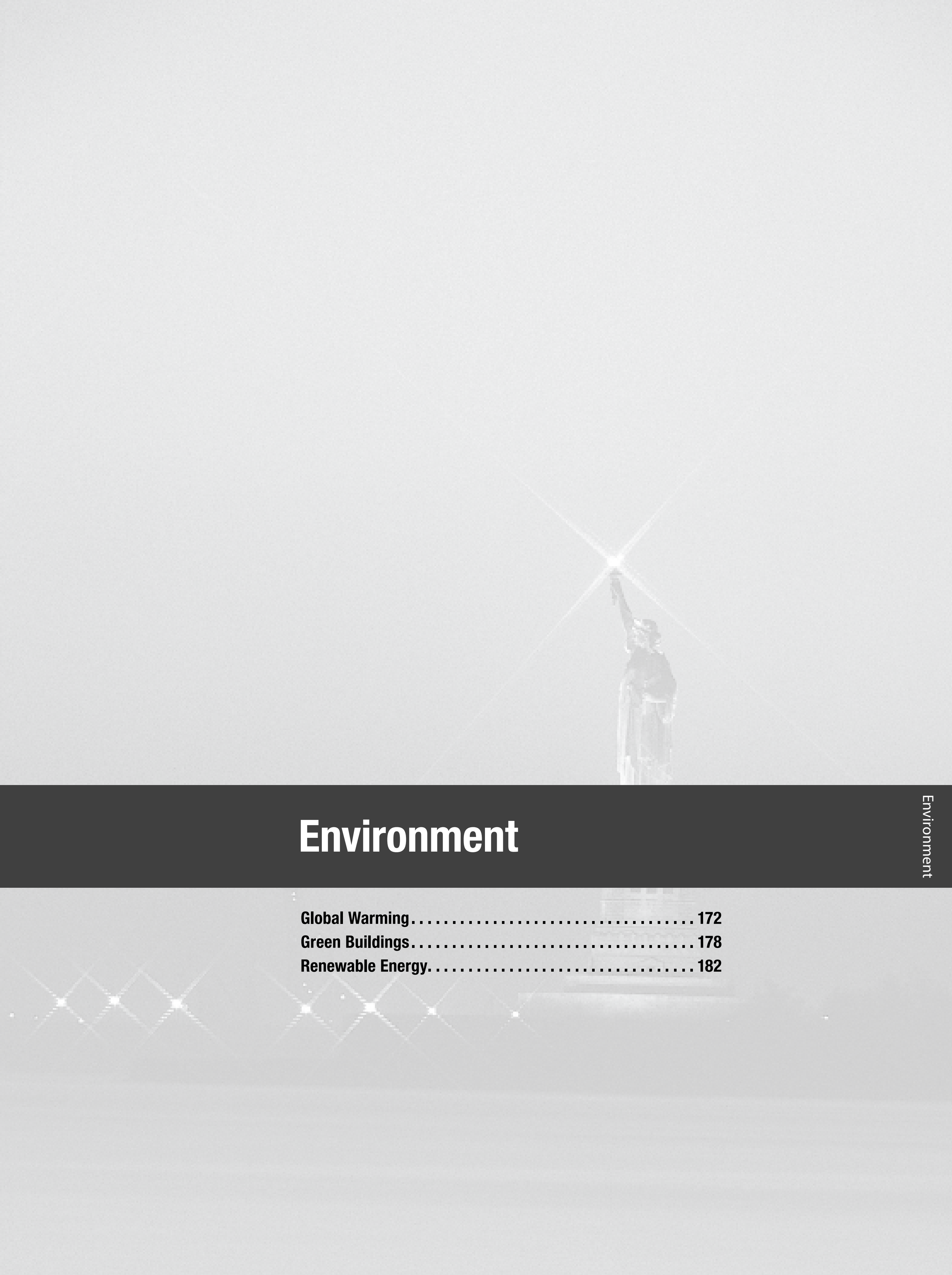
Right to Vote

Sentencing Project

Texas Criminal Justice Reform Coalition

Western Prison Project

A full index of resources with contact information can be found on page 291.



Environment

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Global Warming

- Global warming is bringing rising temperatures, a higher sea level, and more severe floods, droughts, hurricanes and wildfires.
- The evidence of global warming is overwhelming.
- The U.S. government acknowledges the warming trend.
- Global warming has already caused damage in many parts of the United States.
- Carbon dioxide and other air pollution that causes global warming is disproportionately generated by the United States.
- State laws can address global warming.

Global warming is bringing rising temperatures, a higher sea level, and more severe floods, droughts, hurricanes and wildfires.

Scientists predict that unless dramatic changes are made, the average global surface temperature will rise one to 4.5 degrees over the next 50 years, and two to ten degrees by the year 2100.[1] As a result, sea level is likely to rise two feet, causing extensive flooding.[2] Both evaporation and rainfall will increase, bringing greater precipitation in some areas and spreading drought in others. Heat waves and major storms will be more frequent, more intense, and more deadly.

The evidence of global warming is overwhelming.

Although local temperatures fluctuate naturally, during the past 50 years the average global temperature has increased at the fastest rate in recorded history. According to NASA scientists, 2005 was the warmest year in over a century, and 1998, 2002, 2003 and 2004 followed as the next four warmest years.[3] In fact, the ten hottest years on record have all occurred since 1990.[4] And the polar icecaps are unquestionably melting. In 2005, researchers found that the Greenland ice sheet is not only melting, but it is doing so at a faster rate than expected. Fifty-three cubic miles drained into the sea last year alone, compared to 23 cubic miles in 1996.[5]

The U.S. government acknowledges the warming trend.

The U.S. Environmental Protection Agency reports that "[s]cientists know for certain that human activities are changing the composition of Earth's atmosphere. Increasing levels of greenhouse gases, like carbon dioxide (CO_2), in the atmosphere since pre-industrial times have been well documented. There is no doubt this atmospheric buildup of CO_2 and other greenhouse gases is largely the result of human activities. It's well accepted by scientists that greenhouse gases trap heat in the Earth's atmosphere and tend to warm the planet. By increasing the levels of greenhouse gases in the atmosphere, human activities are strengthening Earth's natural greenhouse effect. The key greenhouse gases emitted by human activities remain in the atmosphere for periods ranging from decades to centuries. Warming has occurred in both the northern and southern hemispheres, and over the oceans. Confirmation of 20th century global warming is further substantiated by melting glaciers, decreased snow cover in the northern hemisphere and warming below ground."[6]

Global warming has already caused damage in many parts of the United States.

In recent years, western states have endured their worst wildfire seasons ever. Drought has created severe dust storms in the Great Plains, and floods have caused billions of dollars in damage. Hurricane Katrina is part of a trend toward more destructive hurricanes caused by increased ocean temperatures. The impacts of global warming are not limited to the U.S. The World Health Organization estimates that climate change contributes to more than 150,000 deaths and five million illnesses each year.[7] Global warming has also caused widespread drying that has turned arid lands to desert, especially in Africa.[8]

Carbon dioxide and other air pollution that causes global warming is disproportionately generated by the United States.

Carbon dioxide and other pollutants collect in the atmosphere like a thickening blanket, trapping the sun's heat and causing the planet to warm. While the entire world contributes to this buildup, the United States is the largest source of global warming pollution. Americans make up just four percent of the world's population, but produce 25 percent of the carbon dioxide pollution from fossil-fuel burning. Coal-burning power plants are the largest U.S. source of CO_2 pollution—they produce 2.5 billion tons every year. Automobiles, the second largest source, create nearly 1.5 billion tons of CO_2 annually.[9]

State laws can address global warming.

In 2006, California enacted the Global Warming Solutions Act, a first-in-the-world comprehensive program aimed at reducing California's greenhouse gas emissions 25 percent by 2020. The law requires redesigned cars and trucks, greener electricity, energy conservation, and smart growth planning. Other states have also addressed the causes and effects of global warming:

★ **Clean Power Plants**—Power plants are responsible for 35 percent of man-made carbon dioxide emissions. Connecticut, Maryland, Minnesota, New Hampshire and Vermont have passed laws that restrict pollution from power plants, and Idaho implemented a two-year ban on the construction of coal-fired power plants.

★ **Clean Cars**—Automobiles account for 26 percent of CO_2 emissions in the U.S. Nine states (CA, CT, MA, NJ, NY, OR, RI, VT, WA) have adopted California's strict emission-control standards.

★ **Renewable Energy**—Renewable energy—generated by wind, sun, water, plant growth, and geothermal heat—can be cleanly converted into power. Twenty-two states (AZ, CA, CO, CT, DE, HI, IL, IA, ME, MD, MA, MN, MT, NV, NJ, NM, NY, PA, RI, TX, VT, WA) have adopted "renewable portfolio standards" which require public utilities to increase their use of renewable energy sources over time.

★ **Impact Studies**—Some of the effects of global warming can be predicted and some of its damage can be mitigated. However, every state's situation is different. In 2006, Alaska passed a resolution to create a commission that will study how the state should deal with erosion, floods and thawing permafrost brought by global warming. North Carolina passed a similar bill to investigate the impact of global warming on the state and determine what action should be taken.

This policy brief relies in large part on information from the Natural Resources Defense Council.

Endnotes

1 U.S. Environmental Protection Agency, "Global Warming – Climate," 2006.

2 Ibid.

3 National Aeronautics and Space Administration, "2005 Warmest Year in Over a Century," January 24, 2006.

4 Natural Resources Defense Council, "Global Warming Basics," 2006.

5 Jeffrey Kluger, "Be Worried. Be Very Worried," *Time Magazine*, April 3, 2006.

6 "Global Warming – Climate."

7 Juliet Eilperin, "Climate Shift Tied to 150,000 Fatalities," *Washington Post*, November 17, 2005.

8 National Center for Atmospheric Research & the UCAR Office of Programs, "Drought's Growing Reach: NCAR Study Points to Global Warming as Key Factor," 2005.

9 "Global Warming Basics."

Global Warming

Low Emission Vehicle Act

Summary: The Low Emission Vehicle Act adopts the California vehicle emission rules (commonly known as LEV II), which set a stricter standard than the U.S. Environmental Protection Agency's National Low Emission Vehicle (NLEV) standard.

SECTION 1. SHORT TITLE

This Act shall be called the "Low Emission Vehicle Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Air pollution from cars and trucks is dangerous to the health of [State] residents.
2. Motor vehicles are a major source of pollution in [State], and contribute to greenhouse gases that cause worldwide climate change.
3. Technology can significantly reduce dangerous emissions from motor vehicles.

(B) PURPOSE—This law is enacted to protect the health and safety of [State] residents.

SECTION 3. LOW EMISSION VEHICLES

After section XXX, the following new section XXX shall be inserted:

(A) The Department of [Environmental Protection] shall implement Phase II of the California Low Emission Vehicle program in this State beginning in the 2010 automobile model year. "Phase II of the California Low Emission Vehicle program" means the second phase of the low emission vehicle program implemented in California, pursuant to the requirements of the federal Clean Air Act, 42 U.S.C. Section 7401 et seq.

(B) The Department of [Environmental Protection] shall promulgate such regulations as are necessary to implement this section.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Global Warming Impact Assessment Commission Act

Summary: The Global Warming Impact Assessment Commission Act creates a commission to study the direct effects of global climate change on the state's economy and natural resources.

SECTION 1. SHORT TITLE

This Act shall be called the "Global Warming Impact Assessment Commission Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Over the past 50 years, global temperatures have increased at the fastest rate in recorded history. It is well-accepted by scientists that human activities are responsible for this global warming.
2. Global warming causes damage of many kinds: wildfires, droughts, flooding and more destructive hurricanes.
3. If unchecked, global warming will create or worsen natural disasters within the state.
4. It is only prudent for the state to study and create a plan to mitigate negative effects of climate change, address economic impacts, and help save lives, protect public health, preserve natural resources, and protect valuable infrastructure.

(B) PURPOSE—This law is enacted to study the impact of global warming on the health, safety and welfare of state residents.

SECTION 3. STUDY TO ASSESS THE IMPACT OF GLOBAL WARMING

(A) ESTABLISHMENT OF COMMISSION

1. There is established a [State] Global Warming Impact Assessment Commission.
2. The commission shall consist of 11 members as follows:
   a. Two senators appointed by the President of the Senate.
   b. Two representatives appointed by the Speaker of the House of Representatives.
   c. Seven public members appointed jointly by the President of the Senate and the Speaker of the House of Representatives including at least one member with expertise in climatology, one member who is knowledgeable about [State's] economy, one member who is knowledgeable in the area of land management or maintenance of natural resources, and one member who represents tourism industries.
3. The public members of the commission may receive compensation for *per diem* or reimbursement for travel or other expenses incurred in serving on the commission.
4. The House and Senate [Environmental Resources] Committees shall assign committee staff to provide support services for the commission.
5. As part of its study, the commission shall conduct a series of hearings around the state.

(B) NATURE OF THE STUDY—The study shall include:

1. An assessment of the current and potential effects of global warming trends on the citizens, natural resources, public health, and economy of the state.
2. An estimate of the costs to the state and its citizens of adverse effects associated with global warming.
3. An examination of measures that might prevent or mitigate the effects of flooding, erosion, drought or wildfires that might be caused or worsened by global warming.
4. Recommendations for laws and regulations that may be warranted to minimize the adverse impacts of global warming.

(C) REPORT—The commission shall report the results of this study, including any legislative proposals, to the governor and the legislature on or before January 1, 2008.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Environment

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www.stateaction.org

Green Buildings

- ✱ Energy costs are skyrocketing and will continue to increase.
- ✱ The generation of energy causes pollution and contributes to global warming.
- ✱ Buildings account for 39 percent of total energy use and 38 percent of carbon dioxide emissions.
- ✱ Green building standards help preserve the environment.
- ✱ Green building standards save money for taxpayers.
- ✱ Green buildings boost the performance of workers and students.
- ✱ Green building standards do not burden architects or builders.
- ✱ Several states have enacted high-performance green building laws.

Energy costs are skyrocketing and will continue to increase.

Between 2003 and 2005, the price of heating oil increased 51 percent, gasoline increased 47 percent, diesel increased 39 percent, and natural gas increased 37 percent.[1] Heating costs for the winter of 2005-2006 jumped by 30 to 40 percent compared to the previous year. The U.S. Department of Energy predicts that energy prices will likely continue to rise because of tight worldwide supply and increased U.S. demand.[2] In 2006, the United States is expected to consume more than 100 quadrillion BTUs of energy—over one-sixth of the energy consumption of the entire world.[3]

The generation of energy causes pollution and contributes to global warming.

Power generating plants are the single worst industrial contributor to air pollution in the United States, pouring sulfur dioxide, nitrogen oxide, and mercury, as well as carbon dioxide and other greenhouse gases, into our atmosphere.[4] Greenhouse gases absorb sunlight that reflects off the Earth's surface, creating a blanket of heated gas around the Earth. A rapid increase in greenhouse gases is causing climate change around the world, including global warming, altered weather patterns, and more cases of severe weather.

Buildings account for 39 percent of total energy use and 38 percent of carbon dioxide emissions.[5]

The U.S. Environmental Protection Agency (EPA) reports that buildings have a huge impact on our consumption of energy and the quality of our environment. In addition to overall energy use and carbon dioxide emissions, the EPA reports that buildings account for 68 percent of total electricity consumption and 12 percent of total water consumption in the United States.[6] If we want to get energy use and pollution under control, we must focus on standards for new and existing buildings.

Green building standards help preserve the environment.

The Leadership in Energy and Environmental Design (LEED) Green Building Rating System is a flexible, non-bureaucratic standard for the construction and maintenance of new or existing buildings. LEED standards were developed by the U.S. Green Buildings Council—which represents all segments of the building industry—and emphasize energy and water savings, use of recycled materials, and indoor air quality.

Green building standards save money for taxpayers.

Green buildings cut energy costs by 30 percent, and water costs by 20 percent.[7] A study in California found that for a $5 million project, a $100,000 investment in green building features results in a $1 million savings over the life of the building.[8] As energy prices rise, savings from green buildings will increase. If well planned, there is no significant difference in construction costs for LEED-compliant buildings versus non-LEED buildings.[9]

Green buildings boost the performance of workers and students.

The improved air quality and increased natural sunlight in green buildings have a positive impact on both psychological and physical health. Green buildings are proven to improve student performance and reduce worker absenteeism.[10] A Pittsburgh, PA company that adopted LEED standards experienced an 83 percent reduction in voluntary employee termination.[11]

Green building standards do not burden architects or builders.

LEED standards use a point system to measure 34 criteria and denote varying degrees of efficiency and environmental impact. A rating of platinum, gold, silver or basic is granted, depending on the number of points scored. The point system means that a builder or architect can achieve LEED standards in different ways. Points are earned for meeting specific goals in energy efficiency, water use, building materials, and ventilation.[12]

Several states have enacted high-performance green building laws.

Washington's 2005 law, the first in the country, requires that new buildings and renovations that exceed 5,000 square feet must meet LEED standards. Arizona, Hawaii and Utah enacted similar efficiency standard laws in 2006. Also in 2006, the Wisconsin governor issued an executive order requiring higher energy efficiency standards in state buildings. Four more states (MD, NJ, NY, OR) offer tax incentives for buildings with greater energy efficiency.

Endnotes

1 U.S. Department of Energy, Energy Information Administration, "Short-Term Energy Outlook," November 8, 2005.

2 Ibid.

3 Energy Information Administration, "Annual Energy Outlook 2006," U.S. Department of Energy, Feburary 2006.

4 Natural Resources Defense Council, "Benchmarking Air Emissions of the 100 Largest Electric Power Producers in the United States," 2002.

5 U.S. Environmental Protection Agency, "Green Buildings: Why Build Green?" 2005.

6 Ibid.

7 Office of the Governor of Washington, "Gov. Gregoire signs bill for first-in-the-nation environmental building standards," April 8, 2005.

8 Greg Katz, "The Costs and Financial Benefits of Green Buildings: A Report to California's Sustainable Building Task Force," October 2003.

9 Davis Langdon Seah International, "Costing Green: A Comprehensive Cost Database and Budgeting Methodology," July 2004.

10 For studies, see U.S. Green Building Council, "Research: Productivity," 2005.

11 "The Costs and Financial Benefits of Green Buildings: A Report to California's Sustainable Building Task Force."

12 U.S. Green Buildings Council, "LEED-NC: Green Building Rating System for New Construction or Major Renovations, Version 2.2," October 2005.

Green Buildings

Green Buildings Act

Summary: The Green Buildings Act adopts LEED standards for the construction or renovation of public buildings over 5,000 square feet in size.

SECTION 1. SHORT TITLE

This Act shall be called the "Green Buildings Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Energy costs for public buildings are skyrocketing and will likely continue to increase.
2. Energy use by public buildings contributes substantially to the problems of pollution and global warming.
3. Public buildings can be built and renovated using high-performance methods that save energy costs, preserve the environment, and make workers and students more productive.

(B) PURPOSE—This law is enacted to more efficiently spend public funds and protect the health and welfare of [State] residents.

SECTION 3. GREEN BUILDINGS

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Department" means the Department [of General Administration].
2. "LEED silver standard" means the United States Green Building Council Leadership in Energy and Environmental Design green building rating standard referred to as silver standard.
3. "Major facility project" means:
   a. A building construction project larger than 5,000 gross square feet of occupied or conditioned space; or
   b. A building renovation project when the cost is greater than 50 percent of the assessed value and the project is larger than 5,000 gross square feet of occupied or conditioned space.
4. "Public agency" means every state office, board, commission, committee, bureau, department or public institution of higher education.

(B) GREEN BUILDINGS STANDARDS

1. All major facility projects of public agencies shall be designed, constructed and certified to at least the LEED silver standard. This provision applies to major facility projects that have not entered the design phase prior to October 1, 2007.

2. All major facility projects of a public school district, where the project receives any funding from the state capital or operating budget, shall be designed, constructed and certified to at least the LEED silver standard. This provision applies to major facility projects that have not entered the design phase prior to January 1, 2008.
3. All major facility projects by any person, corporation or entity other than a public agency or public school district, where the project receives any funding from the state capital or operating budget, shall be designed, constructed and certified to at least the LEED silver standard. This provision applies to major facility projects that have not entered the grant application process prior to January 1, 2008.
4. A major facility project does not have to meet the LEED silver standard if:
    a. There is no appropriate LEED silver standard for that type of building or renovation project. In such case, the Department will set lesser green building standards that are appropriate to the project.
    b. There is no practical way to apply the LEED silver standard to a particular building or renovation project. In such case, the Department will set lesser green building standards that are appropriate to the project.
    c. The building or renovation project is an electricity transmitter building, a water pumping station, or a hospital.

(C) ADMINISTRATION AND REPORTS

1. The Department shall promulgate such regulations as are necessary to enforce this section. Those regulations shall include how the Department will determine whether a project qualifies for an exception from the LEED silver standard, and the lesser green building standards that may be imposed on projects that are granted exceptions.
2. The Department shall monitor and document ongoing operating savings that result from major facility projects designed, constructed and certified as meeting the LEED silver standard and annually publish a public report of findings and recommended changes in policy. The report shall also include a description of projects that were granted exceptions from the LEED silver standard, the reasons for exceptions, and the lesser green building standards imposed.
3. The Department shall create a green buildings advisory committee composed of representatives from the design and construction industry involved in public works contracting, personnel from affected public agencies and school boards that oversee public works projects, and others at the Department's discretion to provide advice on implementing this section. The advisory committee shall make recommendations regarding an education and training process and an ongoing evaluation or feedback process to help the Department implement this section.

(D) PROTECTION FROM LIABILITY—No person, corporation or entity shall be held liable for the failure of a major facility project to meet the LEED silver standard or other standard established for the project as long as a good faith attempt was made to achieve the standard set for the project.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Renewable Energy

- ✱ Power plants are the nation's worst industrial air polluters.
- ✱ Air pollution from burning fossil fuels is dangerous to America's health.
- ✱ Air pollution from burning fossil fuels causes further harm to the environment.
- ✱ Unless policymakers act, air pollution from fossil fuel burning power plants will get much worse.
- ✱ Renewable energy sources are much cleaner than fossil fuels.
- ✱ The energy market is stacked against renewable energy sources.
- ✱ States can set "renewable portfolio standards" that require increased use of renewable energy sources.
- ✱ Twenty-three states have enacted renewable portfolio standards.

Power plants are the nation's worst industrial air polluters.

More than 85 percent of the energy generated in the United States comes from burning fossil fuels: coal, oil and natural gas.[1] Fossil fuel burning power plants are responsible for 76 percent of sulfur dioxide, 59 percent of nitrogen oxides, and 37 percent of the mercury released into the environment.[2] The production and use of energy causes almost 80 percent of air pollution.[3]

Air pollution from burning fossil fuels is dangerous to America's health.

A study of mortality in Arizona found that exposure to the pollutants emitted by burning fossil fuels caused a significant increase in death from heart disease.[4] Smog triggers more than six million asthma attacks per year and results in 160,000 emergency room visits in the eastern United States alone.[5] Sulfur dioxide pollution shortens the lives of an estimated 30,000 Americans per year. And mercury poisoning, often through the consumption of fish from contaminated lakes and rivers, causes serious damage to the human nervous system.[6]

Air pollution from burning fossil fuels causes further harm to the environment.

Air pollutants are returned to the Earth in the form of acid rain, which contaminates vegetation and kills aquatic life. Fossil fuels also produce greenhouse gases that are responsible for the erosion of the ozone layer and have triggered global warming.

Unless policymakers act, air pollution from fossil fuel burning power plants will get much worse.

Total energy consumption in the U.S. is projected to increase more than 40 percent between 2002 and 2025.[7]

Renewable energy sources are much cleaner than fossil fuels.

Renewable energy—generated by wind, sun, water, plant growth, and geothermal heat—can be cleanly converted into power for everyday use. If we invest in renewable energy, it can supply a significant portion of our energy needs without the negative effects on the environment that are produced by the extraction and burning of fossil fuels.

The energy market is stacked against renewable energy sources.

Oil, gas and coal companies benefit from government policies that were crafted to promote their success and have led to a virtual monopoly on the market for energy sources. In the absence of counterbalancing government policies, companies that offer renewable energy are at a disadvantage.

States can set "renewable portfolio standards" that require increased use of renewable energy sources.

Renewable portfolio standards (RPS) laws require public utilities to increase their use of renewable energy sources over time. Typically, RPS laws require that, over a period of 20 years, renewable energy be gradually increased until those sources account for ten to 20 percent of total energy production. In addition to reducing pollution, RPS laws decrease states' dependence on potentially unreliable sources of fossil fuels. With current state RPS laws, it is projected that by 2017, carbon dioxide emissions (the gas most responsible for global warming) will be reduced by nearly 75 million metric tons—the equivalent of removing 11.1 million cars and planting trees in an area larger than West Virginia.[8]

Twenty-three states have enacted renewable portfolio standards.

In 2005, Delaware, Illinois, Montana and Vermont enacted RPS laws and Texas expanded its highly successful RPS law. Twenty-three states (AZ, CA, CO, CT, DE, HI, IL, IA, ME, MD, MA, MN, MT, NV, NJ, NM, NY, PA, RI, TX, VT, WA, WI) have enacted RPS laws. Due to the popularity of these laws, nine percent of the energy consumed nationwide comes from renewable sources.[9]

Endnotes

1 U.S. Department of Energy, "Energy Sources: Fossil Fuels," 2004.

2 Congressman Bernie Sanders, "Closing the Dirty Old Powerplant Loophole," July 22, 2003.

3 State Environmental Resource Center, "RPS Renewable Energy Fact Pack," 2006.

4 Therese Mar, Gary Norris, Jane Koenig, and Timothy Larson, "Associations Between Air Pollution and Mortality in Phoenix, 1995-97," April 2000.

5 "Closing the Dirty Old Powerplant Loophole."

6 Natural Resources Defense Council, "The Bush Administration's Air Pollution Plan," June 15, 2003.

7 U.S. Department of Energy, "Annual Energy Outlook 2004 with Projections to 2025," September 29, 2004.

8 Union of Concerned Scientists, "Renewable Electricity Standards at Work in the States," 2006.

9 Energy Information Administration, "Renewable Energy Trends—2004 Highlights," August 2005.

Renewable Energy

The Renewable Portfolio Standards Sustainable Energy Act

Summary: The Renewable Portfolio Standards Sustainable Energy Act adopts minimum standards for the production and usage of renewable energy.

SECTION 1. SHORT TITLE

This Act shall be called the "Renewable Portfolio Standards Sustainable Energy Act."

SECTION 2. RENEWABLE PORTFOLIO STANDARDS

(A) DEFINITIONS—In this section:

1. "Biomass" means organic matter that is available on a renewable basis. "Biomass" includes:
   a. Organic material from a plant that is planted exclusively for the purpose of electricity production, provided: such plant is produced on land that was in crop production on the date this title is enacted; such plant is produced on land that is protected by the federal Conservation Reserve Program (CRP); and that crop production on CRP lands does not prevent achievement of the water quality protection, soil erosion prevention, or wildlife habitat enhancement purposes for which the land was primarily set aside;
   b. Any solid, nonhazardous cellulosic waste material that is segregated from other waste materials, and which is derived from waste pallets, crates and dunnage, or landscape or right-of-way tree trimmings, but not including municipal solid waste or post-consumer wastepaper;
   c. Any solid, nonhazardous cellulosic waste material that is segregated from other waste materials, and which is derived from agriculture sources, including orchard tree crops, vineyards, grains, legumes, sugar and other crop by-products or residues;
   d. landfill methane; and
   e. animal wastes.

   "Biomass" does not include: forestry resources; agricultural resource waste material necessary for maintaining soil fertility or for preventing erosion; unsegregated solid waste; or paper that is commonly recycled.
2. "Commission" means the [Public Service Commission].
3. "Provider of electric service" and "provider" mean any person or entity that is in the business of selling electricity to retail customers in this state, regardless of whether the person or entity is otherwise subject to regulation by the commission. "Provider" does not include the state or a subdivision of the state, a rural electric cooperative, or a cooperative association, nonprofit corporation or association, or a provider of electric service which is declared to be a public utility and which provides service only to its members.
4. "Renewable energy" means biomass, geothermal energy, solar energy, wind, and low impact, small hydroelectric, and micro hydro projects that produce less than 20 megawatts of electricity. "Renewable energy" does not include coal, natural gas, oil, propane, or any other fossil fuel, or nuclear energy.

5. "Renewable energy system" means a solar energy system that reduces the consumption of electricity in a facility or energy system, or a system that uses renewable energy to generate electricity and transmits or distributes the electricity that it generates from renewable energy via:
   a. A power line dedicated to the transmission or distribution of electricity generated from renewable energy and which is connected to a facility or system owned, operated or controlled by a provider of electric service; or
   b. A power line shared with not more than one facility or energy system generating electricity from nonrenewable energy and which is connected to a facility or system owned, operated or controlled by a provider of electric service.
6. "Retail customer" means a customer that purchases electricity at retail. "Retail customer" includes the state and its subdivisions.

(B) ESTABLISHMENT OF PORTFOLIO STANDARD

1. For each provider of electric service, the Commission shall establish a portfolio standard for renewable energy that shall require each provider to generate or acquire electricity from renewable energy systems in an amount that is:
   a. For calendar years 2009 and 2010, not less than five percent of the total amount of electricity sold by the provider to its retail customers in this state during those calendar years.
   b. For calendar years 2011 and 2012, not less than seven percent of the total amount of electricity sold by the provider to its retail customers in this state during those calendar years.
   c. For calendar years 2013 and 2014, not less than nine percent of the total amount of electricity sold by the provider to its retail customers in this state during those calendar years.
   d. For calendar years 2015 and 2016, not less than 11 percent of the total amount of electricity sold by the provider to its retail customers in this state during those calendar years.
   e. For calendar years 2017 and 2018, not less than 13 percent of the total amount of electricity sold by the provider to its retail customers in this state during those calendar years.
   f. For calendar year 2019 and for each calendar year thereafter, not less than 15 percent of the total amount of electricity sold by the provider to its retail customers in this state during that calendar year.
2. If, for the benefit of one or more of its retail customers in this state, the provider has subsidized, in whole or in part, the acquisition or installation of a solar energy system which qualifies as a renewable energy system and which reduces the consumption of electricity, the total reduction in the consumption of electricity during each calendar year that results from the solar thermal energy system shall be deemed to be electricity that the provider generated or acquired from a renewable energy system for the purposes of complying with its portfolio standard.
3. The Commission may adopt regulations that establish a system of renewable energy credits, that is, a trading mechanism that may be used by a provider to comply with its portfolio standard.
4. The Commission shall establish a renewable energy fund for the purpose of promoting renewable energy systems in the state. Any provider may comply with the requirements of this Act by paying two cents into the fund for every kilowatt-hour it sells to retail customers in the state.
5. Each provider of electric service shall submit to the Commission an annual report that provides information that relates to the actions taken by the provider to comply with its portfolio standard.

(C) ENFORCEMENT

1. The Commission shall adopt regulations to carry out and enforce the provisions of this Act. The regulations adopted by the Commission may include any enforcement mechanisms which are necessary and reasonable to ensure that each provider of electric service complies with its portfolio standard. Such enforcement mechanisms may include, without limitation, the imposition of administrative fines.
2. In the aggregate, the administrative fines imposed against a provider for all violations of its portfolio standard for a single calendar year must not exceed the amount which is necessary and reasonable to ensure that the provider complies with its portfolio standard, as determined by the Commission.

SECTION 3. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 4. EFFECTIVE DATE.

This Act shall take effect on July 1, 2007.

Environment

For policy toolkits covering more than 125 state issues, visit our website:

www.stateaction.org

ENVIRONMENT RESOURCES

Global Warming

Defenders of Wildlife
Natural Resources Defense Council
Sierra Club

Green Buildings

Natural Resources Defense Council
U.S. Green Building Council

Renewable Energy

Database of State Incentives for Renewable Energy
Renewable Energy Policy Project
Union of Concerned Scientists

A full index of resources with contact information can be found on page 291.

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Health

All Kids Coverage

- More than eight million American children lack any form of health insurance.
- Uninsured children frequently do not receive essential medical care.
- Children without health insurance are at a disadvantage in school.
- States can provide health insurance for all children.
- All Kids Coverage saves money by reducing emergency room visits and hospitalizations.
- All Kids Coverage boosts the state economy.
- Americans strongly favor health insurance for all children.

More than eight million American children lack any form of health insurance.[1]

A majority of uninsured children come from families in which one or both parents work full-time. Working families are often ineligible for Medicaid and unable to afford private health insurance.[2] Ethnic and racial minorities are most likely to be uninsured. Latinos' rate of uninsurance is three times that of Caucasians, and African Americans' and Native Americans' uninsurance is double Caucasians' rate. Asian Americans experience nearly one and a half times the uninsurance rate of Caucasians.[3]

Uninsured children frequently do not receive essential medical care.

Compared to uninsured children, insured children are eight times more likely to have a consistent source of medical care and receive preventive care. They are also ten times more likely to receive all necessary medical care. Uninsured children are five times more likely to use the emergency room as a regular source of care, several times more likely to postpone or forgo necessary medical care, and almost three times more likely to do without a prescription because their parents can't afford to pay for it.[4]

Children without health insurance are at a disadvantage in school.

A Florida study showed that children who don't have health insurance are 25 percent more likely to miss school.[5] A California study found that children who were enrolled in health insurance improved their school performance by 68 percent.[6]

States can provide health insurance for all children.

All Kids Coverage includes doctor visits, hospital stays, prescription drugs, vision care and dental care. Premiums and copayments for doctor visits and prescriptions are based on a family's income. The state covers the difference between what parents contribute in monthly premiums and the actual cost of providing health care for each child. In 2006, Illinois and Pennsylvania became the first states to enact All Kids Coverage plans by maximizing SCHIP benefits and using the negotiating and purchasing power of its Medicaid program.

All Kids Coverage saves money by reducing emergency room visits and hospitalizations.

When children are insured, illnesses are prevented or diagnosed earlier, reducing the need for emergency care, hospitalizations and specialized care for critical conditions. Patients with chronic conditions such as asthma or diabetes can avoid acute care because their primary physician provides the treatments and ongoing monitoring they need.[7] Studies show that managing diseases not only improves life for the patients but also saves money. For example, every dollar spent for primary care of asthma saves three dollars in emergency care.[8] Twenty-nine other states have realized significant savings by using this primary care model for their Medicaid programs. In Illinois, the All Kids Coverage program is expected to cost $45 million more than is collected from family premiums in the first year. However, the state Department of Healthcare and Family Services estimates that Illinois will save $56 million in the first year of All Kids Coverage by implementing the primary care model.[9]

All Kids Coverage boosts the state economy.

Health care is one of the fastest growing industries in the nation. In its first year, Illinois' All Kids Coverage program will capture an additional $37 million in federal matching funds for covering more children who are eligible for Medicaid and SCHIP. The $37 million will have a direct impact on the state's economy. Using a U.S. Department of Commerce input-output model, its ripple effect is expected to produce $87,561,000 in new business activity and $30,769,000 in new wages in the first year.[10]

Americans strongly favor health insurance for all children.

Americans believe that all children deserve health care when they are ill and preventive care to keep them from developing serious illnesses. Polls show that 89 percent of Americans support government programs which ensure that all children have health insurance even in difficult economic times, and 79 percent support it even if it will result in an increase in their taxes.[11]

Endnotes

1. U.S. Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2005," August 2006.
2. Peter Slevin, "Illinois to Unveil Insurance Program," *Washington Post*, October 6, 2005.
3. Kaiser Commission on Medicaid and the Uninsured, "The Uninsured: A Primer," January 2006.
4. Families USA Foundation, "Good for Kids, Good for the Economy: Health Coverage for All Kids in Illinois," 2005.
5. Florida Healthy Kids Project, "Healthy Kids Annual Report," 1997.
6. Health Status Assessment Project, "First Year Results, Data Insights Report No. 10," 2002.
7. Governor Rod D. Blagojevich, Press Release, November 15, 2005.
8. Debra Pressey, "State's New Kids' Health Coverage Ready to Roll Out," *The East-Central Illinois News Gazette*, March 5, 2006.
9. Governor Rod D. Blagojevich, press release, January 26, 2006.
10. "Good for Kids, Good for the Economy."
11. International Communications Research, "Children's Insurance," March 2003.

All Kids Coverage

Covering All Kids Health Insurance Act

Summary: The Covering All Kids Health Insurance Act provides health insurance to children who are not otherwise covered by public programs or private policies.

SECTION 1. SHORT TITLE

This Act shall be called the "Covering All Kids Health Insurance Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Many children in working families, including many families whose family income ranges between $40,000 and $80,000, are uninsured.
2. Numerous studies, including the Institute of Medicine's report, "Health Insurance Matters," demonstrate that lack of insurance negatively affects health status.
3. Access to health care is a key component for children's healthy development and successful education.
4. It is, therefore, the intent of this legislation to provide access to affordable health insurance to all uninsured children in the state.

(B) PURPOSE—This law is enacted to protect the health and welfare of all the children in [State].

SECTION 3. COVERING ALL KIDS HEALTH INSURANCE

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Application agent" means an organization or individual, such as a licensed healthcare provider, school, youth service agency, employer, labor union, local chamber of commerce, community-based organization, or other organization, approved by the Department to assist in enrolling children in the Program.
2. "Child" means a person under the age of 19.
3. "Department" means the Department of [Health].
4. "Program" means the Covering All Kids Health Insurance Program.
5. "Resident" means an individual who is in the state for other than a temporary or transitory purpose during the taxable year, or who is domiciled in this state but is absent from the state for a temporary or transitory purpose during the taxable year.
6. "State medical assistance" means healthcare benefits provided under [the state Medicaid or the SCHIP programs], or under another government program.

(B) ESTABLISHMENT OF THE PROGRAM

1. There is established a Covering All Kids Health Insurance Program. The Program shall be administered by the Department of [Health]. The Department shall have the same powers and authority to administer the Program as are provided to the Department in connection with the Department's administration of [the state Medicaid program] and the [SCHIP program]. The Department shall coordinate the Program with the existing health programs operated by the Department and other State agencies.
2. To be eligible for the Program, a person must be a child who is a resident of the state, and who is ineligible for state medical assistance, and:
   a. Who has been without health insurance coverage for a period set forth by the Department in rules, but not less than six months or more than 12 months;
   b. Whose parent lost employment that made available affordable dependent health insurance coverage, until such time as affordable employer-sponsored dependent health insurance coverage is again available for the child as set forth by the Department in rules;
   c. Who is a newborn whose responsible relative does not have available affordable private or employer-sponsored health insurance; or
   d. Who, within one year of applying for coverage under this Act, lost state medical assistance benefits.
3. An entity that provides health insurance coverage to state residents shall provide health insurance data to the Department for the purpose of determining eligibility for the Program. The rules for obtaining this information shall be consistent with all laws relating to the confidentiality or privacy of personal information or medical records, including provisions under the federal Health Insurance Portability and Accountability Act (HIPAA).
4. The Department, at its discretion, may take into account the affordability of dependent health insurance when determining whether employer-sponsored dependent health insurance coverage is available upon reemployment of a child's parent.
5. The Department shall adopt eligibility rules, including, but not limited to rules regarding annual renewals of eligibility for the Program; rules providing for re-enrollment, grace periods, notice requirements, and hearing procedures; and rules regarding what constitutes availability and affordability of private or employer-sponsored health insurance, with consideration of such factors as the percentage of income needed to purchase child or family health insurance, the availability of employer subsidies, and other relevant factors.
6. The Department shall develop procedures to allow application agents to assist in enrolling children in the Program or other children's health programs operated by the Department. At the Department's discretion, technical assistance payments may be made available for approved applications facilitated by an application agent.
7. The Department may provide grants to application agents and other community-based organizations to educate the public about the availability of the Program. The Department shall adopt rules regarding performance standards and outcomes measures expected of organizations that are awarded grants under this Section, including penalties for nonperformance of contract standards.

8. The Department shall request any necessary state plan amendments or waivers of federal requirements in order to allow receipt of federal funds for implementing any or all of the provisions of the Program. The failure of the responsible federal agency to approve a waiver or other state plan amendment shall not prevent the implementation of any provision of this Act.

(C) OPERATION OF THE PROGRAM

1. The Department shall purchase or provide healthcare benefits for eligible children that are identical to the benefits provided for children under the [SCHIP] program.
2. As an alternative to [SCHIP] program benefits, when cost-effective, the Department may offer families:
   a. Subsidies toward the cost of private health insurance, including employer-sponsored health insurance.
   b. Partial coverage to children who are enrolled in a high-deductible private health insurance plan.
   c. A limited package of benefits to children in families who have private or employer-sponsored health insurance that does not cover certain benefits such as dental or vision benefits.
3. The content, availability, and terms of eligibility of any alternatives to [SCHIP] program benefits shall be at the Department's discretion and the Department's determination of efficacy and cost-effectiveness.
4. Children enrolled in the Program are subject to the following cost-sharing requirements:
   a. The Department, by rule, shall set forth requirements concerning copayments and coinsurance for healthcare services and monthly premiums. This cost-sharing shall be on a sliding scale based on family income. The Department may periodically modify such cost-sharing. However, there shall be no copayment required for well-baby or well-child health care, including, but not limited to, age-appropriate immunizations as required under state or federal law.
   b. Children enrolled in a private health insurance plan are subject to the cost-sharing provisions stated in the private health insurance plan.

(D) CLAIMS FOR REIMBURSEMENT

1. To the extent of the amount of healthcare benefits provided for a child under the Program, the Department shall be subrogated to any right of recovery such recipient may have under the terms of any private or public healthcare coverage or casualty coverage, without the necessity of assignment of claim or other authorization to secure the right of recovery to the Department.
2. When benefits are provided or will be provided to a beneficiary under the Program because of an injury for which another person is liable, or for which a carrier is liable in accordance with the provisions of any policy of insurance, the Department shall have a right to recover from such person or carrier the reasonable value of benefits so provided. To enforce such right, the Department may institute and prosecute legal proceedings against the third person or carrier who may be liable for the injury in an appropriate court, either in the name of the Department or in the name of the injured person, his guardian, personal representative, estate or survivors.

(E) STUDY OF THE PROGRAM—The Department shall conduct a study that includes, but is not limited to, the following:

1. Establishing estimates, broken down by regions of the state, of the number of children with and without health insurance coverage; the number of children who are eligible for Medicaid or the state Children's Health Insurance Program, and, of that number, the number who are enrolled in Medicaid or the state Children's Health Insurance Program; and the number of children with access to dependent coverage through an employer, and, of that number, the number who are enrolled in dependent coverage through an employer.
2. Surveying those families whose children have access to employer-sponsored dependent coverage but who decline such coverage as to the reasons for declining coverage.
3. Ascertaining, for the population of children accessing employer-sponsored dependent coverage or who have access to such coverage, the comprehensiveness of dependent coverage available, the amount of cost-sharing currently paid by the employees, and the cost-sharing associated with such coverage.
4. Measuring the health outcomes or other benefits for children enrolled in the Covering All Kids Health Insurance Program and analyzing the effects on utilization of healthcare services for children after enrollment in the Program compared to the preceding period of uninsured status.
5. These studies shall be conducted in a manner that compares a time period preceding or at the initiation of the program with a later period.
6. The Department shall submit the preliminary results of the study to the governor and the legislature no later than July 1, 2009 and shall submit the final results to the governor and the legislature no later than July 1, 2011.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Consumer-Directed Care for Medicaid Recipients

- Long-term care accounts for the largest percentage of Medicaid costs.
- The U.S. Supreme Court's *Olmstead v. L.C.* decision requires states to offer community-based long-term care options.
- Consumer-directed care gives patients the choice to individualize their care.
- Consumer-directed care can increase patient satisfaction without increasing Medicaid costs.
- Family members or neighbors compensated under consumer-directed care programs can help states cope with healthcare workforce shortages.
- Seven states have established pilot programs to explore Medicaid coverage for consumer-directed care.

Long-term care accounts for the largest percentage of Medicaid costs.

Along with education, health care consumes the largest part of state budgets. Medicaid is often the single most expensive state program—and the state's largest health insurer. Nationally, 60 million low-income Americans are enrolled in Medicaid. Children and their parents represent nearly three-fourths—44 million—of all Medicaid enrollees, but they account for only about one-third of Medicaid spending. The other two-thirds are consumed by the six million elderly and ten million disabled people covered by Medicaid, who require ongoing and costly care.[1]

The U.S. Supreme Court's *Olmstead v. L.C.* decision requires states to offer community-based long-term care options.

In 1999, the U.S. Supreme Court ruled that people with disabilities have the right to receive services "in the most integrated setting possible."[2] Before *Olmstead*, many disabled and elderly people were forced to live in institutions to receive services. As a result of the case, states must face the challenge of how to provide cost-effective, community-based care.

Consumer-directed care gives patients the choice to individualize their care.

Medicaid enrollees who receive long-term care services at home often have little input into their own care—home health workers are chosen by agencies and care is limited to a standard set of services. Consumer-directed care generally allows patients to select their own caregiver and personalize the type of care they receive. Patients may choose to pay a relative or neighbor with whom they feel comfortable to perform services, instead of an unfamiliar person chosen by an agency. Other times, patients may elect to purchase items that make it easier to care for themselves rather than having someone come over to help them daily or weekly. For example, patients may buy a microwave rather than having someone else prepare meals, or a chair lift to eliminate the need for mobility assistance.

Consumer-directed care can increase patient satisfaction without increasing Medicaid costs.

In the states with the longest-running programs (AR, FL, NJ), consumers who used a consumer-directed model of care reported fewer unmet needs and greater satisfaction than consumers who used agency-directed services.[3] In Arkansas, 71 percent of 18- to 64-year-old participants in the consumer-directed care model said they were "very satisfied" with their overall care arrangements versus just 42 percent of their counterparts who received agency-directed services.[4] Long-term health care recipients are less likely to utilize more expensive services, such as nursing homes and emergency rooms, when they have adequate care provided to them in their homes. The reduction in use of these higher-cost services offsets the cost increases that result when previously uncompensated informal caregivers are paid for their services.[5] A program in which "money follows the person" can also cut costs by eliminating administrative overhead costs.

Family members or neighbors compensated under consumer-directed care programs can help states cope with healthcare workforce shortages.

Many states face healthcare workforce shortages. The recruitment and retention of front-line long-term care workers is a particular problem for nursing homes, assisted living facilities, and home care as rising demand outstrips the supply of such workers. The limited supply of agency workers means that many consumers do not receive all of the care they require and to which they are entitled.[6] A consumer-directed model addresses this problem by allowing family and friends to provide care—and, unconstrained by business hours, to do so in a more timely fashion. Studies have also shown that some relatives and friends paid as caregivers remain in the field.

Seven states have established pilot programs to explore Medicaid coverage for consumer-directed care.

States can apply for federal grants to create home care pilot programs that determine whether the Medicaid program saves money by providing intensive at-home care rather than paying for the cost of nursing home care. Seven states (MD, MO, NV, ND, TX, UT, VT) have already established such programs. In 2006, Connecticut passed legislation that authorizes the application to the federal government for money to launch its own program and details how the money would be used.[7] Other states have become demonstration states for the Cash and Counseling program operated by The Robert Wood Johnson Foundation. Arkansas, Florida and New Jersey were the original demonstration states, and the program's success has led to its expansion to 12 other states (AL, IL, IA, KY, MI, MN, NM, PA, RI, VT, WA, WV).

Endnotes

1 Center on Budget and Policy Priorities, "An Introduction to Medicaid," October 2, 2006.

2 *Olmstead v. L.C.*, 527 US 581 (1999).

3 Leslie Foster et al., "Effect of Consumer Direction on Adults' Personal Care and Well-Being in Arkansas, New Jersey, and Florida – Final Report," Mathematica Policy Research, Inc., May 2005.

4 Leslie Foster et al., "Improving the Quality of Medicaid Personal Assistance Through Consumer Direction," *Health Affairs* web exclusive, March 23, 2003.

5 Stacy Dale et al., "The Effects of Cash and Counseling on Personal Care Services and Medicaid Costs in Arkansas," *Health Affairs* web exclusive, November 19, 2003.

6 Ibid.

7 Daniel D'Ambrosio, "At-Home Care Measure Passes," *The Waterbury Connecticut Republican American*, May 4, 2006.

Consumer-Directed Care for Medicaid Recipients

Consumer-Directed Care Act

Summary: The Consumer-Directed Care Act creates a program which allows Medicaid recipients of in-home and community-based services to select the services they need and the providers they want.

SECTION 1. SHORT TITLE

This Act shall be called the "Consumer-Directed Care Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The state should encourage alternatives to institutional care, such as in-home and community-based care, for appropriate Medicaid recipients.
2. Giving Medicaid recipients of in-home and community-based services the opportunity to select the services they need and the providers they want, including family and friends, enhances their sense of dignity and autonomy.
3. Pilot projects have found that consumer-directed care is both popular among and beneficial to Medicaid recipients of in-home and community-based services.

(B) PURPOSE—This law is enacted to enhance the health and welfare of Medicaid recipients by giving them more choices in and greater control over the purchased long-term care services they receive.

SECTION 3. CONSUMER-DIRECTED CARE

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Budget allowance" means the amount of money made available each month to a consumer to purchase needed long-term care services, based on the results of a functional needs assessment.
2. "Consultant" means an individual who provides technical assistance to consumers in meeting their responsibilities under this section.
3. "Consumer" means a person who has chosen to participate in the program, has met the enrollment requirements, and has received an approved budget allowance.
4. "Department" means the Department of [Health].
5. "Fiscal intermediary" means an entity approved by the agency that helps the consumer manage the consumer's budget allowance, retains the funds, processes employment information, if any, and tax information, reviews records to ensure correctness, writes paychecks to providers, and delivers paychecks to the consumer for distribution to providers and caregivers.
6. "Provider" means a person licensed or otherwise permitted to render services eligible for reimbursement under this program for whom the consumer is not the employer of record, or a consumer-employed caregiver for whom the consumer is the employer of record.
7. "Representative" means an uncompensated individual designated by the consumer to assist in managing the consumer's budget allowance and needed services.

(B) ESTABLISHMENT AND OPERATION

1. The Department shall establish the consumer-directed care program to allow enrolled persons to choose the providers of services and to direct the delivery of services, to best meet their long-term care needs. The Department shall establish interagency cooperative agreements with and shall work with the Departments of [Elderly Affairs and Human Services] to implement and administer the program.
2. Persons who are enrolled in one of the Medicaid home- and community-based waiver programs and are able to direct their own care, or to designate an eligible representative, may choose to participate in the consumer-directed care program.
3. Consumers enrolled in the program shall be given a monthly budget allowance based on their assessed functional needs and the financial resources of the program. Consumers shall receive the budget allowance directly from an agency-approved fiscal intermediary. Each department shall develop purchasing guidelines, approved by the agency, to assist consumers in using the budget allowance to purchase needed, cost-effective services.
4. Consumers shall use the budget allowance only to pay for home- and community-based services that meet the consumer's long-term care needs and are a cost-efficient use of funds. Such services may include, but are not limited to, the following:
    a. Personal care.
    b. Homemaking and chores, including housework, meal preparation, shopping and transportation.
    c. Home modifications and assistive devices which may increase the consumer's independence or make it possible to avoid institutional placement.
    d. Assistance in taking self-administered medication.
    e. Day care and respite care services, including those provided by licensed nursing home facilities or by licensed adult day care facilities.
    f. Personal care and support services provided in an assisted living facility.
5. Consumers shall be allowed to choose the providers of services, as well as when and how the services are provided. Providers may include a consumer's neighbor, friend, spouse or relative.
6. In cases where a consumer is the employer of record, the consumer's roles and responsibilities include, but are not limited to, the following:
    a. Developing a job description.
    b. Selecting caregivers and submitting information for the background screening as required.
    c. Communicating needs, preferences, and expectations about services being purchased.
    d. Providing the fiscal intermediary with all information necessary for provider payments and tax requirements.
    e. Ending the employment of an unsatisfactory caregiver.
7. In cases where a consumer is not the employer of record, the consumer's roles and responsibilities include, but are not limited to, the following:
    a. Communicating needs, preferences, and expectations about services being purchased.
    b. Ending the services of an unsatisfactory provider.

   c. Providing the fiscal agent with all information necessary for provider payments and tax requirements.

8. The Department's roles and responsibilities include, but are not limited to, the following:
   a. Assessing each consumer's functional needs, helping with the service plan, and providing ongoing assistance with the service plan.
   b. Offering the services of consultants who shall provide training, technical assistance, and support to the consumer.
   c. Completing the background screening for providers.
   d. Approving fiscal intermediaries.
   e. Establishing the minimum qualifications for all caregivers and providers and being the final arbiter of the fitness of any individual to be a caregiver or provider.
9. The fiscal intermediary's roles and responsibilities include, but are not limited to, the following:
   a. Providing recordkeeping services.
   b. Retaining the consumer-directed care funds, processing employment and tax information, if any, reviewing records to ensure correctness, writing paychecks to providers, and delivering paychecks to the consumer for distribution.

(C) ADMINISTRATION

1. The Department shall promulgate rules needed to administer this program.
2. The Department shall take all necessary action to ensure state compliance with federal regulations.
3. The Department shall apply for any necessary federal plan amendments, waivers or waiver amendments needed to implement the program.

(D) REPORTS

1. The Department shall, on an ongoing basis, review and assess the implementation of the consumer-directed care program.
2. By January 15 of each year, the Department shall submit a written report to the legislature that includes a review of the program and contains recommendations for improvements to the program.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Health

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Fair Share Health Care

- Millions of Americans have lost employer-based health coverage.
- The drop in employer-based coverage disproportionately affects people of color.
- For the first time in recent memory, America's largest employers are failing to insure their workers.
- Wal-Mart is leading the race to the bottom—it provides health insurance for fewer than half of its employees.
- Companies that don't provide health insurance are, in effect, subsidized by companies that do.
- Companies that don't provide health insurance are, in effect, subsidized by state taxpayers.
- Companies that don't provide health insurance have an unfair competitive advantage over companies that do.
- States can require large companies to pay their fair share of health costs.
- Americans strongly support the Fair Share Health Care Act.

Millions of Americans have lost employer-based health coverage.

Between 2004 and 2005, the number of uninsured Americans grew by 1.3 million. Most of the increase is due to a decline in employer-sponsored coverage.[1] Only 60 percent of working-age Americans have employer-based coverage today, compared to 69 percent in 2000.[2] Today, 36 million working Americans do not have employer-based health coverage.[3]

The drop in employer-based coverage disproportionately affects people of color.

Only 51 percent of African Americans and 40 percent of Latinos had health insurance coverage through an employer in 2003. That same year, 71 percent of white employees had health coverage.[4]

For the first time in recent memory, America's largest employers are failing to insure their workers.

Historically, large American companies have provided health insurance to their employees. But in recent years, some large companies have cut health insurance benefits to reduce costs. Today, more than one quarter of employees in companies with 500 or more workers do not receive employer-based coverage.[5] Those employees' companies may offer insurance, but pay such a small share of the premium that the coverage is unaffordable.

Wal-Mart is leading the race to the bottom—it provides health insurance for fewer than half of its employees.

Of Wal-Mart's 1.33 million employees in the United States,[6] only 48 percent are covered by the company's health insurance plan.[7] Those employees whom Wal-Mart does cover receive relatively paltry benefits—the company spends only about $2,660 annually per covered employee for health benefits.[8] In contrast, Wal-Mart's leading competitor, Costco, covers 80 percent of its workers[9] and spends $5,735 per worker for health benefits.[10] Although Wal-Mart announced a lower-premium health insurance option in late 2005, high deductibles, copays, and an overall benefit cap make the plan much less affordable than the insurance offered by competitor companies.

Companies that don't provide health insurance are, in effect, subsidized by companies that do.

Responsible companies that provide health benefits pay $150 billion to insure their own employees, but also pay $31 billion to insure other companies' workers through dependent coverage.[11] Their actual costs are even higher because insurance premiums are inflated to compensate hospitals for treatment of the uninsured.

Companies that don't provide health insurance are, in effect, subsidized by state taxpayers.

A few large companies pay such low wages that employees qualify for state public assistance programs. Public programs—mostly Medicaid and SCHIP—pay a total of $8 billion annually to cover workers and their families.[12] According to the company's own internal study, about 65,000 Wal-Mart employees are covered by Medicaid and 27 percent of the children of Wal-Mart employees are enrolled in Medicaid or SCHIP.[13]

Companies that don't provide health insurance have an unfair competitive advantage over companies that do.

Businesses with and without employee health insurance coverage compete against each other for customers and contracts. The companies that don't pay a fair share of health costs have a competitive advantage—and responsible companies are penalized for being good corporate citizens.

States can require large companies to pay their fair share of health costs.

The Fair Share Health Care Act—enacted by the Maryland legislature in 2006—requires companies with 10,000 or more employees to spend at least eight percent of payroll for health care or pay the difference into a fund that expands Medicaid eligibility. The Act recaptures healthcare costs shifted to the state, and it begins to level the playing field between businesses with and without employee health coverage. Although the Maryland law was struck down in the case of *Retail Industry Leaders Association (RILA) v. Fielder*, the court rejected plaintiff's argument that the Fair Share concept violates the U.S. Constitution's equal protection clause. Instead, the court ruled that the statute's language conflicts with the federal Employee Retirement Income Security Act (ERISA).[14] Maryland legislative leaders have vowed to reenact the law in a manner that it is not preempted by ERISA.

Americans strongly support the Fair Share Health Care Act.

A November 2006 Lake Research Partners poll found that American voters support Fair Share Health Care by a margin of three to one.[15]

This policy summary relies in large part on information from the AFL-CIO and the Maryland Citizens' Health Initiative.

Endnotes

1 John Holahan and Allison Cook, "Why Did the Number of Uninsured Continue to Increase in 2006?" Kaiser Commission on Medicaid and the Uninsured, October 2006.

2 Kaiser Family Foundation/HRET, "Employer Health Benefits: 2005 Summary of Findings," September 14, 2005.

3 Sara Collins, Karen Davis and Alice Ho, "A Shared Responsibility: U.S. Employers and the Provision of Health Insurance to Employees," *Inquiry*, Spring 2005.

4 Bradley Shrunk and James Reschovsky, "Trends in U.S. Health Insurance Coverage, 2001-2003," The Center for Health Systems Change, August 2004.

5 "A Shared Responsibility: U.S. Employers and the Provision of Health Insurance to Employees."

6 Steven Greenhouse and Michael Barbaro, "Wal-Mart Memo Suggests Ways to Cut Employee Benefit Costs," *New York Times*, October 26, 2005.

7 Susan Chambers, Wal-Mart Executive Vice President for Benefits, "Supplemental Benefits Documentation: Board of Directors Retreat FY06," Wal-Mart Stores, Inc. (internal document released to the *New York Times*), October 2005.

8 "Wal-Mart Memo Suggests Ways to Cut Employee Benefit Costs."

9 Michael Barbaro, "Wal-Mart to Expand Health Plan for Workers," *New York Times*, October 24, 2005.

10 Annette Bernhardt, Anmol Chaddha and Siobhan McGrath, "What Do We Know About Wal-Mart?," Brennan Center for Justice, August 2005.

11 "A Shared Responsibility: U.S. Employers and the Provision of Health Insurance to Employees."

12 Ibid.

13 "Supplemental Benefits Documentation: Board of Directors Retreat FY06."

14 *Retail Industry Leaders Association v. Fielder*, 435 F.Supp.2d 481 (D.Md. 2006).

15 Lake Research Partners poll, conducted for Center for Policy Alternatives, November 2006.

Fair Share Health Care

Fair Share Health Care Act

Summary: The Fair Share Health Care Act requires companies with [10,000] or more employees to spend at least [ten] percent of payroll on health care or to pay the difference to a state Medicaid expansion fund.

SECTION 1. SHORT TITLE

This Act shall be called the "Fair Share Health Care Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Historically, large American companies have provided health insurance to their employees. But in recent years, some large companies have cut health insurance benefits to reduce costs.
2. Companies that don't provide health insurance are, in effect, subsidized by companies that do. Nationwide, responsible companies that cover health benefits not only pay a total of $150 billion annually to insure their own employees, but also pay $31 billion to insure other companies' workers through dependent coverage.
3. Companies that don't provide health insurance are, in effect, subsidized by state taxpayers. Nationwide, states pay a total of $8 billion annually to provide public assistance health insurance to the employees of companies that pay poverty-level wages and their families.
4. Companies that don't provide health insurance have an unfair competitive advantage over companies that do.

(B) PURPOSE—This law is enacted to protect the health of workers and their families, to end an unfair drain on state health resources, and to create a more competitive business environment by requiring large companies to pay their fair share of their employees' health care costs.

SECTION 3. FAIR SHARE HEALTH CARE

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Employee" means all individuals employed full time or part time directly by an employer.
2. "Employer" has the same meaning as in [cite state employment law] except that "employer" does not include the federal or state governments, or any political subdivision of a state.
3. "Healthcare costs" means the amount paid by an employer to provide health care to employees in the state to the extent those costs may be deductible by the employer under federal tax law. "Healthcare costs" includes expenditures for medical care, prescription drugs, vision care, medical savings accounts, and any other costs to provide health benefits to employees.
4. "Secretary" means the Secretary of the Department of [Labor].
5. "Wages" has the same meaning as in [cite state employment law].

(B) FAIR SHARE HEALTH CARE FUND

1. The Fair Share Health Care Fund shall be established to help finance Medicaid coverage for uninsured workers.
2. The Fair Share Health Care Fund is a non-lapsing fund held separately from the general fund.
3. The Fair Share Health Care Fund shall consist of any revenue received from payments made by employers under this section and any other monies accepted for the benefit of the fund.
4. The [Treasurer] shall invest the Fair Share Health Care Fund in the same manner as other state monies, and any investment earnings shall be retained to the credit of the fund.

(C) HEALTH CARE REPORTING REQUIREMENTS

1. On or before July 1 of each year, every employer with more than [10,000] employees in the state shall report to the Secretary:
    a. The average number of employees in the state during the previous calendar year and the number of employees as of December 31;
    b. The amount spent by the employer on healthcare costs for employees in the state during the previous calendar year; and
    c. The percentage of wages that was spent by the employer on healthcare costs for employees in the state during the previous calendar year.
2. The information required shall:
    a. Be provided in a format approved by the Secretary;
    b. Be signed by the chief executive officer or an individual who performs a similar function; and
    c. Include an affidavit under penalty of perjury that the information was reviewed by the signing officer and that the information is complete, does not contain any untrue statement of a material fact, and does not omit any material fact.
3. When calculating the percentage of wages spent on healthcare costs for employees in the state, an employer may exempt:
    a. Wages paid to any employee in excess of $50,000, or in excess of the median household income in the state as published by the U.S. Census Bureau, whichever is greater; and
    b. Wages paid to an employee who is enrolled in or eligible for Medicare.

(D) PAYMENT TO THE FAIR SHARE HEALTH CARE FUND

1. An employer with more than [10,000] employees in the state that is not organized as a nonprofit organization and does not spend at least [ten percent—NOTE: use a percentage that approximates the average for large for-profit employers] of total wages paid to employees in the state for health care costs shall pay to the Fair Share Health Care Fund an amount equal to the difference between what the employer spends for health care costs and [ten percent] of total wages paid to employees in the state.

2. An employer with more than [10,000] employees in the state that is organized as a nonprofit organization and does not spend at least [eight percent—NOTE: use a percentage that approximates the average for large nonprofit employers] of total wages paid to employees in the state for healthcare costs shall pay to the Fair Share Health Care Fund an amount equal to the difference between what the employer spends for healthcare costs and [eight percent] of total wages paid to employees in the state.
3. An employer may not deduct any payment made under this section from the wages of an employee.
4. An employer shall make the payment required under this section to the Fair Share Health Care Fund on a periodic basis as determined by the Secretary.

(E) ENFORCEMENT

1. The Secretary shall promulgate such regulations as are necessary to implement and administer compliance.
2. Failure to file a report in accordance with this section shall result in a civil penalty of $1,000 for each day that the report is not timely filed.
3. Failure to make a payment required under this section shall result in a civil penalty of $500,000.
4. A person who knowingly violates or attempts to violate this section, or a person who knowingly advises another person to violate this section, shall be guilty of a misdemeanor punishable by up to one year in prison and a fine of up to $10,000.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Health Care Disclosure Act

Summary: The Health Care Disclosure Act requires the collection and publication of data identifying employers with at least 25 employees who sought government-funded healthcare benefits or uncompensated health care.

SECTION 1. SHORT TITLE

This Act shall be called the "Health Care Disclosure Act."

SECTION 2. HEALTH CARE DISCLOSURE

After section XXX, the following new section XXX shall be inserted:

(A) INFORMATION TO BE PROVIDED—Any person who applies for government-funded healthcare benefits, including but not limited to Medicaid and SCHIP, and any person who requests uncompensated care in a hospital or other healthcare facility, shall identify the employer or employers of the proposed beneficiary of the healthcare benefits. In the event the proposed public health program beneficiary is not employed, the applicant shall identify the employer or employers of any adult who is responsible for providing all or some of the proposed beneficiary's support.

(B) DISCLOSURE TO THE PUBLIC—On or before February 15 of each year, the [Department of Health] shall make public a report that identifies all employers with at least 25 employees who sought government-funded healthcare benefits or uncompensated care during the previous year. In determining whether an employer has 25 employees who sought government-funded healthcare benefits or uncompensated care, the [Department of Health] shall include all subsidiaries at all locations within the state. The report shall include each employer's name, subsidiaries and locations, and for each: the total number of employees and dependents identified, a breakdown between government-funded health benefits and uncompensated care; and the approximate costs to the state. The report shall not include the names of any individuals who seek government-funded health benefits or uncompensated care.

(C) ENFORCEMENT—The Secretary [of Health] shall promulgate such regulations as are necessary to implement and administer compliance.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Fire-Safe Cigarettes

- Cigarettes are the leading cause of fatal home fires in the United States.
- Fires caused by cigarettes disproportionately affect the elderly, poor and disabled.
- One-quarter of these victims did not cause the fires themselves.
- There is a much safer alternative.
- The New York Fire Safety Standards for Cigarettes have saved lives.
- States have acted on fire-safe cigarettes because the federal government has not.
- Six states have enacted laws mandating fire-safe cigarettes.
- Fire-safe cigarette legislation has not affected revenues from state tobacco taxes.

Cigarettes are the leading cause of fatal home fires in the United States.

Every year there are approximately 130,000 smoking-related fires which kill nearly 900 Americans. These fires also injure thousands more and cause billions of dollars in property damage. About one-fourth of all fire deaths can be traced to smoking materials.[1]

Fires caused by cigarettes disproportionately affect the elderly, poor and disabled.

Senior citizens are slower than others to identify smoke alarms and evacuate their homes, making them almost forty percent of smoking fire fatalities. For similar reasons, 30 percent of those who die from smoking-material fires have physical limitations or disabilities.[2] Furthermore, individuals living below the poverty line are 50 percent more likely than others to smoke, making them especially prone to harm.[3]

One-quarter of these victims did not cause the fires themselves.

Of the approximately 900 who die each year, more than 200 are innocent bystanders. Many victims are children or other nonsmokers put in the line of fire by parents, spouses and neighbors.[4]

There is a much safer alternative.

Cigarette-makers currently manufacture "fire-safe" or "fire-retardant" cigarettes for sale in New York and other states. Fire-safe cigarettes are designed to be much less likely to ignite furniture or mattresses when carelessly discarded. Such cigarettes have a number of very small and inexpensive improvements, most notably thin bands of less-porous paper at strategic junctures. These bands tend to extinguish the cigarette if it is left unpuffed. A 2005 study by the Harvard University School of Public Health showed that fire-safe cigarettes were 90 percent less likely than traditional cigarettes to burn their full lengths when left unattended.[5]

The New York Fire Safety Standards for Cigarettes have saved lives.

Authorities in New York worked with both manufacturers and consumer product safety experts over a period of years to design their standards for fire-safe cigarettes. The standards went into effect on June 28, 2004 and quickly proved their effectiveness. While deaths in New York from cigarette-related fires averaged 42 per year between 2000 and 2002, such deaths quickly declined to 28 in 2005.[6]

States have acted on fire-safe cigarettes because the federal government has not.

Although the technology to produce fire-safe cigarettes has been available for more than a decade, the tobacco industry has refused to utilize it. Fire-safe cigarette legislation has been introduced in every Congress since 1999, but tobacco industry lobbying has blocked its passage. The federal Consumer Product Safety Commission, which would have mandated fire-safe cigarettes years ago, is forbidden by law from regulating tobacco products.

Six states have enacted laws mandating fire-safe cigarettes.

New York enacted its law in 2000 and it took effect in 2004. California and Vermont passed their statutes in 2005, and Illinois, Massachusetts and New Hampshire enacted similar legislation in 2006. Over 25 percent of Americans live in states that mandate fire-safe cigarettes.

Fire-safe cigarette legislation has not affected revenues from state tobacco taxes.

The average monthly New York cigarette and tobacco products tax revenue from July 2004 through November 2004 was virtually unchanged. So too were tobacco sales.[7]

Endnotes

1 John Hall, "The Smoking-Material Fire Problem," Coalition for Fire Safe Cigarettes, 2006.

2 John Hall et. al, "Behavioral Mitigation of Smoking Fires Through Strategies Based on Statistical Analysis," United States Fire Administration, 2003.

3 Centers For Disease Control, "Tobacco Information and Prevention Source," December 2005.

4 Coalition for Fire Safe Cigarettes, "What is a fire-safe cigarette?" 2006.

5 Hillel Alpert et al., "The Effect of the New York State Cigarette Fire Safety Standard on Ignition Propensity. Smoke Toxicity and the Consumer Market," Harvard University School of Public Health, January 2005.

6 Michael Gormley, "First Year of 'Fire-Safe Cigarette Law Yields Fewer Deaths," Associated Press, September 2005.

7 "The Effect of the New York State Cigarette Fire Safety Standard on Ignition Propensity. Smoke Toxicity and the Consumer Market."

Fire-Safe Cigarettes

Fire-Safe Cigarettes Act

Summary: The Fire-Safe Cigarettes Act adopts the New York Fire Safety Standards for Cigarettes.

SECTION 1. SHORT TITLE

This Act shall be called the "Fire-Safe Cigarettes Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Cigarettes are the leading cause of fatal home fires in the United States.
2. New York was the first state to require that cigarettes be substantially less likely to ignite furniture or mattresses when carelessly discarded. The New York standards are widely recognized as successful and have been adopted in several other states.
3. By adopting the New York standards, the legislature intends that only reduced ignition propensity cigarettes be sold in our state, but the legislature recognizes that these cigarettes are not guaranteed to self-extinguish. The legislation is expected to reduce fires and related personal injury and property damage caused by cigarette smoking, but not to end such injury and damage.
4. By adopting standards already in effect in New York and other states, the legislature intends to minimize the administrative burdens of compliance on manufacturers.

(B) PURPOSE—This law is enacted to protect the health and safety of [State] residents by reducing the number and severity of accidental fires caused by cigarettes.

SECTION 3. FIRE SAFE CIGARETTES

(A) DEFINITIONS—In this section, the terms "cigarette," "manufacturer," "wholesale dealer," and "retailer" have the same meanings as in [cite tobacco tax statute].

(B) FIRE SAFE STANDARD

1. No cigarettes may be sold or offered for sale to any person in this state unless the cigarettes comply with the New York Fire Safety Standards for Cigarettes in effect on January 1, 2007.
2. Packages of cigarettes that comply with this provision shall be marked in accordance with the New York Fire Safety Standards for Cigarettes in effect on January 1, 2007. If these New York standards for marking packages of cigarettes change significantly, the [Secretary of Health] shall determine whether packages must be marked in accordance with the new standards or the pre-existing standards.

(C) ENFORCEMENT

1. The [Secretary of Health] shall adopt rules necessary to implement and administer this section.
2. Civil penalties may be assessed against a manufacturer, wholesale dealer, retailer, or any other person that knowingly sells cigarettes that violate this section. Such a civil penalty shall not exceed $10,000 for each sale.

3. In addition to any other remedy provided by law, the [Attorney General] may file an action for a violation of this section, including petitioning for injunctive relief, recovery of costs or damages suffered by the state as the result of a violation of this section, including enforcement costs relating to the specific violation and attorney's fees.
4. Any cigarettes that have been offered for sale, possessed for sale, or sold in violation of this section shall be deemed contraband and subject to seizure by the [Tobacco Tax Division], or by any peace officer of this state when directed to do so by the [Tobacco Tax Division]. All seized cigarettes shall be destroyed.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Freedom of Choice

- With two new justices on the U.S. Supreme Court, *Roe v. Wade* is in jeopardy.
- If *Roe* is overturned, abortion may be criminalized without any legislative action in as many as 19 states.
- Without access to safe, legal abortions, women will die.
- Without *Roe*, women and their doctors will be sent to prison.
- Without the right to choose, a woman would be forced to bear her rapist's child.
- If *Roe* is overturned, every woman who miscarries is at risk of becoming the target of a criminal investigation.
- Reproductive health decisions should be made by patients and their doctors, not by politicians.
- Americans overwhelmingly support the protections of *Roe v. Wade*.
- States can adopt the Freedom of Choice Act to protect women's rights regardless of what happens in the Supreme Court.

With two new justices on the U.S. Supreme Court, *Roe v. Wade* is in jeopardy.

The 1973 ruling that decriminalized abortion is now seriously threatened by conservative forces that have been steadily dismantling freedom of choice at the federal and state levels. In the 1992 *Casey* decision, the Rehnquist Court upheld a woman's right to choose by a slim one-vote majority.[1] Now that Justice Sandra Day O'Connor has retired, it is possible that *Roe* will be reversed and nearly certain that it will be drastically limited. If that happens, individual states will decide whether abortion is legal.

If *Roe* is overturned, abortion may be criminalized without any legislative action in as many as 19 states.

Thirteen states (AL, AZ, AR, CO, DE, LA, MA, MI, MS, NM, OK, VT, WI) have abortion bans on the books that could quickly take effect. Five states (AR, IL, KY, MD, ND) have legislative intent laws that restrict abortion to the extent permitted by the U.S. Constitution. Two states have "trigger statutes" that ban abortion if *Roe* is overturned.[2] It is unclear whether state courts will enforce trigger statutes. In any of these 19 states, women who seek safe abortions, and the doctors who provide them, may soon be treated as criminals—perhaps as murderers. In 2006, South Dakota became the third state since *Roe* to adopt an abortion ban with no exception except to prevent a woman's death—a law that was subsequently overturned by statewide referendum. Louisiana and Utah both enacted bans in 1991 that were struck down in court.

Without access to safe, legal abortions, women will die.

Maternal mortality dropped dramatically after *Roe* was decided in 1973. In the year after New York legalized abortion, maternal mortality decreased by 45 percent in New York City.[3] Before *Roe,* an estimated 5,000 women died every year from complications of illegal abortion.[4] Laws have never stopped abortions. Without access to safe, early abortion, women will again turn to back-alley abortions by unlicensed providers—and thousands will die.

Without *Roe*, women and their doctors will be sent to prison.

Women, their doctors, other healthcare workers, and anyone who helps a woman secure an abortion could be prosecuted and sentenced to long prison terms. For example, under Alabama law, those who "aid or abet" an abortion may be sentenced to jail for up to 12 months with "hard labor." Laws in Arizona and Oklahoma punish those who participate in abortion with two to five years in prison. Abortion is classified as a felony in Michigan, Mississippi and North Carolina.[5] Before *Roe*, police raided the offices of doctors and arrested the physicians, nurses and patients. Without *Roe*, this practice would resume.

Without the right to choose, a woman would be forced to bear her rapist's child.

Some existing and proposed anti-abortion laws do not include an exception for women who have been raped. Every year about 300,000 women are raped, and about 25,000 become pregnant as a result of a sexual assault.[6] Denying abortion to thousands of rape victims is inhumane and inexcusable.

If *Roe* is overturned, every woman who miscarries is at risk of becoming the target of a criminal investigation.

The results of a miscarriage and an abortion are the same. In order to enforce an abortion ban, police and prosecutors will require the involuntary participation of healthcare professionals. Doctors and nurses will be called before grand juries. Medical records will be subpoenaed or seized by police. Every woman who suffers a miscarriage could be investigated by police for the possibility of an abortion—and all of her doctors could be investigated for the possibility that they participated in an abortion.

Reproductive health decisions should be made by patients and their doctors, not by politicians.

Reproductive rights are human rights. For 33 years, reproductive rights have been guaranteed by the United States Constitution. If freedom in America means anything, it means that the most personal and private decisions in our lives—decisions about having and raising children—must be ours, not the government's.

Americans overwhelmingly support the protections of *Roe v. Wade.*

Only 11 percent of Americans believe abortion should be illegal in all cases.[7] Sixty-six percent of Americans support *Roe*.[8] Leading medical groups such as the American Medical Association, the American College of Obstetricians and Gynecologists, and the American Medical Women's Association strongly support women's access to safe abortion services.[9]

States can adopt the Freedom of Choice Act to protect women's rights regardless of what happens in the Supreme Court.

Ten state constitutions (AK, CA, FL, MA, MN, MT, NJ, NM, TN, WV) and statutes in six other states (CT, HI, ME, MD, NV, WA) affirmatively guarantee the right to an abortion. Hawaii enacted its law in 2006. The remaining 34 states should enact a Freedom of Choice Act before *Roe* is overturned to ensure that abortion remains safe and legal.

This policy summary relies in large part on information from NARAL Pro-Choice America.

Endnotes

1 *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

2 Center for Reproductive Rights, "What if *Roe* Fell? The State-by-State Consequences of Overturning *Roe v. Wade*," September 2004.

3 Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and the Law in the United States, 1867-1973*, 1997.

4 Phillip G. Stubblefield and David A. Grimes, "Septic Abortion," *New England Journal of Medicine*, 1994.

5 "What if *Roe* Fell?"

6 Felicia Stewart and James Trussell, "Prevention of Pregnancy Resulting from Rape: A Neglected Preventive Health Measure," *American Journal of Preventive Medicine*, November 2000.

7 Pew Research Center/Pew Forum on Religion & Public Life survey conducted by Schulman, Ronca & Bucuvalas, Inc., July 6-19, 2006.

8 CNN/*USA Today*/Gallup poll, January 20-22, 2006.

9 NARAL Pro-Choice America, "Leading Medical Groups Oppose Obstacles to Abortion," July 10, 2002.

Freedom of Choice

Freedom of Choice Act

Summary: The Freedom of Choice Act codifies the fundamental right to a safe and legal abortion which was guaranteed in Roe v. Wade.

SECTION 1. SHORT TITLE

This Act shall be called the "Freedom of Choice Act."

SECTION 2. FREEDOM OF CHOICE

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITION—In this section, "viable" means the stage when, in the best medical judgment of the attending physician, based on the particular facts of the case before the physician, there is a reasonable likelihood of the fetus's sustained survival outside the womb.

(B) FREEDOM OF CHOICE

1. The State and its subdivisions shall not interfere with the decision of a woman to terminate a pregnancy:
   a. Before the fetus is viable; or
   b. At any time during the woman's pregnancy, if the termination procedure is necessary to protect the life or health of the woman, or if the fetus is affected by genetic defect or serious deformity or abnormality.
2. The Secretary [of Health] shall adopt regulations that implement and enforce this section, including regulations that:
   a. Are both necessary and the least intrusive method to protect the life or health of the woman; and
   b. Are consistent with established medical practice.
3. A physician is not liable for civil damages or subject to a criminal penalty for a decision to perform an abortion under this section made in good faith and in the physician's best medical judgment in accordance with accepted standards of medical practice.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Health

Health Information Technology and Exchange

- Hundreds of thousands of Americans die each year because of medical errors.
- Our antiquated system for keeping health records leaves us unprepared for natural disasters or terrorist attacks.
- Health information technology (HIT) gives healthcare providers the tools to make the best possible decisions about care.
- HIT results in major cost savings.
- State wield great influence over the development of HIT.
- Despite widespread concerns about privacy, Americans support the use of HIT.
- Sixteen states have enacted laws to study and develop strategies for the implementation of HIT and HIE.

Hundreds of thousands of Americans die each year because of medical errors.

The landmark 1999 Institute of Medicine (IOM) report, *To Err is Human*, estimated that between 44,000 and 98,000 hospitalized people die each year as a result of medical errors. However, subsequent studies have found the number to be as high as 195,000.[1] Between 2002 and 2004, Medicare recipients experienced more than 1.24 million patient safety incidents—295,000 of which were fatal.[2] These figures make medical errors a leading cause of death in the United States. Because there are few measurement tools available, they may only be the tip of the iceberg. According to one survey, one in three people report that medical errors have affected themselves or their families.[3]

Our antiquated system for keeping health records leaves us unprepared for natural disasters or terrorist attacks.

The hurricanes of 2005 revealed potentially disastrous gaps in our healthcare system. As years of paper medical records disappeared under water, patient information that could be critical to decisions about care was lost forever. Even in cases where records had been digitized and stored on computers, the lack of interoperability between various healthcare providers' systems made this information nearly impossible to transmit. A small number of people could obtain their medication histories from pharmacies, but the vast majority had no access to this information at all—putting them at risk of not receiving needed medication.[4]

Health information technology (HIT) gives healthcare providers the tools to make the best possible decisions about care.

Web-based, interoperable systems allow doctors to quickly access lab, radiology and pharmacy records as well as a patient's medical history. This information helps doctors and nurses to consider factors that a patient may not have mentioned but that could affect the appropriate course of action. Health information technology can also help to identify and communicate best practices, which allows providers to avoid making medical errors.

HIT results in major cost savings.

Much of the high cost of health care is a result of the use of unneeded or inappropriate tests. In Massachusetts, 15 percent of the state's total healthcare expenditures went toward redundant testing, at a cost of $4.5 billion per year.[5] If most of the nation's hospitals and doctors' offices implemented health information technology, they could save $77 billion a year through greater efficiency alone. The health and safety benefits could double those savings.[6]

States wield great influence over the development of HIT.

A significant amount of activity has taken place on the local, state and federal levels on HIT and health information exchange (HIE), and even more has been done by private health systems and hospitals. In fact, many people already have electronic health records in one or more healthcare setting. It is inevitable that these systems will begin to communicate with each other, and the states must exercise their power as the largest employers and largest healthcare consumers to set the standards that shape the development of HIT and HIE. To create an effective system, states must ensure that patients—not vendors—remain the primary focus of all decisions. States must also work hard to inspire the trust of the public by guaranteeing the privacy of personal information. By passing legislation to remove barriers to data exchange, encourage cooperation between all stakeholders, and use bonds and tax incentives to foster innovation, state legislators can build a health information system that improves quality of care and lowers costs for everyone.

Despite widespread concerns about privacy, Americans support the use of HIT.

A 2005 survey found that 67 percent of healthcare consumers are concerned about the privacy of their personal information. Racial and ethnic minorities were even more likely to have reservations—72 percent reported privacy concerns. Fifty-two percent of the survey's respondents expressed fear that personal health information could be used by employers to limit job opportunities. Overall, however, more than half had a favorable view of HIT and expressed willingness to share their personal information if the benefits of doing so were clear.[7] Americans also support the use of HIT as a means of improving patient safety. Ninety-two percent of Americans say that the reporting of medical errors should be required. Seventy-two percent believe that the development of systems that help track and prevent errors would be "very effective."[8]

Sixteen states have enacted laws to study and develop strategies for the implementation of HIT and HIE.

Each state will have to work to develop a health information system that best suits the needs of its citizens. HIT and HIE systems will likely vary widely from state to state and region to region. Sixteen states (FL, ID, IL, IN, KY, LA, ME, MD, MI, MN, NY, OK, TX, VA, WA, WV) have passed legislation to create task forces to examine the health needs of state residents, explore systems that are currently in use in localities and private healthcare systems, listen to the concerns of employers in the state, and learn about the latest developments in the HIT/HIE field in order to make recommendations to the state.

Endnotes

1 HealthGrades, Inc., "Patient Safety in American Hospitals Report," July 2004.

2 HealthGrades, Inc., "Third Annual Patient Safety in American Hospitals Report," April 2006.

3 Henry J. Kaiser Family Foundation, "National Survey on Consumers' Experiences with Patient Safety and Quality Information," November 2004.

4 The Markle Foundation et al., "Lessons from Katrina Health," June 13, 2006.

5 The Markle Foundation and The Robert Wood Johnson Foundation, "Linking Health Care Information: Proposed Methods for Improving Care and Protecting Privacy," February 2005.

6 Rand Corporation, "Health Information Technology: Could HIT Lower Costs and Improve Quality?" 2005.

7 California Healthcare Foundation, "National Consumer Health Privacy Survey 2005," November 2005.

8 "National Survey on Consumers' Experiences with Patient Safety and Quality Information."

Health Information Technology and Exchange

Electronic Health Records Task Force Act

Summary: The Electronic Health Records Task Force Act creates a task force to study and develop a strategy for the adoption of electronic health records that is consistent with emerging national standards and would promote interoperability of health information systems.

SECTION 1. SHORT TITLE

This Act shall be called the "Electronic Health Records Task Force Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Hundreds of thousands of Americans die as a result of preventable medical errors each year.
2. The use of health information technology has grown dramatically, but more progress is needed to promote interoperability and to guarantee privacy of personal medical records.
3. The state must set the standards for privacy, interoperability, efficiency and effectiveness of health information technology and exchange.

(B) PURPOSE—This law is enacted to promote the health and welfare of state residents by improving the quality of the health care they receive.

SECTION 3. ELECTRONIC HEALTH RECORDS TASK FORCE

(A) ESTABLISHMENT OF TASK FORCE

1. There is established a Task Force to Study Electronic Health Records.
2. The Task Force consists of the following members:
   a. One member of the Senate, appointed by the Senate President.
   b. One member of the House, appointed by the Speaker.
   c. The Dean from the University of [State] School of Medicine or the Dean's designee.
   d. The state Director of the Veterans' Administration Health Care System or the Director's designee.
   e. The Attorney General or the Attorney General's designee.
   f. One representative from the Department of [Health].
   g. One representative from a Federally Qualified Health Center.
   h. Two representatives from the state Hospital Association who represent hospitals in the state.
   i. One representative from the home health care industry.
   j. One representative from a medical laboratory.
   k. Two representatives from nursing homes or long-term care facilities in the state.

l. One representative from the information technology field as it relates to health care.

m. One representative from the health insurance industry.

n. One non-hospital-based licensed physician.

o. One non-hospital-based psychiatrist.

p. One licensed dentist.

q. One licensed nurse.

r. One licensed pharmacist.

s. Two members of the public representing consumers.

3. The governor shall appoint the members listed in section (2)(f) through (2)(s) with the advice of the Senate President and the House Speaker.
4. The governor shall appoint a Task Force chair.
5. The Department of [Health] shall provide staff for the Task Force.
6. A member of the Task Force may not receive compensation, but is entitled to reimbursement for expenses.

(B) DUTIES OF THE TASK FORCE

1. The Task Force shall study electronic health records and the recent and potential expansion of electronic health record utilization in the state, including:

   a. electronic transfer;

   b. electronic prescribing;

   c. computerized physician order entry;

   d. the cost of implementing each of these;

   e. the impact of the current and potential expansion on school health records;

   f. the impact of the current and potential expansion on patient safety; and

   g. the impact of any potential expansion on patient privacy.

2. The Task Force shall develop a strategy for the adoption of electronic health records that would be consistent with emerging national standards and promote interoperability of health information systems. The strategy should:

   a. Be informed by research into and identification of the best practices in electronic health records systems and health information technologies, including system design, implementation, operation and evaluation;

   b. Be designed to encourage greater adoption of electronic health record and health information technologies among the state's healthcare providers to reduce medical errors and enable patients to make better decisions about their own health care by promoting secure access to medical records online;

Health

c. Seek to promote standards and systems that are compatible with current adopters of electronic health record systems; and

d. Ensure that the privacy and security of health information is protected, as required by state and federal law.

3. Not later than January 1, 2009, the Task Force shall submit a report to the governor, legislature and the public that includes findings and conclusions, and recommendations for legislative and administrative actions.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Pharmacist Refusals

* A growing number of pharmacists refuse to fill birth control prescriptions.
* These pharmacists claim that birth control pills cause abortion—which is patently false.
* This new movement focuses on emergency contraception, but some pharmacists deny other forms of contraception as well.
* Ironically, by denying contraception, these pharmacists cause more abortions.
* Pharmacists are not qualified to overturn the medical judgment of physicians.
* Americans overwhelmingly oppose pharmacist refusals to fill birth control prescriptions.
* Some states have adopted laws that require pharmacists to fill birth control prescriptions.

A growing number of pharmacists refuse to fill birth control prescriptions.

The anti-abortion group Pharmacists for Life International encourages pharmacists to refuse to dispense emergency contraceptive pills, commonly known as the "morning-after pill" or "Plan B."[1] Until very recently, pharmacist refusals were rare. But during a six month period in 2004, pharmacists refused contraceptives to at least 180 women.[2] Examples of pharmacists refusing prescriptions for emergency contraception include:

* In May 2005, a Wisconsin mother of six was berated in a crowded waiting area by a Walgreens pharmacist who called her a murderer when she tried to fill her prescription for emergency contraception.[3]
* In April 2005, a woman at a Pennsylvania CVS was refused emergency contraceptive pills ordered by her gynecologist. First she was told that she could wait for the next pharmacist to come on duty, but was later told that the next pharmacist would also refuse to fill the prescription.[4]
* In March 2004, a rape victim in Texas was denied emergency contraceptive pills by an Eckerd pharmacy.[5]

These pharmacists claim that birth control pills cause abortion—which is patently false.

Emergency contraception is the same medicine as the one-per-day birth control pills that 82 percent of American women have taken at some point in their lives.[6] Emergency contraceptive pills "do not interfere with an established pregnancy."[7] An entirely different medicine known as RU-486 or Mifeprex does cause abortion.[8] The anti-abortion movement has built opposition to emergency contraception by deliberately confusing it with Mifeprex—but licensed pharmacists should certainly know the difference. When pharmacists refuse to dispense contraceptive pills, they stand against birth control—not abortion.

This new movement focuses on emergency contraception, but some pharmacists deny other forms of contraception as well.

The idea that pharmacists have the right to refuse prescriptions has emboldened some to block access to traditional contraceptives. For example:

* In April 2005, a Minnesota woman called a Snyders pharmacy to check on the status of a prescription order for a birth control patch. The pharmacist responded that he opposed birth control and would not fill the prescription.[9]
* In December 2004, a Massachusetts woman was told by a CVS pharmacist that he did not want to fill her prescription for traditional birth control pills.[10]
* In October 2004, a Walgreen pharmacist denied a Georgia woman her birth control prescription refill because, the pharmacist said, she did not believe in birth control.[11]

Ironically, by denying contraception, these pharmacists cause more abortions.

Emergency contraception pills work best when taken soon after unprotected sex, and are ineffective if not taken within a few days. Therefore, pharmacist refusals to fill prescriptions for emergency contraception inevitably cause unwanted pregnancies and unnecessary abortions.

Pharmacists are not qualified to overturn the medical judgment of physicians.

Whether a particular prescription is appropriate is a decision between a doctor and patient. States license pharmacists to fill legally-prescribed medicines, not to substitute their judgment for a doctor's. Pharmacists have a professional and ethical obligation to serve their clients. If an individual doesn't want to do the job of a pharmacist—to dispense legally-prescribed medicines—he or she should simply find another job.

Americans overwhelmingly oppose pharmacist refusals to fill birth control prescriptions.

A November 2004 poll conducted by CBS News and the *New York Times* found that eight out of ten Americans believe that pharmacists should not be permitted to refuse to dispense birth control pills. This opinion was consistent across all party affiliations—85 percent of Democrats and 70 percent of Republicans opposed pharmacist refusals.[12]

Some states have adopted laws that require pharmacists to fill birth control prescriptions.

In 2005, California enacted legislation that prohibits pharmacies from refusing to dispense contraceptives. Nevada enacted a version of the same legislation that only refers to refills. Illinois issued an administrative order requiring all pharmacies that stock at least one method of contraception to accept and fill prescriptions for contraceptives "without delay." Pharmacy boards in Massachusetts, North Carolina and Wisconsin have advised pharmacists to fill any valid prescription. Four states (AR, GA, MS, SD) have laws that specifically allow pharmacists to refuse to fill prescriptions.

This policy summary relies in large part on information from NARAL Pro-Choice America.

Endnotes

1 See www.pfli.org.

2 "Moralists at the Pharmacy," Editorial, *New York Times*, April 3, 2005.

3 "Pharmacist Refuses to Fill Prescriptions for Moral Reasons: Walgreens Allows Pharmacists to Not Dispense Drugs They Object To," *MilwaukeeChannel.com*, May 5, 2005.

4 Planned Parenthood Federation of America, "Refusal Laws by State," 2005.

5 "Contraception: Pharmacist's Refusal to Fill Emergency Contraception Script Raises Questions," *Women's Health Weekly*, March 18, 2004.

6 Centers for Disease Control and Prevention, "Use of Contraception and Use of Family Planning Services in the United States: 1982-2002—A Fact Sheet for Advance Data No. 350," 2004.

7 Association of Reproductive Health Professionals, "What you need to know: The Facts about Emergency Contraception," 2005; American College of Obstetricians & Gynecologists, "Statement on Contraceptive Methods," 1998.

8 Association of Reproductive Health Professionals, "What you need to know: Mifepristone Safety Overview," 2005.

9 Rene Sanchez, "New Arena for Birth-Control Battle," *Star Tribune* (MN), May 3, 2005.

10 Amy Grzybinski, "University Drive Pharmacist Denies a Student Birth Control," *Massachusetts Daily Collegian*, December 13, 2004.

11 "Pharmacists' Ability to Reject Prescriptions on Personal Grounds Violates Consumers' Rights," Editorial, *Atlanta Journal-Constitution*, October 14, 2004.

12 CBS News/*New York Times* poll, November 24, 2004.

Pharmacist Refusals

Responsible Pharmacy Act

Summary: The Responsible Pharmacy Act guarantees all residents access to legally-prescribed medicines.

SECTION 1. SHORT TITLE

This Act shall be called the "Responsible Pharmacy Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Some pharmacists refuse to dispense legally-prescribed contraceptives.
2. The refusal to dispense contraceptives is contrary to the professional and ethical obligations of pharmacists.
3. The refusal of pharmacists to fill prescriptions for contraceptives causes unwanted pregnancies and unnecessary abortions.

(B) PURPOSE—This law is enacted to clarify the responsibilities of state-licensed pharmacists, safeguard the doctor-patient relationship, and protect the health of women.

SECTION 3. PHARMACY DUTY TO DISPENSE CONTRACEPTIVES

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Contraceptive" means all drugs or devices that prevent pregnancy which are approved by the U.S. Food and Drug Administration.
2. "Pharmacy" means a business licensed under [cite state law].
3. "Pharmacist" means a person licensed under [cite state law].

(B) DUTY TO DISPENSE CONTRACEPTIVES

1. Upon receipt of a lawful prescription for a contraceptive, a pharmacy must dispense the contraceptive, or a suitable alternative permitted by the prescriber, to the patient or the patient's agent without delay, consistent with the normal timeframe for filling any other prescription.
2. If the contraceptive or a suitable alternative is not in stock, the pharmacy must obtain the contraceptive under the pharmacy's standard procedures for ordering drugs not in stock. If directed by the patient, the prescription must be transferred to a local pharmacy of the patient's choice under the pharmacy's standard procedures for transferring prescriptions. If the patient so directs, an unfilled prescription for contraceptive drugs must be returned to the patient.
3. A pharmacist may refuse to dispense a prescription only if:
   a. The pharmacist has previously notified the pharmacy in writing of the drug or class of drugs to which he or she objects; and
   b. Another pharmacist in the same pharmacy dispenses the prescription without delay.

4. Nothing in this subsection shall interfere with a pharmacist's screening for potential drug therapy problems due to therapeutic duplication, drug disease contraindications, drug interactions, drug-food interactions, incorrect drug dosage or duration of drug treatment, drug allergies, or clinical abuse or misuse, pursuant to [cite current state law].

(C) ENFORCEMENT

1. The [Secretary of Health] shall fine a pharmacy not less than $1,000 for a first-time violation of this section and not less than $10,000 for a second-time violation. A pharmacy's license shall be revoked for a third time violation of this section. The [Secretary of Health] shall promulgate such regulations as are necessary to implement this section.
2. The [Secretary of Health] shall suspend a pharmacist's license for a period of not less than 15 days for a first-time violation of this section. A pharmacist's license shall be revoked after any subsequent violation.
3. A person who knowingly violates or attempts to violate this section, or a person who knowingly advises another person to violate this section, shall be guilty of a misdemeanor punishable by up to one year in prison and a fine of up to $10,000.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Prescription Drug Marketing

- Prescription drug prices are skyrocketing.
- Drug manufacturers market directly to doctors—a practice called “detailing”—to encourage them to prescribe the most expensive medicines.
- Detailing by drug manufacturers has rapidly escalated.
- The influence of detailers puts patients at risk.
- Because of detailers, government programs, private employers, and individual patients pay too much for prescription drugs.
- Gifts to doctors give detailers undue influence.
- Prescriber reports give detailers undue influence.
- The drug industry’s voluntary code of ethics for marketing isn’t working.
- Vermont, Maine and New Hampshire have enacted laws that control drug marketing practices.

Prescription drug prices are skyrocketing.

Prescription drug prices increased an average of 8.3 percent per year from 1994 to 2005, more than three times faster than the rate of inflation.[1] Rising drug prices prevent patients from getting the medicines they need, drive up health insurance costs, and make government health programs unaffordable.

Drug manufacturers market directly to doctors—a practice called “detailing”—to encourage them to prescribe the most expensive medicines.

Drug manufacturers spent $22 billion on direct marketing to doctors in the United States during 2003.[2] That amounts to about $25,000 per physician per year.[3] This money is largely spent on visits to doctors by sales representatives, called “detailers.” Detailers promote the newest and most expensive brand name drugs. Studies have consistently proven that the practice of detailing causes doctors to prescribe the latest drugs—even when overwhelming medical evidence shows that less expensive, tried and true remedies would be significantly cheaper, equally effective, and in many cases, safer.[4]

Detailing by drug manufacturers has rapidly escalated.

Spending on marketing to doctors increased by 275 percent between 1996 and 2004.[5] The drug industry employed 87,892 detailers in 2001—a 110 percent increase from the 41,855 employed in 1996.[6] There is now at least one drug detailer for every five office-based physicians in America.

The influence of detailers puts patients at risk.

The more doctors rely on drug detailers for information about prescription medicines, the less likely they are to prescribe drugs in a manner consistent with patient needs, according to numerous medical studies.[7] For example, by the time Merck withdrew the anti-inflammatory drug Vioxx from the market, more than 100 million prescriptions had been dispensed in the United States—the vast majority written after evidence of cardiovascular risks was known. Internal company documents prove that Merck trained its detailers to mislead doctors about the dangers of Vioxx.[8]

Because of detailers, government programs, private employers, and individual patients pay too much for prescription drugs.

The job of drug detailers is to promote the newest and most expensive drugs, regardless of what is best for each patient. This drives up the cost of medicine for individuals, businesses, insurance programs, and state governments. For the 50 million Americans who do not have prescription drug insurance coverage, these prescriptions are virtually unaffordable.

Gifts to doctors give detailers undue influence.

Nearly all physicians accept gifts from drug detailers.[9] Those gifts, worth billions of dollars, run the gamut from free pens and drug samples to high-priced meals, trips and honoraria. Doctors concede that gifts are one of the main reasons they meet with drug detailers. As a result, the average doctor meets with detailers several times every month.[10] Many doctors see drug detailers in their offices every day.

Prescriber reports give detailers undue influence.

Unbeknownst to most doctors, drug detailers have access to prescriber reports that let them know—right down to the pill—if their sales pitches are successful. Prescriber reports are weekly lists of every prescription written by every physician, excluding patients' names.[11] Data mining companies like Dendrite International, Verispan and IMS Health buy this information from pharmacies, pharmacy benefits managers, and insurance companies. Dendrite, for example, purchases information on 150 million prescriptions every month and currently has a database of five billion prescriptions. This data is sold to pharmaceutical manufacturers, who distribute doctor-by-doctor prescriber reports to their detailers. Prescriber reports allow detailers to target doctors and adjust sales pitches until they find the one that works best.[12] This invasion of privacy provides no benefit to doctors or patients—it serves only to enrich drug companies and detailers.

The drug industry's voluntary code of ethics for marketing isn't working.

Lavish drug company gifts to doctors led the Pharmaceutical Research and Manufacturers of America (PhRMA) to adopt voluntary ethical guidelines in 1990. Those guidelines prohibited gifts worth over $100. In recent years, PhRMA has recognized the continuing problem of unethical marketing practices and issued a slightly revised voluntary ethical code in 2002, again with a $100 limit. But industry self-regulation has failed.

Vermont, Maine and New Hampshire have enacted laws that control drug marketing practices.

In 2002, Vermont enacted legislation that requires drug companies to file annual reports that disclose the value, nature and purpose of any gift, payment or subsidy worth over $25. The law applies to marketing activities to any physician, hospital, nursing home, pharmacist, or health plan administrator. Maine and the District of Columbia have adopted similar measures. In 2006, New Hampshire became the first state to block prescriber reports by prohibiting the sale of prescription data.

This policy summary relies in large part on information from the National Legislative Association on Prescription Drug Prices.

Endnotes

1 Kaiser Family Foundation, "Prescription Drug Trends," June 2006.

2 Kaiser Family Foundation, "Trends and Indicators in the Changing Health Care Marketplace," 2005.

3 There were 871,535 physicians in the U.S. in 2003 according to the American Medical Association, "Total Physicians By Race/Ethnicity—2003," January 2005.

4 Dana Katz, Arthur Caplan, and Jon Merz, "All Gifts Large and Small: Toward an Understanding of the Ethics of Pharmaceutical Industry Gift-Giving," *American Journal of Bioethics*, Summer 2003; Ashley Wazana, "Physicians and the Pharmaceutical Industry: Is a Gift Ever Just a Gift?" *Journal of the American Medical Association*, January 19, 2000.

5 "Trends and Indicators in the Changing Health Care Marketplace."

6 Tyler Chin, "Drug firms score by paying doctors for time," *American Medical News*, May 6, 2002.

7 "All Gifts Large and Small" and "Physicians and the Pharmaceutical Industry."

8 Rep. Henry Waxman, "The Marketing of Vioxx to Physicians," based on documents received by the U.S. House of Representatives' Committee on Government Reform, May 5, 2005.

9 "All Gifts Large and Small" and "Physicians and the Pharmaceutical Industry."

10 Ibid.

11 Shannon Brownlee and Jeanne Lenzer, "Spin Doctored: How drug companies keep tabs on physicians," *Slate*, May 31, 2005; Liz Kowalczyk, "Drug Companies' Secret Reports Outrage Doctors," *Boston Globe*, May 25, 2003.

12 For a sample "Physician Targeting Report," see Paul Kallukaran and Jerry Kagan, "Data Mining at IMS Health: How we turned a mountain of data into a few information-rich molehills," 1999.

Prescription Drug Marketing

Prescription Drug Ethical Marketing Act

Summary: The Prescription Drug Ethical Marketing Act requires drug manufacturers to disclose the value, nature and purpose of gifts to doctors.

SECTION 1. SHORT TITLE

This Act shall be called the "Prescription Drug Ethical Marketing Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Prescription drugs are the fastest growing component of health care spending in the United States.
2. Drug manufacturers' marketing to doctors, or "detailing," causes doctors to prescribe the most expensive medicines, even when less expensive drugs are as effective or safer.
3. Gifts from prescription drug detailers to doctors play a major role in persuading doctors to change which drugs they prescribe.

(B) PURPOSE—This law is enacted to lower prescription drug costs for individuals, businesses and the state—and to protect the health of residents—by deterring the practice of unethical gift-giving by drug manufacturers.

SECTION 3. PRESCRIPTION DRUG ETHICAL MARKETING

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—in this section:

1. "Pharmaceutical marketer" means a person who, while employed by or under contract to represent a manufacturer or labeler, engages in pharmaceutical detailing, promotional activities, or other marketing of prescription drugs in this state to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to prescribe or dispense prescription drugs.
2. "Secretary" means the Secretary of the Department of [Health], or the Secretary's designee.
3. "Manufacturer" means a manufacturer of prescription drugs as defined in 42 U.S.C. Section 1396r-8 (k)(5), including a subsidiary or affiliate of a manufacturer.
4. "Labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler to repackage for retail sale, and that has a labeler code from the Food and Drug Administration under 21 C.F.R. Section 207.20.

(B) DISCLOSURE OF MARKETING PRACTICES

1. On or before January 1 of each year, every manufacturer and labeler that sells prescription drugs in the state shall disclose to the Secretary the name and address of the individual responsible for the company's compliance with the provisions of this section.

2. On or before February 1 of each year, every manufacturer and labeler that sells prescription drugs in the state shall file a marketing disclosure report with the Secretary listing the value, nature and purpose of any gift, fee, payment, subsidy or other economic benefit provided in connection with detailing, promotion or other marketing activities by the company, directly or through its pharmaceutical marketers, to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person in [State] authorized to prescribe or dispense prescription drugs. Each gift recipient shall be clearly identified by full name and address. The marketing disclosure report shall cover the prior year and be submitted on paper and in a standardized electronic database format prescribed by the Secretary.
3. On or before February 15 of each year, the Secretary shall make the marketing disclosure reports available to the public on paper and through the Internet.
4. The following shall be exempt from disclosure:
    a. Any gift, fee, payment, subsidy or other economic benefit worth less than 25 dollars.
    b. Free samples of prescription drugs to be distributed to patients.
    c. The payment of reasonable compensation and reimbursement of expenses in connection with a *bona fide* clinical trial conducted in connection with a research study designed to answer specific questions about vaccines, new therapies, or new uses of known treatments.
    d. Scholarship or other support for medical students, residents and fellows to attend a *bona fide* educational, scientific or policy-making conference of an established professional association, if the recipient of the scholarship or other support is selected by the association.

(C) ADMINISTRATION AND ENFORCEMENT

1. This section shall be enforced by the Secretary, who shall promulgate such regulations as needed to implement and administer compliance, including regulations describing *bona fide* clinical trials in section (B)4c and *bona fide* conferences in section (B)(4)(d).
2. If a manufacturer or labeler violates this section, the Secretary may bring an action in court for injunctive relief, costs, attorneys' fees, and a civil penalty of up to $10,000 per violation. Each unlawful failure to disclose shall constitute a separate violation.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007. Initial disclosure shall be made on or before February 1, 2008 for the six-month period July 1, 2007 to December 31, 2007.

PRESCRIPTION DRUG MARKETING

Prescription Privacy Act

Summary: The Prescription Privacy Act prohibits the sale of information listed on prescriptions that identifies specific prescribers or patients.

SECTION 1. SHORT TITLE

This Act shall be called the “Prescription Privacy Act.”

SECTION 2. PRESCRIPTION PRIVACY

After section XXX, the following new section XXX shall be inserted:

(A) PRESCRIPTION PRIVACY—Information that identifies a specific prescriber or patient on a prescription shall not be transferred by any pharmacy, pharmacy benefits manager, insurance provider, data transfer intermediary, or their agents.

(B) EXCEPTIONS—If no payment is received for the disclosure, information that identifies a specific prescriber or patient on a prescription may be released to:

1. The patient for whom the original prescription was issued.
2. A licensed prescriber who issued the prescription or who treats the patient.
3. An officer, inspector or investigator for a government health, licensing or law enforcement agency.
4. A person authorized by a court order to receive the information.
5. A pharmacy or medical researcher who has written authorization signed by the patient or the patient’s legal guardian to receive such information.
6. Another pharmacy, for the limited purpose of preventing individuals from misusing or falsifying prescription forms to illegally obtain excessive or unauthorized drugs.
7. The patient’s insurance provider or the provider’s agent, for the limited purpose of reimbursing the pharmacy.

(C) ENFORCEMENT

1. This section shall be enforced by the [Secretary of Health], who shall promulgate such regulations as are necessary to implement and administer compliance.
2. If any person violates this section, the [Secretary of Health] may bring an action in court for injunctive relief, costs, attorneys’ fees, and a civil penalty of up to $1,000 per violation. Each unlawful disclosure shall constitute a separate violation.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Health

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Smoke-Free Workplaces

- Exposure to secondhand smoke is common in workplaces.
- Exposure to secondhand smoke is extremely dangerous to nonsmokers.
- People of color are exposed to higher levels of secondhand smoke on the job.
- Smoke-free workplace laws help smokers quit.
- Smoke-free workplaces save employers money.
- Fears in the hospitality industry that smoking bans may damage business are unfounded.
- Ventilation is not a solution to secondhand smoke.
- Thirteen states have banned smoking in nearly all workplaces.

Exposure to secondhand smoke is common in workplaces.

Millions of Americans are exposed to secondhand smoke (also called involuntary smoking, environmental tobacco smoke and passive smoking) while at work. It is still commonplace for offices to be filled with tobacco smoke. Only 43 percent of workers are protected by 100 percent smoke-free workplace policies. Additionally, just 28 percent of restaurant waitstaff and 13 percent of bartenders are covered by such policies.[1]

Exposure to secondhand smoke is extremely dangerous to nonsmokers.

The scientific evidence on the danger of secondhand smoke is clear, convincing and overwhelming. Secondhand smoke is the third leading cause of preventable deaths in the United States.[2] Every year in this country, secondhand smoke kills about 65,000 nonsmokers from heart disease or lung cancer.[3] For every eight smokers killed, one nonsmoker is killed.

People of color are exposed to higher levels of secondhand smoke on the job.

People of color are disproportionately employed in jobs that have high rates of exposure to secondhand smoke, such as food service, laborer and factory jobs. African American workers are subjected to substantially more secondhand tobacco smoke than white workers.[4] Latinos and Native Americans have the highest rates of occupational exposure to secondhand smoke.[5]

Smoke-free workplace laws help smokers quit.

Smoke-free workplaces encourage smokers to try to quit, increase the number of successful attempts to quit, and reduce the number of cigarettes that continuing smokers consume.[6] A study published in the journal *Tobacco Control* found that "requiring all workplaces to be smoke-free would reduce smoking prevalence by ten percent. Workplace bans have their greatest impact on groups with the highest smoking rates."[7]

Smoke-free workplaces save employers money.

Employers bear direct and indirect costs as a result of employees' smoking, including absenteeism, decreased productivity, increased early retirement, higher healthcare costs, higher life insurance premiums, higher maintenance and cleaning costs, higher risk of fire damage, explosions and other accidents, and higher fire insurance premiums. A 1995 study estimated that when smokers quit, their employers save approximately $3,191 per smoker per year.[8] Cigarette smoking and secondhand smoke result in $92 billion in productivity losses each year.[9]

Fears in the hospitality industry that smoking bans may damage business are unfounded.

A 2003 report in *Tobacco Control* provides a comprehensive review of all available studies on the economic impact of smoke-free workplace laws, and concludes that "[a]ll of the best designed studies report no impact or a positive impact of smoke-free restaurant and bar laws on sales or employment. Policymakers can act to protect workers and patrons from the toxins in secondhand smoke confident in rejecting industry claims that there will be an adverse economic impact."[10] In fact, one year after a strong smoke-free workplace law took effect, an official New York City study found that, "... business receipts for restaurants and bars have increased, employment has risen, virtually all establishments are complying with the law, and the number of new liquor licenses issued has increased—all signs that New York City bars and restaurants are prospering."[11]

Ventilation is not a solution to secondhand smoke.

Even the newest ventilation technologies under ideal conditions cannot remove secondhand smoke and its toxic elements from the air. Studies show that the only way to eliminate the health risks associated with indoor smoking exposure is to ban smoking.[12]

Thirteen states have banned smoking in nearly all workplaces.

In 2006, Arkansas, Colorado, and Utah enacted smoke-free workplace laws. Also in 2006, voters in three states (AZ, NV, OH) passed ballot initiatives that ban smoking in all indoor public areas. Thirteen states (AZ, CA, CT, CO, DE, ME, MA, NV, NY, OH, RI, VT, WA) and the District of Columbia now ban smoking in nearly all indoor workplaces, including restaurants and bars. Nine states (AR, FL, GA, ID, LA, MT, ND, SD, UT) now ban workplace smoking in restaurants, but not in bars. Montana's and Utah's laws will cover bars in 2009. Hundreds of cities and counties have their own smoke-free workplace laws. In all, more than 100 million Americans live in jurisdictions that require smoke-free workplaces.

This policy brief relies in large part on information from Americans for Nonsmokers' Rights and the Campaign for Tobacco-Free Kids.

Endnotes

1 U.S. Department of Health and Human Services, "The Health Consequences of Involuntary Exposure to Tobacco Smoke," June 27, 2006.

2 National Cancer Institute, "Health Effects of Exposure to Environmental Tobacco Smoke: The Report of the California Environmental Protection Agency," *Smoking and Tobacco Control Monograph No. 10*, U.S. Department of Health and Human Services, National Institutes of Health, NIH Pub. No. 99-4645, 1999.

3 Ibid.

4 U.S. Census Bureau, "Current Population Survey," 2005.

5 Karen Gerlach et al., "Workplace Smoking Policies in the United States: Results from the California Tobacco Surveys, 1990-1999," University of California, San Diego, 2001.

6 "The Health Consequences of Involuntary Exposure to Tobacco Smoke."

7 Matthew Farrelly et al., "The impact of workplace smoking bans: results from a national survey," *Tobacco Control*, 1999.

8 (The figure of $3,191 is expressed in 2005 U.S. dollars adjusted for inflation from the original 1995 estimate of $2,565.) Canadian Conference Board, "Smoking and the bottom line: costs of smoking in the workplace," 1997.

9 Americans for Nonsmokers' Rights, "Business Costs in Smoke-filled Environments," October 2005.

10 Michelle Scollo et al., "Review of the quality of studies on the economic effects of smoke-free policies on the hospitality industry," *Tobacco Control*, 2003.

11 New York City Department of Finance, Department of Health and Mental Hygiene, Department of Small Business Services, and Economic Development Corporation, "The State of Smoke-Free New York City: A One-Year Review," March 2004.

12 American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., "Environmental Tobacco Smoke," June 2005.

Smoke-Free Workplaces

Smoke-Free Workplaces Act

Summary: The Smoke-Free Workplaces Act bans smoking in places of employment.

SECTION 1. SHORT TITLE

This Act shall be called the "Smoke-Free Workplaces Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Secondhand smoke is the third leading cause of preventable deaths in the United States.
2. It is still commonplace for workplaces to be filled with tobacco smoke.
3. There is no safe level of exposure to secondhand smoke—ventilation cannot "clear the air" and protect workers from harmful exposure to tobacco smoke.
4. Smoke-free workplaces will improve public health.

(B) PURPOSE—This law is enacted to protect the public health and welfare by prohibiting smoking in places of employment.

SECTION 3. SMOKE-FREE WORKPLACES

(A) DEFINITIONS—In this section:

1. "Employee" means a person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, or independent contractor who performs a service in the employer's workplace for more than a *de minimis* amount of time.
2. "Employer" means an individual, person, partnership, association, corporation, trust, organization, educational institution, or other legal entity, whether public, quasi-public, private, or nonprofit which uses the services of one or more employees at one or more workplaces.
3. "Enclosed" means a space bounded by walls, with or without windows, continuous from floor to ceiling and accessible by one or more doors, including a space that is temporarily enclosed by removable walls or covers, while such walls or covers are in place.
4. "Public transportation conveyance" means a vehicle or vessel used in mass transportation of the public, including a train, passenger bus, school bus, taxi, passenger ferry, water shuttle, or an enclosed lift or tram.
5. "Residence" means a structure or an enclosed part of a structure that is used as a dwelling, including a private home, apartment, mobile home, vacation home, or the residential portions of a school.
6. "Retail tobacco store" means an establishment whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times.

7. “Smoking” or “smoke” means lighting or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be lit and inhaled.
8. “Workplace” means an area, structure or facility, or a portion thereof, at which one or more employees perform a service for compensation.

(B) PROHIBITING SMOKING IN THE WORKPLACE

1. Smoking shall be prohibited in all enclosed workplaces, including individual offices, common work areas, classrooms, meeting rooms, elevators, hallways, lounges, staircases, restrooms, retail stores, and in places where food or drink is served.
2. Smoking shall be prohibited in any public transportation conveyance and in any airport, train station, bus station, or transportation passenger terminal.
3. Smoking shall be prohibited in that portion of any building, vehicle, or vessel owned, leased or operated by the state or one of its political subdivisions.
4. A person or entity that owns, manages, operates or otherwise controls a place of employment shall make and enforce workplace rules to ensure compliance with this section.

(C) EXCEPTIONS—Notwithstanding subsection (B), smoking may be permitted in the following places and circumstances:

1. In a private residence, except during such time when the residence is used as part of a business, such as a childcare center or healthcare facility.
2. In a guest room in a hotel, motel, inn, bed and breakfast, or lodging home that is designed and normally used for sleeping and living purposes, and that is rented to a guest and designated as a smoking room.
3. In a retail tobacco store, provided that smoke from the retail tobacco store does not infiltrate into areas where smoking is prohibited.
4. By a theatrical performer upon a stage or in the course of a professional film production, if the smoking is part of a theatrical production, and if permission has been obtained from the appropriate local authority.
5. By a person or entity that conducts medical or scientific research on tobacco products, if the research is conducted in an enclosed space not open to the public, in a laboratory facility at an accredited college or university, or in a professional testing laboratory as defined by regulation of the Department of [Health].
6. During religious ceremonies in which smoking is part of the ritual.
7. By a tobacco farmer, leaf dealer, manufacturer, importer, exporter, or wholesale distributor of tobacco products, for the sole purpose of testing said tobacco for quality assurance.
8. In private and semiprivate rooms in licensed nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, provided that smoke from these rooms does not infiltrate into areas where smoking is prohibited.

(D) ENFORCEMENT

1. The Department of [Health] shall promulgate regulations to implement this section.
2. A person or entity that owns, manages, operates or otherwise controls a place of employment who fails to make and enforce workplace rules to ensure compliance with this section shall be guilty of a misdemeanor punishable by a fine of $500 for the first violation, $5,000 for a second violation, and $10,000 for a third and each subsequent violation.
3. If a person or entity that owns, manages, operates or otherwise controls a place of employment demonstrates egregious noncompliance with this section, all applicable state and local licensing boards will be directed to suspend or revoke that person's or entity's license(s) to operate.
4. A person who violates this section by smoking in a place where smoking is prohibited shall be subject to a civil penalty of $100 for each violation.
5. Any person may register a complaint with the Department of [Health] to initiate an investigation and enforcement action.
6. Any person or entity subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Health

Stem Cell Research

- ✱ Embryonic stem cells have tremendous potential to relieve human suffering.
- ✱ One hundred million Americans suffer from conditions that could be treated with embryonic stem cell therapy.
- ✱ Embryonic stem cells not used for research often go to waste.
- ✱ Scientists are already getting positive returns from stem cell research.
- ✱ Anti-choice policymakers have restricted federal embryonic stem cell research.
- ✱ Embryonic stem cell research has strong bipartisan support.
- ✱ States are promoting life-saving stem cell research.
- ✱ The Stem Cell Research Act is based on recent Maryland law.

Embryonic stem cells have tremendous potential to relieve human suffering.

Initial research indicates that embryonic stem cells hold enormous promise in the prevention, treatment or cure of many diseases.[1] Adult stem cells can develop into only a few types of cells and successfully treat a limited number of diseases, including blood disorders, leukemia, and lymphoma. However, because embryonic stem cells can develop into nearly any kind of cell, they have the potential to prevent, treat or cure a much wider variety of diseases. Also, embryonic stem cells are more easily grown than adult stem cells, providing a greater base for research and possible therapies.[2]

One hundred million Americans suffer from conditions that could be treated with embryonic stem cell therapy.[3]

Diabetes, heart disease, many forms of cancer, Alzheimer's disease, Parkinson's disease, Lou Gehrig's Disease, stroke, multiple sclerosis, spinal cord injuries, osteoarthritis, rheumatoid arthritis and glaucoma afflict millions of Americans and are believed to be among the diseases which embryonic stem cells could possibly treat.

Embryonic stem cells not used for research often go to waste.

Embryonic stem cells used for research come from in-vitro fertilization clinics with the informed consent of donors.[4] These cells are the byproducts of in-vitro fertilization and do not come from eggs fertilized in a woman's body. The embryos used are customarily four to five days old and consist of approximately 50 to 150 cells. There are currently about 400,000 unused frozen embryos in fertility clinics in the U.S.[5]

Scientists are already getting positive returns from stem cell research.

Privately-supported scientists have developed self-replicating, insulin producing cells from embryonic stem cells. If scientists can figure out how to get these cells to respond to blood sugar levels, they could become a treatment for diabetes. The National Institutes of Health (NIH) scientists have found they can stop the growth of specific skin cells in mice. If this process can be replicated in human skin cells, it could be used to treat cells damaged by burns or skin cancer. Also, privately-funded scientists have found stem cell therapies to improve the visual acuity of rats with the genetic eye disease AMD.[6]

Anti-choice policymakers have restricted federal embryonic stem cell research.

Anti-choice policymakers have stifled life-saving stem cell research because they claim that the extraction of stem cells from discarded embryos is akin to abortion. As a result, the Bush Administration has severely restricted funding for embryonic stem cell research. Embryos that could be used for research are now discarded as the byproduct of in-vitro fertilization. Yet stem cell research can be carried out in an ethical manner. The ethical issues that surround stem cell research are not unique. Existing medical ethics policies—such as human subject protections and cell line use in laboratories—can be adapted for use of stem cells.[7]

Embryonic stem cell research has strong bipartisan support.

Polls show that Americans strongly favor embryonic stem cell research. Three out of four Americans—including 71 percent of Republicans, 80 percent of Democrats and 69 percent of independent voters—support embryonic stem cell research.[8] When presented with a list of diseases that could be cured through stem cell therapy and informed that the embryos used for research would otherwise be discarded, voter support for embryonic stem cell research increases.[9] In the 2006 election, Missouri voters approved a constitutional amendment protecting embryonic stem cell research.

States are promoting life-saving stem cell research.

A number of states have devoted funds to stem cell research, including embryonic stem cell research: California ($3 billion), Connecticut ($100 million), Illinois ($10 million), Maryland ($15 million) and New Jersey ($380 million).

The Stem Cell Research Act is based on recent Maryland law.

Maryland's stem cell research law, enacted in 2006, was crafted in a bipartisan manner and supports research involving both embryonic and adult stem cells. The law:

- Establishes a Stem Cell Research Fund which accepts both government and private money.
- Gives decision-making authority to an independent commission.
- Uses an independent scientific peer review committee to recommend grant-worthy research projects.
- Mandates approval of all research projects by in institutional review board to ensure the protection of the rights and welfare of human subjects involved in such investigations.
- Bans the sale of stem cells and prohibits human cloning.

Endnotes

1 Office of Medical Development, Stanford University Medical Center, "Stem Cell Biology and Regenerative Medicine: Transforming the Way We Heal," 2006.

2 National Institutes of Health, "Stem Cell Basics," October 6, 2006.

3 Gareth Cook, "Senators Call to Ease Stem Cell Restrictions," *Boston Globe*, June 2, 2004.

4 "Stem Cell Basics."

5 Stem Cell Research Foundation, "What are the sources of Stem Cells?" 2006.

6 National Institutes of Health, "Highlights of Stem Cell Research," November 8, 2006.

7 American Association for the Advancement of Science, "Stem Cell Research and Applications," November 1999.

8 Ipsos-Reid poll, August 10-12, 2001.

9 Pew Forum on Religion and Public Life, "GOP the Religion-Friendly Party but Stem Cell Research May Help Democrats," August 24, 2004.

Stem Cell Research

Stem Cell Research Act

Summary: The Stem Cell Research Act creates a fund to support stem cell research, administered by an independent Stem Cell Research Commission.

SECTION 1. SHORT TITLE

This Act shall be called the "Stem Cell Research Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. An estimated 128,000,000 Americans suffer from the crippling physical, economic and psychological burdens of chronic, degenerative and acute diseases, including Alzheimer's disease, heart disease, diabetes, Parkinson's disease, macular degeneration, amytrophic lateral sclerosis (ALS), multiple sclerosis and cancer.
2. The economic costs of treatment and lost productivity of chronic, degenerative, and acute diseases in the United States amounts to hundreds of billions of dollars every year, and the extreme human loss and suffering associated with these conditions is immeasurable.
3. Stem cell research offers immense promise for the development of new medical therapies and a better understanding of these debilitating diseases and could lead to unprecedented treatments and potential cures for Alzheimer's disease, heart disease, diabetes, Parkinson's disease, cancer, and other diseases.
4. Stem cell research, including the use of embryonic stem cells for medical research, raises significant ethical and policy concerns that must be carefully considered.
5. Public policy on stem cell research must balance ethical and medical considerations and must be based on an understanding of the science associated with stem cell research.
6. Stem cell research policy must be carefully crafted to ensure that researchers have the tools necessary to fulfill the promise of stem cell research.

(B) PURPOSE—This law is enacted to ensure the responsible study of stem cells to improve the lives of [State] residents.

SECTION 3. STEM CELL RESEARCH COMMISSION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Adult stem cell" means a stem cell that is derived from human tissue that is obtained after birth.
2. "Department" means the Department of [Health].
3. "Human cloning" means the production of a precise genetic copy of nuclear human DNA or any other human molecule, cell, or tissue, in order to create a new human being or to allow development beyond the embryonic stage.

4. "Institutional review board" has the meaning stated in the federal regulations on the protection of human subjects.
6. "Stem cell" means a human cell that has the ability to divide indefinitely, give rise to many other types of specialized cells, and yield new stem cells with identical potential.

(B) ESTABLISHMENT OF STEM CELL RESEARCH FUND

1. There is established a [State] Stem Cell Research Fund.
2. The purpose of the fund is to promote state-funded stem cell research and cures through grants and loans to public and private entities in the state.
3. The fund is a special, non-lapsing fund under the jurisdiction of the [State Treasurer].
4. The proceeds of the fund shall be invested and reinvested in the same manner as other state funds, and any investment earnings shall be paid into the fund.
5. The fund consists of appropriations as provided in the state budget, and any other money from any other source accepted for the benefit of the fund.
6. The fund shall be administered by the [State] Stem Cell Research Commission.
7. Money in the fund may only be expended to:
    a. Award grants and loans for state-funded stem cell research, in accordance with the recommendations of the Commission;
    b. Award grants and loans for facilities, capital leases and capital equipment where state-funded stem cell research is conducted, in accordance with the recommendations of the Commission; and
    c. Pay the costs necessary to administer the fund.
8. The Commission shall establish procedures making the disbursement of a grant contingent on the approval of an institutional review board.

(C) ESTABLISHMENT OF STEM CELL RESEARCH COMMISSION

1. There is established a Stem Cell Research Commission within the Department, which is an independent commission.
2. The Secretary of the Department shall not have the power to disapprove or modify any decision or determination that the Commission makes under authority specifically delegated by law to the commission.
3. The Commission shall consist of the following members:
    a. The Attorney General or the Attorney General's designee.
    b. Three patient advocates, one appointed by the governor, one appointed by the President of the Senate, and one appointed by the Speaker of the House.
    c. Three individuals with experience in biotechnology, one appointed by the governor, one appointed by the President of the Senate, and one appointed by the Speaker of the House.
    d. Two individuals who work as scientists for the state university system and do not engage in stem cell research, appointed by the university system of [State].

   e. Two individuals who work as scientists for private universities and do not engage in stem cell research, appointed by the governor.
   f. Two bioethicists, one appointed by the university system of [State] and one appointed by the governor.
   g. Two individuals with expertise in the field of biomedical ethics as it relates to religion, appointed by the governor.
   h. The governor shall designate the Chair of the Commission.
4. The term of an appointed member is two years, with terms staggered so that half of the initial appointees shall serve an initial term of one year and are then eligible for reappointment. An appointed member may not serve more than three consecutive full terms.
5. A member of the Commission may not receive compensation as a member of the commission, but is entitled to reimbursement for expenses under the standard state travel regulations, as provided in the state budget.
6. The Commission shall meet at least twice a year.
7. The Commission may employ a staff, including contractual staff, in accordance with the state budget.
8. Each member of the Commission shall disclose to the [state commission on ethics] whether the member is employed by or has a financial interest in an entity that may apply to conduct state-funded stem cell research.

(D) DUTIES OF THE COMMISSION

1. The Commission shall contract with an independent scientific peer review committee composed of scientifically-recognized experts in the field of stem cell research. The peer review committee shall:
   a. Review, evaluate, rank and rate research proposals for state-funded stem cell research based on the procedures and guidelines established by the Commission, and in a manner that gives due consideration to the scientific, medical and ethical implications of the research.
   b. Make recommendations to the Commission, based on the rankings and ratings awarded to research proposals, for the award and disbursement of grants under the fund.
2. A member of the peer review committee is not eligible to receive a grant or loan for state-funded stem cell research from the fund. Members of the peer review committee shall be subject to conflict of interest standards that are at least as stringent as the standards on conflict of interest adopted by the National Institutes of Health.
3. The Commission shall:
   a. Develop criteria, standards and requirements for the review of grant and loan applications.
   b. Establish procedures and guidelines to be used for the peer review, evaluation, ranking and rating of research proposals for state-funded stem cell research.
   c. Ensure that the procedures and guidelines established under this subsection are based on the guidelines of the National Institutes of Health Center for Scientific Review.
   d. Establish criteria, standards and requirements for consideration of grant and loan applications based on the rankings and ratings of the committee.
   e. Establish standards for the oversight and use of awards.

   f. Develop guidelines on disclosure and recusal to be followed by members of the Commission when considering grant and loan applications.

4. A grant shall be contingent on the submission by a grantee to the Commission of approval from an institutional review board, and entrance into a memorandum of understanding between the grantee and the Commission that establishes the scope of the state's ownership or other financial interest in the commercialization and other benefits of the results, products, inventions and discoveries of state-funded stem cell research, and to the extent consistent with federal and state law, reflects the intellectual property policies of the institution.

(E) RESPONSIBILITY OF PRACTITIONERS

1. A licensed health care practitioner who treats individuals for infertility shall:
   a. Provide individuals with information sufficient to enable them to make an informed and voluntary choice regarding the disposition of any unused material; and
   b. Present to individuals the options of storing or discarding any unused material, donating any unused material for clinical purposes in the treatment of infertility, and donating any unused material for research purposes.
2. An individual who donates any unused material for research purposes under this section shall provide the health care practitioner with written consent for the donation.
3. Nothing in this subtitle shall be construed to prohibit the creation of stem cell lines to be used for therapeutic research purposes.

(F) PROHIBITIONS

1. A person who conducts state-funded stem cell research may not engage in any research that intentionally and directly leads to human cloning.
2. A person may not purchase, sell, transfer or obtain any material donated in accordance with this subtitle for valuable consideration.
3. A person may not give valuable consideration to another person to encourage the production of material donated in accordance with this subtitle for the sole purpose of medical research.
4. A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding three years, a fine not exceeding $50,000 or both.
5. A person may not conduct or attempt to conduct human cloning. A person who violates this paragraph is guilty of a felony and on conviction is subject to imprisonment not exceeding ten years or a fine not exceeding $200,000 or both.

(G) REPORT

1. On or before January 1 of each year, the commission shall report to the governor and legislature on the progress of state-funded stem cell research conducted in accordance with this subtitle.
2. The report shall identify each grantee that received funding from the fund, the amount of funding awarded to each grantee, and a description of the type of stem cell research performed by the grantee.

SECTION 4. EFFECTIVE DATE—This Act shall take effect on July 1, 2007.

HEALTH RESOURCES

All Kids Coverage

Families USA

Consumer-Directed Care for Medicaid Recipients

The Robert Wood Johnson Foundation

Fair Share Health Care

AFL-CIO

AFSCME

Maryland Citizen's Health Initiative

SEIU

UFCW

Wal-Mart Watch

Fire-Safe Cigarettes

Center for Tobacco-Free Kids

Coalition for Fire-Safe Cigarettes

Freedom of Choice

Center for Reproductive Rights

NARAL Pro-Choice America

Planned Parenthood Federation of America

Health Information Technology and Exchange

eHealth Initiative

The Markle Foundation

The Robert Wood Johnson Foundation

Pharmacist Refusals

NARAL Pro-Choice America

Planned Parenthood Federation of America

Prescription Drug Marketing

AARP

Alliance for Retired Americans

National Legislative Association on Prescription Drug Prices

USAction

Smoke-Free Workplaces

American Heart Association

American Lung Association

Americans for Nonsmokers' Rights

Campaign for Tobacco-Free Kids

Stem Cell Research

National Institutes of Health

Stem Cell Research Foundation

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Housing

Mobile Home Park Tenant Rights

- ✱ Millions of American families are at risk of unfair eviction because they are tenants in mobile home parks.
- ✱ Mobile homes are not particularly mobile.
- ✱ The immobility makes eviction from a mobile home park devastating to tenants.
- ✱ Mobile home park owners often sell their land to developers, forcing all tenants to leave.
- ✱ The elderly and poor are particularly vulnerable to eviction or closure.
- ✱ States have stepped in to provide legal rights to mobile home park tenants.
- ✱ The National Consumer Law Center and AARP have developed a model state statute covering a range of mobile home issues.

Millions of American families are at risk of unfair eviction because they are tenants in mobile home parks.

About 19 million Americans live in more than seven million mobile homes as primary residences. An additional million mobile homes are owned for seasonal or recreational use. In the 1990s, about one-sixth of all new homeowners bought mobile homes—they now comprise 7.6 percent of the housing stock in America.[1] About 32 percent of mobile homes are located in mobile home parks where customers own the homes but rent the land.[2] Renters in a mobile home park are placed in a precarious position. Like apartment renters, they may be subjected to unaffordable rent hikes or unreasonable landlord-imposed rules, or can even be evicted without cause. But unlike apartment renters, mobile home park tenants have their biggest investment—their homes—at stake.

Mobile homes are not particularly mobile.

Federal law refers to mobile homes as "manufactured housing units," in part because once affixed to a concrete slab foundation they are hardly mobile, and because housing advocates prefer to use that term. These homes are produced in factories in accordance with a set of construction standards administered by the federal Department of Housing and Urban Development. Some are "single-wide" and look like trailers, while others are multi-section units that are designed to look more like traditional houses with pitched roofs and covered porches. Although mobile homes are built on permanent chassis and attached to axles and wheels, they are rarely moved after they are placed on a foundation. Any mobile home can be damaged when it is moved off its original foundation, but older mobile homes are often destroyed by the process. In any case, moving a mobile home to another site can cost $5,000 to $10,000.[3]

The immobility makes eviction from a mobile home park devastating to tenants.

In most states, mobile home park tenants are "tenants at will" and can be thrown out for any reason. Because it can be tremendously difficult or impossible for tenants to relocate their homes, landlords wield extraordinary power over their renters. Tenants often have to tolerate rents, fees and living conditions that average apartment dwellers wouldn't abide—substantially increased costs, arbitrary rules, restrictions on visitors, and even kickback arrangements. A tenant whose home is too old to move is at the mercy of his or her landlord.

Mobile home park owners often sell their land to developers, forcing all tenants to leave.

Parks that opened decades ago on the outskirts of urban areas have now become valuable real estate. Speculators are snapping up the land for condominiums, shopping centers, and housing developments. Only six states (CT, FL, MA, MN, NJ, RI) give tenants any right of first refusal before a mobile home park is to converted to a different use. Five states (CA, NH, NV, OR, VT) require the park to give the tenants advance notice and to negotiate in good faith with them if they make a purchase offer. Even many of these laws have major loopholes.[4]

The elderly and poor are particularly vulnerable to eviction or closure.

The elderly and poor, often unable to afford traditional housing, comprise a disproportionate share of mobile home residents. The cost of a mobile home is about one-third less per square foot than a conventional home.[5] In 2001, the average price of a new conventional home was $164,217 not counting the land—the average mobile home cost $48,800.[6] That same year, the median household income of mobile home park tenants was only $25,000. About 43 percent of mobile homes that are used as primary residences are occupied by people who are at least 50 years old.[7]

States have stepped in to provide legal rights to mobile home park tenants.

Twenty-one states (AZ, CA, CO, CT, DE, ID, MD, MA, MN, NV, NH, NJ, NM, ND, SC, UT, VT, VA, WA, WV, WI) require a written lease between mobile home park landlords and tenants. Thirty-two states (AK, AZ, CA, CO, CT, DE, FL, ID, IL, ME, MD, MA, MI, MN, MT, NE, NV, NH, NJ, NM, NY, ND, OH, PA, RI, SC, UT, VT, VA, WA, WV, WI) prohibit evictions unless good cause is shown. But many of these laws could be substantially strengthened. And unfortunately, 40 percent of all the mobile homes in the United States are located in the 14 states (AL, AK, GA, HI, KY, LA, MS, MO, NC, OK, SD, TN, TX, WY) that do not offer these or any similar legal protections for mobile home park tenants.

The National Consumer Law Center and AARP have developed a model state statute covering a range of mobile home issues.[8]

Part of the model legislation addressing tenant rights is presented as the Manufactured Housing Community Tenant Protection Act, which:

* Prohibits evictions unless good cause is shown.
* Provides that evictions must be accomplished by court order.
* Creates a process for tenants to be notified if the mobile home park is to be sold or converted to another use.
* Creates a process whereby a tenants association has a right of first refusal to buy the mobile home park rather than see it sold or converted to another use.

This policy brief relies in large part on information from the National Consumer Law Center and AARP.

Endnotes

1 Kevin Krajick, "Home Sweet (Manufactured) Home," Ford Foundation Report, Spring 2003.

2 Carolyn Carter et al., "Manufactured Housing Community Tenants: Shifting the Balance of Power," National Consumer Law Center and AARP, 2004.

3 "Manufactured Housing Community Tenants."

4 David Buchholz, "'Mobile' Homes No More: Policy Innovations in Manufactured Housing," *Housing Facts and Findings*, Fannie Mae Foundation, Vol. 7, No. 4, 2005.

5 National Consumer Law Center, "Home on Wheels: Helping Mobile Home Owners Stay Put," 2003.

6 "Home Sweet (Manufactured) Home."

7 "Manufactured Housing Community Tenants."

8 Note that although AARP has a model bill, found in "Manufactured Housing Community Tenants," each state AARP chapter sets its own priorities.

Mobile Home Park Tenant Rights

Manufactured Housing Community Tenant Protection Act

Summary: The Manufactured Housing Community Tenant Protection Act protects tenants from unreasonable evictions in a variety of circumstances.

SECTION 1. SHORT TITLE

This Act shall be called the "Manufactured Housing Community Tenant Protection Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Tenants of mobile home parks—called manufactured housing communities herein—are at risk of unfair evictions.
2. Once a home is situated on a manufactured housing community site, the difficulty and cost of moving the home gives the community operator excessive power in establishing rent levels, fees, rules, and other terms of tenancy.
3. Because existing law is inadequate, evictions, sale of the manufactured home community, and changes in the land use of the manufactured housing community may result in serious economic harm to residents, including the loss of their homes.

(B) PURPOSE—This law is enacted to protect the rights of, and provide a minimum level of security to, tenants of manufactured housing communities.

SECTION 3. MANUFACTURED HOUSING COMMUNITY TENANT PROTECTION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Manufactured home" means a residential structure, transportable in one or more sections, which is eight feet or more in width and 32 feet or more in length, built on an integral chassis, and designed to be used as a dwelling when connected to the required utilities. "Manufactured home" does not include travel trailers, camping trailers, truck campers, or motor homes which are primarily designed as temporary living quarters for recreational camping or travel use and which either have their own motor power or are mounted on or drawn by another vehicle.
2. "Manufactured housing community" or "community" means a use of land in which four or more lots or spaces are offered for rent or lease for the placement of manufactured housing and in which the primary use of the community or the manufactured home section thereof is residential.
3. "Community operator" or "operator" means an owner or manager of a manufactured housing community, including manufactured housing community employees and any subsequent purchaser of a manufactured housing community.
4. "Resident" means the owner of a manufactured home in a manufactured home community that rents the use of land from a community operator.

5. "Resident association" means any organization of residents representing at least 51 percent of the residents of the manufactured housing community, which is organized for the purpose of resolving matters relating to living conditions in the manufactured housing community.

(B) RENEWAL OF LEASE

1. Six months prior to the end of a resident's rental term, a community operator shall offer the resident a renewal rental agreement with a term of at least two years that specifies a proposed rental amount and any fee or other lease changes.
2. If the resident does not accept the new terms, the community operator may initiate a binding appraisal process whereby an appraiser agreed to by the resident and operator shall determine the fair market value of the lot rent and other fees over the next two years. The amount determined by the appraiser, including any built-in increases, shall be binding for the next two-year period.

(C) GROUNDS FOR EVICTION

1. The community operator may terminate a rental agreement only for one or more of the following reasons:
    a. Nonpayment of rent.
    b. Violation of a community rule.
    c. Disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, endangers other residents or community personnel, or causes substantial damage to the community premises.
    d. The resident's conviction of a crime, commission of which threatens the health, safety, or welfare of the other residents or the community operator.
    e. The resident's refusal to enter into a renewal lease.
    f. Changes in the use of the land so that it will no longer be a manufactured housing community, if the requirements of subsections (E) and (F) are met.
2. Violation of a community rule or regulation shall only be grounds for eviction if all the following conditions are met: the rule has been properly promulgated; the rule is not unfair, unreasonable, or unconscionable; the resident had at least 60 days' notice of the rule before the violation took place; the rule violation is likely to continue or recur; and continuing violation would have a significant adverse impact on the community or its residents. A rule violation may not be determined likely to recur unless the community operator gave the resident written notice of the violation, specifying the persons involved and its date, approximate time, and nature, and the resident failed to correct the violation or, in the case of a periodic rather than continuous violation, the violation recurred with such a frequency as to indicate that it is likely to have a significant adverse impact on the community or its residents. Violation of a rule is not a ground for eviction if the resident shows that it was not enforced uniformly within the community.

(D) PROCEDURES FOR EVICTION

1. The community operator may evict a resident only by court process. The grounds for eviction must be alleged in detail in the complaint, including the date, time, persons involved, and nature of any rule violation or disorderly conduct, and the date, person involved, case number, court, and offense for any criminal conviction.

2. No community operator may file a complaint for eviction for nonpayment of rent until 45 days have elapsed from the date the resident receives notice that rent is delinquent, and only if the resident has not tendered that delinquent payment during that 45-day period.
3. In any eviction action for nonpayment of rent, the resident shall be entitled to raise, by defense or counterclaim, any claim against the community operator relating to or arising out of such tenancy for breach of warranty, breach of the rental agreement, or violation of any law. The amounts which the resident may claim hereunder shall include, but shall not be limited to, the difference between the agreed-upon rent and the fair value of the use and occupancy of the manufactured home lot, and any amounts reasonably spent by the resident to repair defects in the manufactured housing community. The court, after hearing the case, may require the resident claiming under this section to deposit with the clerk of the court the fair value of the use and occupation of the premises less the amount awarded the resident for any claim under this section, or such installments thereof from time to time as the court may direct. Such funds may be expended as the court may direct.
4. Any court order for eviction based on the resident's nonpayment of rent shall specify that the sheriff shall not execute the eviction for at least 30 days. If the order is based on nonpayment of rent, it shall specify that the resident can cure the eviction order by paying the full amount due up until the time the resident is actually evicted by the sheriff. If based on rule violations that are amendable to correction by the resident, the order shall specify conditions whereby the resident can cure the violation and remain in the tenancy.
5. Notwithstanding [Uniform Commercial Code Sec. 9-609], a secured party, in taking possession of a manufactured home, must proceed through judicial process.

(E) SALE OR LEASE OF COMMUNITY

1. If a community operator receives a bona fide offer to purchase or lease the manufactured housing community that the operator intends to consider or to which the operator intends to make a counter-offer, or if an operator offers the manufactured housing community for sale or lease (other than leases for individual lots to individual residents), the operator must send a letter, by registered or certified mail, to every resident, notifying them of the terms of the offer or intended offer (the "Sale Notice"). The Sale Notice must include the following:
   a. The offered purchase price or lease payment;
   b. The terms of any seller or lessor financing (including the amount, the interest rate, and the amortization rate of the financing);
   c. The terms of any assumable financing (including the amount, the interest rate, and the amortization rate of the financing);
   d. A legal description and a statement of the appraised or assessed value of property included in the sale or lease;
   e. Any proposed improvements or economic concessions to be made by the operator in connection with the sale or lease;
   f. A statement of the right of a resident association to purchase the community;
   g. A statement that neither the operator nor any purchaser or lessee of the community may terminate a rental agreement by reason of the sale or lease of the community for two years from the date of the Sale Notice.

2. Any resident association shall have the right to purchase or lease the community, provided that the association meets the essential provisions of any bona fide offer of which the residents are entitled to a Sale Notice. The association shall exercise its right by notifying the community operator of the association's interest in purchasing the community in writing by submitting a proposed purchase and sale agreement or lease agreement with terms substantially equivalent to those of the bona fide offer (the "Purchase Notice"). The association must deliver the Purchase Notice to the community operator within 90 days of receipt of the operator's Sale Notice. The association shall have 180 days in addition to the 90-day period in which to obtain any necessary financing or guarantees and to close on the purchase or lease. If no resident association exists at the time the operator gives its Sale Notice, the residents may form one for the purpose of considering whether to exercise the right of first refusal, provided that the association represents at least 51 percent of the households of the manufactured housing community.
3. The community operator may not enter into an agreement to sell or lease the community for 90 days following the Sale Notice, unless the agreement expressly provides that it is contingent upon the failure of the resident association to exercise its right of first refusal. If the community operator receives a Purchase Notice from a resident association within those 90 days, the operator may not enter into an agreement to sell or lease the community for an additional 180 days after the initial 90-day period expires unless the agreement expressly provides that it is contingent upon the failure of the resident association to complete its purchase or lease of the community.
4. Within 30 days of the community operator's receipt of a Purchase Notice, the community operator must provide the resident association with the following:
    a. A survey and legal description of the community, plus an itemized list of monthly operating expenses, utility consumption rates, taxes, insurance, and capital expenditures for each of the preceding three years;
    b. The most recent rent roll, a list of residents, a list of vacant units, and a statement of the community's vacancy rate for each of the preceding three years;
    c. Any available data relating to the past or present existence of hazardous waste either on the community property or in close proximity;
    d. Any available data relating to the water, sewer, and electrical systems of the community; and
    e. All income and operating expenses relating to the community for the three preceding calendar years. The community operator shall also provide any additional information that a prospective lender requires.
5. The resident association shall have a total of 270 days from the receipt of the Sale Notice to complete a transaction under the right of first refusal provided by this section. The length of any delays by the community operator in supplying information to be provided to the association as stated in this legislation, or any delay resulting from litigation involving the sale of and/or litigation affecting the marketability of the title of the manufactured housing community shall be added to the 270 days available to the association.
6. If the purchaser of a manufactured housing community decides to convert the community to another use within one year after the purchase of the community, the purchaser must offer the community for purchase by the resident association for a cash price equal to the original purchase price paid by the purchaser plus any documented expenses relating to the acquisition and improvement of the community property, together with any increase in value due to appreciation of the community. The availability of this right does not impact the community operator's obligation to comply with the provisions of section (F) regarding notice in advance of change of land use.

(F) CHANGED USE OF THE LAND

If a community operator intends to discontinue any substantial portion of the manufactured housing community as a manufactured housing community, a resident association shall have the right to purchase the community, in accordance with the procedure set forth in section (E) above, except that the purchase price shall be determined by a binding appraisal process whereby an appraiser agreed to by the resident association and community operator shall determine the fair market value of the land. For purposes of the right of first refusal, a termination notice shall serve the function of the Sale Notice.

(G) ENFORCEMENT

1. The [Attorney General] shall enforce this section, and shall promulgate such rules as are necessary. The [Attorney General] may seek temporary and permanent injunctions for any violation of this statute, civil penalties in the amount of $10,000 per violation, and restitution on behalf of all residents or resident associations injured by such violation. In any such successful action, the court shall award costs and attorney's fees. Where the community operator does not have the financial capacity to operate the manufactured housing community or where it is the most effective means of ensuring compliance with court orders, the court may order a receiver to operate the community.
2. A community operator that sells, leases, or transfers a community and fails to comply with the terms of this section shall be liable to the residents as a group in the amount of $50,000 or 50 percent of the gain realized by the community operator from the sale, whichever is greater, in addition to any other remedies available to residents.
3. Upon the request of a resident association, the [Department of Housing] shall assist the association in acquiring financing for the purchase of a manufactured housing community.

SECTION 4. SEVERABILITY

The provisions of the Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of the Act shall not be affected thereby.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Mortgage Rescue Fraud Protection

- ✱ The rate of mortgage foreclosures is skyrocketing.
- ✱ Foreclosure rates are likely to increase as the real estate bubble bursts.
- ✱ The growing foreclosure rate has led to a wave of equity stripping and mortgage rescue scams.
- ✱ Existing state laws are generally insufficient to protect consumers from mortgage rescue scams.
- ✱ States are enacting statutes to prevent mortgage rescue scams.
- ✱ The Mortgage Rescue Fraud Protection Act would protect homeowners from rescue scams.

The rate of mortgage foreclosures is skyrocketing.

The number of homes entering foreclosure increased by more than 50 percent from August 2005 to August 2006.[1] Foreclosures increased nearly 25 percent in 2005.[2] Each month, foreclosure proceedings begin on about one house in every 1,000 nationwide. The highest foreclosure rates were reported in CO, FL, GA, IL, IN, MI, NV, OH, TX and UT.

Foreclosure rates are likely to increase as the real estate bubble bursts.

Rising real estate prices have tempted new buyers into the market for residences, second homes and investment properties. Many of these purchases were financed with high-risk "exotic" mortgages, such as interest-only and no-down-payment loans, and loans with teaser interest rates that increase over time. These mortgages put borrowers at higher risk of foreclosure. "Option" loans permit homeowners to pay less than the monthly principal and interest, which increases overall debt—sometimes allowing debt to expand so much that it exceeds the value of the home. Nearly 40 percent of mortgage loans in the first six months of 2006 were exotic—26 percent were interest-only loans; an additional 13 percent were option loans. Prior to 2000, fewer than two percent of home loans were exotic.[3] Foreclosures could also increase as rising interest rates begin to affect homeowners with Adjustable Rate Mortgages (ARMs). In August 2006, the foreclosure market tracker foreclosures.com projected that "we're looking for defaults to continue to climb over the next 18 months."[4]

The growing foreclosure rate has led to a wave of equity stripping and mortgage rescue scams.

Scam artists target vulnerable, usually low-income homeowners who face foreclosure on their homes. Foreclosure notices are public information that can be obtained from newspapers, reporting services, or directly from courts and other local government agencies. Scam artists contact the homeowners and promise to save the home from foreclosure. Mortgage rescue scams generally fall into three categories, according to the National Consumer Law Center:

✱ **Phantom help—**The "rescuer" charges high fees either for a small number of phone calls and simple paperwork, or for the promise of active representation that never materializes. In either case, the homeowner receives no useful assistance and is left with little or no time to prevent the foreclosure.

✱ **Bailout designed to fail—**The "rescuer" contracts to buy the home, promising a rent-to-own deal so that the homeowner can buy the property back. Homeowners are sometimes told that they must surrender title so that someone with better credit can secure the proper financing. But the terms of these rent-to-own contracts are so onerous that the buyback becomes impossible and the former homeowner is ultimately evicted.

✱ **Bait-and-switch—**The "rescuer" gets the homeowner to surrender ownership under false pretenses. In this case, the homeowner does not realize that the papers he or she signed actually transferred ownership of the house. Many victims say they had made it clear that they had no intention of giving title of the house to anyone else.[5]

Existing state laws are generally insufficient to protect consumers from mortgage rescue scams.

Mortgage rescue scams can sometimes be addressed through fraud claims or unfair and deceptive practices statutes, but such cases can be hard to prove. Existing laws do not clearly prohibit these transactions, and also do not give the homeowner a clear right to rescind an agreement and recover the home. Because they are, by definition, short of funds, victims can rarely afford to hire private counsel. State consumer protection agencies may also feel constrained without a clear set of legal violations to pursue.

States are enacting statutes to prevent mortgage rescue scams.

California, Colorado, Illinois, Maryland, Minnesota, New York, and Rhode Island have laws governing foreclosure purchasers. With the exception of California's law, all were enacted in the last three years. All specify requirements for certain foreclosure purchase contracts and give the homeowner the right to recover the home, and several specify minimum purchase prices and/or maximum repurchase prices. Most statutes also regulate foreclosure consultants, capping fees and giving the right to cancel the contract. Florida recently enacted a statute governing foreclosure surplus purchasers. States and localities have also developed a variety of policies to try to prevent foreclosure.[6]

The Mortgage Rescue Fraud Protection Act would protect homeowners from rescue scams.[7]

The model legislation, based on legislation enacted in Maryland, would:

- Require persons initiating a foreclosure to notify homeowners that a state consumer protection office is available to help them.
- Guarantee that homeowners can rescind foreclosure consulting and reconveyance contracts.
- Limit what foreclosure consultants can do and how much they can charge.
- Limit the terms of any foreclosure reconveyance contract.
- Provide administrative, civil and criminal enforcement procedures.

This policy summary relies in large part on information from the National Consumer Law Center.

Endnotes

1 "National Foreclosures Increase 24 Percent in August According to RealtyTrac U.S. Foreclosure Market Report," *PR Newswire*, September 13, 2006.

2 Broderick Perkins, "Foreclosures Rise 24.5 Percent Nationwide," *Realty Times*, February 16, 2006.

3 Kirstin Downey, "Nontraditional Mortgages Don't Wane Under Warnings," *Washington Post*, October 24, 2006.

4 Alan Smith, "Foreclosures Sweeping the U.S.," Foreclosures.com, August 2006.

5 Steve Tripoli and Elizabeth Renuart, "Dreams Foreclosed: The Rampant Theft of Americans' Homes Through Equity-Stripping Foreclosure 'Rescue' Scams," National Consumer Law Center, June 2005.

6 J. Michael Collins, "Foreclosure Prevention: Preserving Affordable Homes and Vital Communities," *Housing Facts and Figures*, Fannie Mae Foundation, Vol. 8, No. 2, 2006.

7 The National Consumer Law Center is drafting its own model foreclosure rescue fraud legislation, expected to be done in early 2007, which will take into account experience in Maryland and other states that have adopted such laws.

Mortgage Rescue Fraud Protection

Mortgage Rescue Fraud Protection Act

Summary: The Mortgage Rescue Fraud Protection Act regulates foreclosure consulting and reconveyance contracts in order to protect homeowners from mortgage rescue scams.

SECTION 1. SHORT TITLE

This Act shall be called the "Mortgage Rescue Fraud Protection Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The increased use of non-traditional mortgages has led to an increase in mortgage foreclosures. This has created new opportunities for fraudulent schemes targeting vulnerable, usually low-income homeowners who face foreclosure.
2. Mortgage rescue scams most commonly involve foreclosure consultants who do very little for a fee or foreclosure reconveyance agreements which are designed to steal the equity that homeowners have built up in their properties.
3. Current state law is insufficient to protect homeowners from mortgage rescue scam artists.

(B) PURPOSE—This law is enacted to protect the property and security of homeowners who are subject to foreclosure proceedings.

SECTION 3. MORTGAGE RESCUE FRAUD PROTECTION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Homeowner" means the person holding record title to residential real property as of the date on which an action to foreclose the mortgage or deed of trust is filed.
2. "Foreclosure consultant" means a person who directly or indirectly makes any solicitation, representation, or offer to a homeowner facing foreclosure to perform, with or without compensation, or who performs, with or without compensation, any service that the person represents will:
   a. prevent, postpone or reverse the effect of a foreclosure sale;
   b. allow the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence; or
   c. allow the homeowner to have an option to repurchase the homeowner's residence.
3. "Foreclosure reconveyance" means a transaction involving:
   a. the transfer of title to real property by a homeowner during or incident to a proposed foreclosure proceeding, either by transfer of interest from the homeowner to another party or by creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain legal or equitable title to all or part of the property; and
   b. the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the homeowner by the acquirer or a person acting in participation with the acquirer that allows the

homeowner to possess the real property following the completion of the foreclosure proceeding, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, lease, trust, or other contractual arrangement.

4. "Formal settlement" means an in-person, face-to-face meeting with the homeowner to complete final documents incident to the sale or transfer of real property, or the creation of a mortgage or equitable interest in real property, conducted by a settlement agent who is not employed by or an affiliate of the foreclosure purchaser, during which the homeowner must be presented with a completed copy of the HUD-1 settlement form.

(B) NOTICE OF FORECLOSURE

1. In addition to any other required notice, the person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of the action to the record owner of the property to be sold, sent no later than two days after the action to foreclose is docketed, both by certified mail, postage prepaid, return receipt requested, and by first class mail.
2. The notice shall state that an action to foreclose the mortgage or deed of trust may be or has been docketed and that a foreclosure sale of the property will be held. The notice shall contain the following statement printed in at least 14 point boldface type:

   "NOTICE REQUIRED BY STATE LAW

   Mortgage foreclosure is a complex process. Some people may approach you about "saving" your home. You should be careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the [State Attorney General's office at 1-800-XXX-XXXX]."

(C) RESCISSION OF FORECLOSURE CONSULTING AND RECONVEYANCE CONTRACTS

1. In addition to any other right under law to cancel or rescind a contract, a homeowner has the right to rescind a foreclosure consulting contract at any time, and rescind a foreclosure reconveyance at any time before midnight of the tenth business day after any conveyance or transfer.
2. Rescission occurs when the homeowner gives written notice of rescission to the foreclosure consultant at the address specified in the contract, or through any facsimile or electronic mail address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.
3. Notice of rescission, if given by mail, is effective when deposited in the U.S. mail, properly addressed, with postage prepaid. Notice of rescission need not be in any form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the foreclosure consulting contract or foreclosure reconveyance.
4. As part of the rescission of a foreclosure consulting contract or foreclosure reconveyance, the homeowner shall repay, within 60 days from the date of rescission, any funds paid or advanced by the foreclosure consultant or anyone working with the foreclosure consultant under the terms of the foreclosure consulting contract or foreclosure reconveyance, together with interest calculated at the rate of eight percent per year.

(D) LIMITS ON FORECLOSURE CONSULTANTS—A foreclosure consultant shall not:

1. Demand or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

2. Demand or receive any fee, interest, or any other compensation for any reason that exceeds eight percent per year of the amount of any loan that the foreclosure consultant makes to the homeowner;
3. Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation;
4. Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;
5. Acquire any interest, directly or indirectly, in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted; or
6. Take any power of attorney from a homeowner for any purpose, except to inspect documents as provided by law.

(E) LIMITS ON FORECLOSURE RECONVEYANCE

1. A foreclosure purchaser may not enter into, or attempt to enter into, a foreclosure reconveyance with a homeowner unless:
   a. The foreclosure purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of a foreclosure conveyance, or, if the foreclosure conveyance provides for a lease with an option to repurchase the property, the homeowner has or will have a reasonable ability to make the lease payments and repurchase the property within the term of the option to repurchase; and
   b. The foreclosure purchaser and the homeowner complete a formal settlement before any transfer of an interest in the property is effected.
2. A foreclosure purchaser shall:
   a. Ensure that title to the property has been reconveyed to the homeowner in a timely manner if the terms of a foreclosure reconveyance agreement require a reconveyance; or
   b. Make payment to the homeowner within 90 days of any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least 82 percent of the net proceeds from any resale of the property should a property subject to a foreclosure reconveyance be sold within 18 months after entering into a foreclosure reconveyance agreement.
3. A foreclosure purchaser shall not:
   a. Enter into repurchase or lease terms as part of the foreclosure conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;
   b. Represent, directly or indirectly, that:
      (i) the foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the homeowner;
      (ii) the foreclosure purchaser is assisting the homeowner to “save the house” or use a substantially similar phrase; or
      (iii) the foreclosure purchaser is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will not complete a redemption of the property;
   c. Until the homeowner’s right to rescind or cancel the transaction has expired:
      (i) record any document, including an instrument of conveyance, signed by the homeowner; or

(ii) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party.

4. For purposes of this subsection, there is a rebuttable presumption that:
   a. A homeowner has a reasonable ability to pay for a subsequent reconveyance of the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60 percent of the homeowner's monthly gross income; and
   b. The foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liabilities, and income.
5. The foreclosure purchaser shall make a detailed accounting of the basis for the amount of a payment made to the homeowner of a property resold within 18 months after entering into a foreclosure reconveyance agreement on a form prescribed by the [Attorney General].

(F) ENFORCEMENT

1. The [Attorney General] may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this subtitle from engaging or continuing to engage in the violation. The court may enter any order or judgment necessary to:
   a. Prevent the use by a person of any prohibited practice;
   b. Restore to a person any money or real or personal property acquired from the person by means of any prohibited practice; or
   c. Appoint a receiver in case of willful violation of this title.
2. In any action brought under this section, the [Attorney General] is entitled to recover the costs of the action.
3. In addition to any action by the [Attorney General] under this section and any other action authorized by law, a homeowner may bring an action for damages incurred as the result of a practice prohibited by this subtitle. A homeowner who brings an action under this section and who is awarded damages may also seek, and the court may award, reasonable attorney's fees. If the court finds that the defendant willfully or knowingly violated this section, the court may award damages equal to three times the amount of actual damages.
4. A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding three years or a fine not exceeding $10,000 or both.
5. The [Attorney General] shall maintain a list of nonprofit organizations that offer counseling or advice to homeowners in foreclosure or loan default and are not directly or indirectly related to and do not contract for services with for-profit lenders or foreclosure purchasers. The [Attorney General] shall provide names and telephone numbers of organizations on the list to homeowners who contact the [Attorney General].
6. The [Attorney General] shall promulgate such regulations as are necessary to implement and administer compliance.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Predatory Mortgage Lending

- ✱ A dramatic increase in the incidence of predatory mortgage lending practices has created a crisis for communities of color, elderly homeowners, and low-income Americans.
- ✱ The practice of subprime lending increased ten-fold in less than ten years.
- ✱ The increase in subprime lending has predominantly affected minorities, the elderly, and rural homeowners.
- ✱ About half of subprime borrowers could qualify for a traditional mortgage.
- ✱ The victims of predatory lending practices are compelled to accept unreasonable loan terms and abusively high fees.
- ✱ There is a long history of states using usury laws to limit abusive lending practices, but financial industry deregulation and statutory loopholes have made those laws ineffective.
- ✱ Eleven states curtail predatory lending practices.

A dramatic increase in the incidence of predatory mortgage lending practices has created a crisis for communities of color, elderly homeowners, and low-income Americans.

The overwhelming majority of abusive loan practices occur in the subprime mortgage industry. Subprime loans—intended for people unable to obtain a conventional prime loan at standard mortgage rates—have higher interest rates to compensate for the greater risk that the borrowers represent. Lending practices are categorized as predatory when loan terms or conditions are abusive, or when lenders promote high-cost loans to borrowers who may qualify for credit on better terms. Predatory mortgage terms cost borrowers an estimated $9.1 billion per year.[1]

The practice of subprime lending increased ten-fold in less than ten years.

In 1993, 100,000 home purchase or refinance loans were subprime; in 1999, that number had jumped to nearly one million.[2] During the same period, all other home purchase and refinance loans declined by ten percent.[3] In 2005, one in every four home loans was subprime.[4]

The increase in subprime lending has predominantly affected minorities, the elderly, and rural homeowners.

A U.S. Housing and Urban Development Department study found that minorities were significantly more likely to receive a subprime mortgage than non-minorities with similar incomes. Subprime loans accounted for 51 percent of all refinance loans made in predominantly African American neighborhoods, compared to just nine percent of the refinance loans made in predominantly white neighborhoods.[5] Almost one in three refinance loans made to Latino families were subprime. A study in North Carolina found that rural borrowers were 20 percent more likely than their urban counterparts to be subjected to excessive prepayment penalties.[6] Another study found that borrowers 65 years of age or older were three times more likely to hold a subprime mortgage than borrowers under 35 years of age.[7]

About half of subprime borrowers could qualify for a traditional mortgage.

The Fannie Mae Corporation estimated that as many as half of the borrowers who receive high-cost subprime loans could have qualified for traditional mortgages at lower interest rates.[8]

The victims of predatory lending practices are compelled to accept unreasonable terms and abusively high fees.

Borrowers who are not in a position to qualify for an "A" loan are too often required to pay unreasonable rates and fees in the subprime market. Incentive systems that reward brokers and loan officers for charging more contribute to the problem. Other abusive loan practices found in the subprime industry include saddling credit-challenged borrowers with unwanted balloon payments and prepayment penalties, and "flipping"—encouraging repeated refinancing by existing customers, tacking on extra fees each time.

There is a long history of states using usury laws to limit abusive lending practices, but financial industry deregulation and statutory loopholes have made those laws ineffective.

Usury laws have been weakened so much over the past 20 years that predatory lending practices—modern day loan-sharking—are legal. Although federal law prohibits specific predatory practices, those provisions cover only certain types of loans, and the threshold for what is considered a high-cost loan is set so high that many homeowners are left unprotected.

Eleven states curtail predatory lending practices.

North Carolina became the first state to prohibit predatory lending in 1999, saving citizens an estimated $100 million in the law's first year.[9] Nine other states (AR, GA, IL, IN, NJ, NM, NY, SC, WV) have enacted moderate to strong laws against predatory lending. Massachusetts also has a series of strong regulations against predatory lending. Fifteen other states have enacted laws that purport to address the problem, but actually provide no substantive consumer protections.[10]

Effective legislation to prohibit predatory lending practices includes the following elements:

- Incentives for lenders to decrease exorbitant and abusive fees.
- Elimination of kickbacks that reward brokers for setting unjustifiably high interest rates.
- Prohibition of prepayment penalties that trap homeowners in subprime loans.
- Requirement of independent counseling for borrowers before they enter into high-cost mortgage loans.
- Prevention of "loan flipping"—refinancing that worsens the borrower's financial position.
- Prohibition of questionable products, such as credit insurance or debt cancellation fees.

This policy summary relies in large part on information from the Center for Responsible Lending.

Endnotes

1 Center for Responsible Lending, "Predatory Mortgage Lending Robs Homeowners & Devastates Communities," 2005.

2 Edward Gramlich, "Subprime Mortgage Lending: Benefits, Costs, and Challenges," Federal Reserve Board, 2004.

3 U.S. Department of Housing and Urban Development, "Unequal Burden: Income and Racial Disparities in Subprime Lending in America," April 2000.

4 "Subprime Services struggle with Portfolio Growth at Midway Mark," *Inside B&C Lending*, September 1, 2006.

5 U.S. Department of the Treasury and U.S. Department of Housing and Urban Development, "Curbing Predatory Home Mortgage Lending: A Joint Report," June 2000; see Debbie Gruenstein Bocian et al., "Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages," Center for Responsible Lending, May 31, 2006.

6 Center for Responsible Lending, "Rural Borrowers More Likely To Be Penalized for Refinancing Subprime Home Loans," September 2004.

7 AARP, "Subprime Mortgage Lending and Older Borrowers," March 2001.

8 James Carr and Lopa Kolluri, "Predatory Lending: An Overview," Fannie Mae Foundation, 2001.

9 Center for Responsible Lending, "North Carolina's Predatory Mortgage Lending Law: Celebrating Over 5 Years of Success," 2005.

10 Center for Responsible Lending, "CRL State Legislative Scorecard: Predatory Mortgage Lending," 2006.

Predatory Mortgage Lending

Predatory Lending Prevention Act

Summary: The Predatory Lending Prevention Act prohibits specific unfair practices in the sale of residential home loans, and provides civil and administrative enforcement procedures.

SECTION 1. SHORT TITLE

This Act shall be called the "Predatory Lending Prevention Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. A dramatic increase in the practice of subprime lending has occurred in the state. Nationally, subprime lending grew ten-fold in less than ten years, and a similar trend occurred in [State].
2. Subprime loans are intended for people who, because of blemished credit, are unable to obtain conventional prime loans at standard mortgage rates.
3. While subprime lending is a legitimate practice that expands access to credit for home ownership, most predatory practices occur in the subprime lending market.
4. Predatory lenders tend to target citizens who can least afford to be stripped of their assets—lower income families, minorities, and the elderly.
5. The state of [State] must act to protect its residents from abusive loan practices.

(B) PURPOSE—This law is enacted to protect the equity and property of homeowners, provide needed consumer protections, and safeguard the economic vitality of our state.

SECTION 3. PREDATORY LENDING PREVENTION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Annual percentage rate" means the annual percentage rate for a loan, calculated according to the provisions of the federal Truth In Lending Act (15 U.S.C. 1601, et seq.), and the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System (as said Act and regulations are amended from time to time).
2. "Borrower" means any individual obligated to repay a loan, including a co-borrower, cosigner or guarantor.
3. "Flipping" means knowingly refinancing an existing home loan when any of the following occurs:
    a. More than 50 percent of the prior debt refinanced bears a lower interest rate than the new loan.
    b. It will take more than five years of reduced interest rate payments for the borrower to recoup the transaction's prepaid finance charges and closing costs.

c. Refinancing a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which bears a below-market interest rate or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income or are limited to a percentage of income, or for which no payments are required under specified conditions, and if, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage.

4. "High-cost home loan" means a home loan in which:

   a. The total points and fees on the loan exceed five percent of the total loan amount, or

   b. The annual percentage rate of interest of the home loan equals or exceeds eight percentage points over the yield on U.S. Treasury securities that have comparable periods of maturity, as of the 15th day of the month immediately preceding the month in which the application for credit is received by the lender.

5. "Home loan" means a loan, other than a reverse mortgage transaction, in which the principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, and is secured by a mortgage or deed of trust on real estate upon which there is located or is to be located a structure or structures, designed principally for occupancy for one to four families, which is or will be occupied by a borrower as the borrower's principal dwelling. Home loan does not include an open-end line of credit as defined in Part 226 of Title 12 of the Code of Federal Regulations.

6. "Lender" means any entity that originated, or acted as a mortgage broker for, more than five home loans within the previous 12 months.

7. "Points and fees" means:

   a. All items required to be disclosed as finance charges under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, including the Official Staff Commentary, as amended from time to time, except interest.

   b. All compensation and fees paid to mortgage brokers in connection with the loan transaction.

   c. All items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, only if the person originating the covered loan receives direct compensation in connection with the charge.

8. "Total loan amount" means the same as in section 226.32 of Title 12 of the Code of Federal Regulations.

(B) PROHIBITED PRACTICES FOR ALL HOME LOANS

1. **Deceptive and unfair business practices.** No lender shall:

   a. Recommend or encourage non-payment of an existing loan or other debt prior to, and in connection with, the closing or planned closing of a home loan that refinances all or any portion of such existing loan or debt.

   b. Coerce, intimidate or directly or indirectly compensate an appraiser for the purpose of influencing his or her independent judgment concerning the value of real estate that is to be covered by a home loan or is offered as security according to an application for a home loan.

   c. Leave blanks in any loan documents to be filled in after they are signed by the borrower.

2. **Financing credit insurance.** No lender shall require or allow the advance collection of a premium, on a single premium basis, for any credit life, credit disability, credit unemployment, or credit property insurance, or the advance collection of a fee for any debt cancellation or suspension agreement or contract, in connection with any home loan, whether such premium or fee is paid directly by the consumer or is financed by the consumer through such loan. For purposes of this section, credit insurance does not include a contract issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a mortgagor's default.

(C) PROHIBITED PRACTICES FOR HIGH-COST HOME LOANS

1. **Balloon payments.** No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments during the first seven years of the loan. This provision does not apply to a payment schedule that is adjusted to the seasonal or irregular income of the borrower, or a bridge loan with a maturity of less than 12 months that requires only payments of interest until the entire unpaid balance is due.
2. **Prepayment penalties.** No high-cost home loan shall contain a prepayment penalty of more than three percent of the original principal amount of the note in the first year, two percent in the second year, one percent in the third year, or any prepayment penalty beyond the third year.
3. **Negative amortization.** No high-cost home loan may include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due. This provision does not apply to a payment schedule that is adjusted to the seasonal or irregular income of the borrower.
4. **Increased interest rate.** No high-cost home loan may contain a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by a default or the acceleration of indebtedness.
5. **Advance payments.** No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.
6. **Call provisions.** No high-cost home loan may contain a provision that permits the lender, in its sole discretion, to accelerate indebtedness. This provision does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.
7. **Home improvement contracts.** A lender may not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan unless the instrument is payable to the borrower or jointly to the borrower and the contractor, or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to disbursement.
8. **Flipping.** A lender may not offer a high-cost home loan while engaged in the practice of flipping.
9. **Modification or deferral fees.** A lender may not charge a borrower fees or other charges to modify, renew, extend or amend a high-cost home loan, or to defer any payment due under the terms of a high-cost home loan, except when the borrower is in default of the loan.
10. **Homeownership counseling.** A lender may not originate a high-cost home loan without first receiving certification from a counselor approved by the U.S. Department of Housing and Urban Development, a state housing financing agency, or the regulatory agency that has jurisdiction over the lender, that the borrower has received counseling on the advisability of the loan transaction.

(D) ENFORCEMENT

1. **Civil remedies.** This Act may be enforced by a private cause of action under [appropriate section of state statutes].
2. **Administrative remedies.** This Act shall be enforced by [appropriate state oversight agency], which shall promulgate such rules and regulations as are necessary to implement and administer compliance with the Act.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected thereby.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

HOUSING RESOURCES

Mobile Home Park Tenant Rights

AARP

Fannie Mae Foundation

National Consumer Law Center

Mortgage Rescue Fraud Protection

Center for Responsible Lending

Fannie Mae Foundation

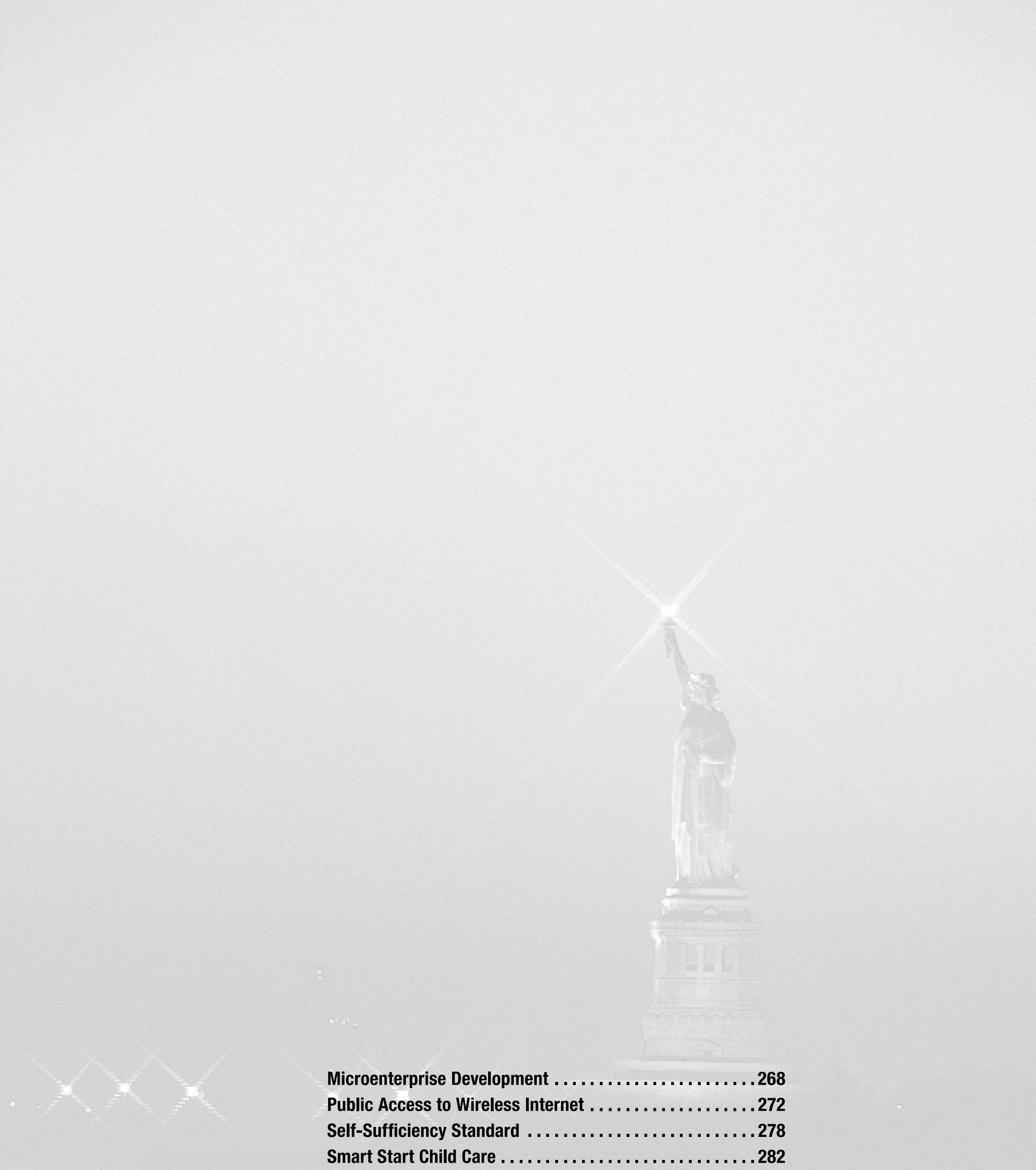
National Consumer Law Center

Predatory Mortgage Lending

Center for Responsible Lending

U.S. Department of Housing and Urban Development

A full index of resources with contact information can be found on page 295.



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Microenterprise Development

- For low-income families, self-employment is a significant source of jobs and income.
- Most low-income workers who want to start microenterprises cannot do so without help.
- Policies that encourage the creation of microenterprises can help low-income families become economically self-sufficient.
- Microenterprise development programs are cost-effective investments that create jobs and reduce reliance on public assistance.
- Training and technical assistance are the most urgent needs for microentrepreneurs.
- States are beginning to recognize the need to fund microenterprise development.

For low-income families, self-employment is a significant source of jobs and income.

Of the 20 million Americans who operate microenterprises, 65 percent are women, 55 percent are minorities, and 59 percent are low-income. These small businesses supplement income from low-wage jobs or create jobs when workers become unemployed. For many low-income Americans, a microenterprise is the most effective way to support their families.

Most low-income workers who want to start microenterprises cannot do so without help.

There is a large unmet demand for microenterprise technical assistance, training, and financing services in low-income communities. Community-based organizations in every state offer some type of microenterprise development program that targets non-traditional entrepreneurs, such as women of color, welfare recipients, immigrants, the disabled, or inner-city residents. But an estimated ten million of U.S. low-income microentrepreneurs do not have access to these programs.[1]

Policies that encourage the creation of microenterprises can help low-income families become economically self-sufficient.

A large-scale study of microentrepreneurs found that 78 percent experienced a substantial rise in income, raising average household incomes from $10,400 to $18,500 in two years. More than 53 percent of low-income entrepreneurs gained enough income to move their families out of poverty, many nearly doubling their family income over five years.[2]

Microenterprise development programs are cost-effective investments that create jobs and reduce reliance on public assistance.

A recent study showed that about 50 percent of microenterprise operators achieved economic self-sufficiency after only 18 months.[3] According to the U.S. Small Business Administration (SBA), businesses created by low-income entrepreneurs have high survival rates. Sixty-eight percent are still in operation after two years—slightly higher than the 66 percent survival rate for all small businesses.[4]

Training and technical assistance are the most urgent needs for microentrepreneurs.

In microenterprise development programs, training and technical assistance are in high demand. On average, 89 percent of microenterprise program clients seek and receive training and technical assistance in areas such as business management and economic literacy. Currently, there are only two small sources of federal funding for training and technical assistance services to low-income entrepreneurs. The two SBA programs, the Microloan Program and Program for Investments in Microenterprise (PRIME), provide only about $40 million in funding. The Bush Administration has repeatedly targeted the Microloan Program, which is the larger of the two programs, for elimination. In FY 2006, the Microloan Program was cut by 15 percent and the PRIME program was cut by 60 percent. An SBA program for technical assistance was cut by ten percent.[5]

States are beginning to recognize the need to fund microenterprise development.

Twenty states currently allocate funding for microenterprise program operations, training and technical assistance. Other programs offer direct loans to microenterprises. Vermont's Job Start Program, the oldest state microenterprise effort in the nation, administers a centralized loan pool through the state Economic Development Authority and uses state funds to support five local community action agencies that provide assistance and training to local entrepreneurs. Louisiana allocated $1 million in TANF funds for microenterprise programs and resource centers statewide. Nebraska's longstanding microenterprise program created over 500 jobs in 2001 at a cost of only $729 per job. Oregon enacted legislation in 2001 that provides grants, technical assistance, and training to microentrepreneurs.

The Microenterprise Development Act supports nonprofit organizations that provide training and technical assistance to low-income microentrepreneurs.

The Act directs the state economic development agency to create a grant program for nonprofit microenterprise development assistance programs. These programs will provide low-income microentrepreneurs with the support they need to succeed, including business planning, marketing, management, and financial management skills. All state funds must be matched at least dollar-for-dollar by other funding sources.

This policy summary relies in large part on information from the Corporation for Enterprise Development and the Aspen Institute.

Endnotes

1 Britton Walker and Amy Kays Blair, "2002 Directory of Microenterprise Programs," Aspen Institute, 2002.

2 Joyce Klein, Ilgar Alisultanov and Amy Kays Blair, "Microenterprise as a Welfare to Work Strategy: Two-year Findings," Aspen Institute, 2003.

3 Women's Initiative for Self-Employment, "Women's Initiative Measures Up: A Report on the Post-training Outcomes for Microenterprise Training Recipients from 1999 to 2002," April 2004.

4 "Microenterprise as a Welfare to Work Strategy."

5 Center for Rural Affairs, "Congress Finalizes FY 2006 Budget: Asset-Building Programs Protected," February 2006.

Microenterprise Development

Microenterprise Development Act

Summary: The Microenterprise Development Act establishes a grant program to support training and technical assistance for low-income microentrepreneurs.

SECTION 1. SHORT TITLE

This Act shall be called the "Microenterprise Development Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Development and expansion of businesses in economically distressed communities in both rural and urban areas can assist residents who are unemployed, underemployed or in low-income jobs.
2. Microenterprises provide a means for unemployed, underemployed or low-income individuals to find and sustain productive work, and they provide opportunities for economically distressed communities to thrive.
3. Low-income microentrepreneurs lack access to capital, training and technical assistance. Many low-income microentrepreneurs need lending services and technical assistance to start, operate or expand their businesses.
4. Local microenterprise support organizations have demonstrated cost-effective delivery methods for providing lending services and technical assistance.
5. Charitable foundation support, federal program funding and private sector support can be leveraged by a statewide program for development of microenterprises.

(B) PURPOSE—This law is enacted to strengthen the [State] economy and enable low-income residents to become self-sufficient by encouraging microenterprise development.

SECTION 3. MICROENTERPRISE DEVELOPMENT

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS—In this section:

1. "Secretary" means the Secretary of the Department of [Economic Development].
2. "Microenterprise" means a sole proprietorship, partnership, or corporation that has fewer than five employees and generally lacks access to conventional loans, equity, or other banking services.
3. "Microenterprise development organization or program" means a nonprofit entity or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to low-income microenterprises.
4. "Training and technical assistance" means services and support provided to low-income owners and operators of microenterprises, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.

5. “Low-income person” means a person with income adjusted for family size that does not exceed:
   a. For metropolitan areas, 80 percent of median income; or
   b. For nonmetropolitan areas, the greater of 80 percent of the area median income or 80 percent of the statewide nonmetropolitan area median income.

(B) ESTABLISHMENT OF MICROENTERPRISE DEVELOPMENT PROGRAM

1. The Secretary shall establish a microenterprise technical assistance and capacity building grant program to provide assistance in the form of grants to qualified organizations.
2. A qualified organization shall use grants made under this program to provide training and technical assistance to low-income entrepreneurs.
3. To be eligible for a grant, a qualified organization shall be a nonprofit microenterprise development organization that has a demonstrated record of delivering services to low-income individuals.
4. The Secretary shall ensure that not less than 50 percent of the funds made available are used to benefit persons whose income, adjusted for family size, is not more than 150 percent of the poverty line as defined in 42 U.S.C. 9902(2).
5. A qualified organization must provide at least one dollar in matching funds for every dollar of state financial assistance. Fees, grants, and gifts from public or private sources may be used to comply with the matching funds requirement.
6. The Secretary shall establish by regulation such requirements as may be necessary to carry out this section.

SECTION 4. AUTHORIZATION

During fiscal year 2008, [$XXXXX] is authorized to be appropriated to the Secretary to carry out this Act.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Public Access to Wireless Internet

- There is a digital divide between those with Internet access and those without.
- The digital divide widens for high-speed Internet access.
- Broadband Internet access has become a social and economic necessity.
- Municipal wireless Internet (Wi-Fi) can close the digital divide.
- Municipal Wi-Fi provides a range of benefits to cities and counties.
- There are 68 municipal Wi-Fi networks in operation.
- Telecommunications companies widen the digital divide by fighting municipal Wi-Fi.
- The Electronic Telecommunications Open Infrastructure Act (ETOPIA) would encourage municipalities to build technology infrastructure, especially Wi-Fi.

There is a digital divide between those with Internet access and those without.

As of mid-2006, 73 percent of American adults—about 147 million people—used the Internet, while the remaining 54 million did not. Older, less educated, and minority Americans disproportionately lack Internet access. Thirty-two percent of people aged 65 and older go online, compared to 74 percent of those aged 50 to 64, 84 percent of those aged 30 to 49, and 88 percent of those aged 19 to 29. Forty percent of Americans who have never graduated from high school have Internet access, compared to 91 percent of college graduates. And 61 percent of African Americans go online, compared to 73 percent of whites.[1]

The digital divide widens for high-speed Internet access.

Forty-two percent of home Internet users had high-speed connections in 2006, up from 30 percent in 2005. It is no surprise that the youngest, most educated and most affluent Americans are most likely to have broadband connections. College graduates are twice as likely to have broadband access as high school graduates; households that earn over $75,000 are more than three times as likely to have broadband connections as households that earn under $30,000.[2]

Broadband Internet access has become a social and economic necessity.

On a typical day in 2006, 97 million Americans went online. Seventy million used the Internet for email, 46 million looked at news stories, and 32 million checked the weather. In a single day, 31 million Americans went online to do research for their jobs and 24 million more to do research for school. Twenty-eight million Americans researched a product online, and nine million bought one.[3] There was about $172 billion in online retail sales in the U.S. in 2005, and that is projected to increase to $329 billion by 2010.[4] Clearly, both individuals and businesses without broadband Internet access are at a great disadvantage in today's society and economy.

Municipal wireless Internet (Wi-Fi) can close the digital divide.

The Internet has become a standard medium for everyday communication and transactions, but many Americans can't get, or can't reasonably afford, access. Municipal wireless Internet easily solves that problem. For example, Scottsburg, Indiana—population 6,000—was in danger of losing at least two large employers due to its lack of broadband Internet infrastructure. When private companies refused to provide broadband services to the town, the public electric utility set up a town-wide wireless network that not only helped to retain the businesses and jobs, but made the city's schools, law enforcement agencies, healthcare providers, and individuals more effective and competitive.[5] Across the country, municipal Wi-Fi networks offer free or substantially discounted access to lower-income residents, and in many cases, to everyone.

Municipal Wi-Fi provides a range of benefits to cities and counties.

Even large municipalities with existing broadband services can benefit by creating their own Wi-Fi system. Beginning in 2004, Philadelphia undertook an effort to provide broadband service to all city residents, reasoning that it would not only provide discount service to lower-income households, but would spur economic development, attract tourists, and save money for city agencies. Municipal Wi-Fi also enables police, firefighters and emergency medical technicians to obtain crucial information immediately from computers in their vehicles.

There are 68 municipal Wi-Fi networks in operation.

There are 68 municipal wireless Internet networks in 25 states (AZ, CA, FL, GA, IN, KS, KY, LA, ME, MD, MA, MI, MN, MS, NM, NY, OH, OK, OR, PA, TX, VT, VA, WA, WI). At least 135 more are planned.[6] However, many of these are in small towns—there is almost infinite capacity for growth in municipal Wi-Fi.

Telecommunications companies widen the digital divide by fighting municipal Wi-Fi.

In more than a dozen states, large telecommunications companies have lobbied state legislators against municipal Wi-Fi because they don't want the competition. It's as if Borders and Barnes & Noble asked legislators to ban municipal libraries because they cut into the bookstore business.[7] In the 21st century, broadband access is essential to both economic growth and education—it is becoming a public utility. Corporate interests have succeeded in enacting a variety of limits on municipal broadband service in 16 states (AR, CO, FL, LA, MO, MN, NE, NV, PA, SC, TN, TX, UT, VA, WA, WI).

The Electronic Telecommunications Open Infrastructure Act (ETOPIA) would encourage municipalities to build technology infrastructure, especially Wi-Fi.

Modeled after legislation in West Virginia, ETOPIA would:

- Create a state Innovation Center to inventory the technology infrastructure of the state.
- Encourage local governments to develop and strengthen telecommunications and data processing hardware, software and services for both government and private use.
- Provide matching funds to help pay for the development of technology infrastructure, especially municipal Wi-Fi.

Endnotes

1 Susannah Fox, "Digital Divisions," Pew Internet & American Life Project, October 5, 2005.

2 John B. Horrigan, "Home Broadband Adoption 2006," Pew Internet & American Life Project, May 28, 2006.

3 "Internet: The Mainstreaming of Online Life," Pew Internet & American Life Project, December 2004.

4 Forrester Research, "US eCommerce Forecast," September 30, 2005.

5 Jon Leibowitz, Commissioner of the Federal Trade Commission, "Remarks before the National Association of Telecommunications Officers and Advisors," September 22, 2005.

6 MuniWireless.com, "September 2006 update of wireless cities and counties in the U.S.," September, 2006.

7 "Remarks before the National Association of Telecommunications Officers and Advisors."

Public Access to Wireless Internet

Electronic Telecommunication Open Infrastructure Act

Summary: *The Electronic Telecommunication Open Infrastructure Act, known as ETOPIA, creates a state Innovation Center to inventory the technology infrastructure of the state, encourage local governments to develop and strengthen telecommunications and data processing hardware, software and services for both government and private use, and provides matching funds to help pay for technology infrastructure development.*

SECTION 1. SHORT TITLE

This Act shall be called the "Electronic Telecommunication Open Infrastructure Act" or "ETOPIA."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The Internet revolution is driving today's economy.
2. Information technology offers economic opportunities, higher living standards, more individual choices, and increased opportunities to participate in government and public life.
3. The past decade has brought considerable advancement in worldwide telecommunications. To remain competitive in the information-based global economy, the state, its people, and its institutions must fully utilize cutting-edge telecommunication and Internet strategies.
4. Broadband Internet access is essential to provide state residents with enhanced educational opportunities, better health care, more effective public safety and homeland security, and a stronger economy.

(B) PURPOSE—This law is enacted to support and improve education, health care, public safety and economic security by increasing access to the Internet and other new technologies.

SECTION 3. ELECTRONIC TELECOMMUNICATION OPEN INFRASTRUCTURE

(A) DEFINITIONS—In this section:

1. "Information equipment" means central processing units, front-end processing units, miniprocessors, microprocessors, and related peripheral equipment such as data storage devices, networking equipment, routers, document scanners, data entry equipment, terminal controllers, data terminal equipment, and computer-based word processing systems other than memory typewriters.
2. "Information systems" means computer-based information equipment and related services designed for the automated transmission, storage, manipulation and retrieval of data by electronic or mechanical means.
3. "Information technology" means data processing and telecommunications hardware, software, services, supplies, personnel, maintenance and training, and includes the programs and routines used to employ and control the capabilities of data processing hardware.
4. "Local government" means any county or municipality, or any of their entities.

5. "Technology infrastructure" means information equipment, information systems, information technology and facilities, lines, and services designed for or used for the transmission, emission or reception of signs, signals, writings, images or sounds by wire, radio, microwave, or other electromagnetic or optical systems, related hardware, software, and programming, and specifically including, but not limited to, all features, facilities, equipment, systems, functions, programming, and capabilities, and technical support used in providing or related to:
   a. Cable service as defined in 47 U.S.C. 522(6);
   b. Telecommunications service as defined in 47 U.S.C. 153(46);
   c. Information service as defined in 47 U.S.C. 153(20);
   d. Advanced services as defined in 47 CFR 51.5;
   e. Broadband Internet service; and
   f. Internet protocol enabled services.

(B) INNOVATION CENTER

1. There is created an office within the [Department of Economic Development] called the Innovation Center. The primary responsibility of the Innovation Center is to encourage the development and implementation of technology infrastructure for public and private uses throughout the state.
2. The Innovation Center may solicit and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this section. Any transfer of endowment or other assets to the Center shall be formalized in a memorandum of agreement to assure, at a minimum, that any restrictions governing the future disposition of funds are observed.
3. The [Department of Economic Development] shall promulgate rules to create the Innovation Center and fulfill the purposes of this section.

(C) TECHNOLOGY STUDY

1. The Innovation Center shall conduct a study of technology infrastructure in the state and compare existing technology infrastructure to best practices in the United States.
2. In conducting its study, the Innovation Center shall consider resources and technical support available through other entities and agencies, both public and private, including the state college and university systems, regional planning organizations, state high technology associations, and the state Chamber of Commerce.
3. By July 1, 2007, the Innovation Center shall issue a public report on its study. The report shall include:
   a. The current condition of technology infrastructure in the state;
   b. Options and strategies for upgrading technology infrastructure in the state;
   c. Options and strategies for encouraging technology cooperation and partnerships among state government, local government, private business, and institutions of higher education;
   d. Expected condition of technology infrastructure if the state does nothing to encourage it; and
   e. Recommendations for actions by the state to encourage improvements in technology infrastructure.

(D) FINANCIAL ASSISTANCE FOR TECHNOLOGY INFRASTRUCTURE

1. The Innovation Center shall create a grant program that makes funding available to local governments to improve technology infrastructure. The grant program shall require a matching contribution from the local government of at least one dollar for every dollar granted. Local governments may secure their matching contributions from any source, including private donations.
2. In making grants for technology infrastructure, the Innovation Center shall give preference to proposals for local governments to offer wireless Internet service.
3. The Innovation Center shall provide technical assistance to agencies of state or local government. Technical assistance may also include consulting services for a fee.

(E) AUTHORITY OF LOCAL GOVERNMENTS

1. Local governments are authorized to construct, own and operate technology infrastructure.
2. Local governments shall receive cooperation from all agencies of the state for proposals to offer wireless Internet service.
3. Local governments may enter into contracts or joint ventures with private businesses to construct, own, use, acquire, deliver, grant, operate, maintain, sell, purchase, lease, and equip technology infrastructure. By written contract or lease, local governments may sell capacity in, or grant other similar rights for private entities to use, government-owned or operated technology infrastructure.
4. Local governments are authorized to issue revenue bonds to pay a portion or all of the costs of improvements in technology infrastructure.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

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www.stateaction.org

Self-Sufficiency Standard

- ★ At $20,000 for a family of four, the Federal Poverty Measure is the same for Sioux Falls, South Dakota as it is for New York City.
- ★ The Federal Poverty Measure is based on outdated methodology and data.
- ★ The one-size-fits-all approach to poverty measurement does not accurately assess the income needs of working families today.
- ★ The Federal Poverty Measure is far below the income needed to survive.
- ★ Americans understand that basic costs for families far exceed the Federal Poverty Measure.
- ★ The Self-Sufficiency Standard provides an alternative to the Federal Poverty Measure, assessing a family's real cost of living, state by state.
- ★ The Self-Sufficiency Standard has already been calculated for 35 states.
- ★ States are adopting the Self-Sufficiency Standard as an official measure of the cost-of-living.

At $20,000 for a family of four, the Federal Poverty Measure is the same for Sioux Falls, South Dakota as it is for New York City.[1]

Despite overwhelming evidence to the contrary, the Federal Poverty Measure assumes that living costs are the same across the continental United States. (It is higher for Alaska and Hawaii.) The poverty measure utterly fails to assess accurately both poverty and the income needs of working families. Yet this measure is used to determine eligibility for numerous programs for low-income Americans, including TANF, food stamps, child care, and Medicaid.

The Federal Poverty Measure is based on outdated methodology and data.

The official U.S. measure of poverty was developed in 1963. It is based on the thrifty food plan, published by the U.S. Department of Agriculture, which estimated that a family of two adults and two children spent about $1,033 per year on food. A 1955 household food consumption survey estimated that a typical family spent one-third of its income on food. So $1,033 was multiplied by three to establish the baseline poverty measure for 1963 at $3,100 for a family of four. The 2006 poverty measure of $20,000 for a family of four is essentially the 1963 measure adjusted for inflation.

The one-size-fits-all approach to poverty measurement does not accurately assess the income needs of working families today.

The Federal Poverty Measure has never been updated to account for social and economic changes. For most families today, food costs constitute less than one-fifth of their budgets. Housing, transportation and health care are a much larger percentage of family costs today than they were 40 years ago. Moreover, the poverty measure was calculated based on a two-parent family model with one stay-at-home parent. That model doesn't accurately describe contemporary families, and is particularly off-base for low-income families with a single working parent. For today's families, there are costs associated with employment—transportation and child care—that the Federal Poverty Measure either underestimates or ignores entirely.

The Federal Poverty Measure is far below the income needed to survive.

In almost any city, town or suburb, an annual income of $20,000—the 2006 poverty measure for a family of four—is nowhere near enough to cover housing, food, health care, child care, transportation, and taxes. For example, in one of the least expensive areas of the nation, New Orleans (before Katrina), a family of four needed about $28,000 a year to survive. In contrast, in a more expensive area such as Boston, the same family needs more than $59,000.[2]

Americans understand that basic costs for families far exceed the Federal Poverty Measure.

A Lake Snell Perry & Associates poll found that 69 percent of Americans believe it takes at least twice the Federal Poverty Measure to "make ends meet."[3]

The Self-Sufficiency Standard provides an alternative to the Federal Poverty Measure, assessing a family's real cost of living, state by state.

The Self-Sufficiency Standard is calculated for 70 different family types, and for each jurisdiction within a state. By including the costs of housing, food, child care, health care, transportation, and taxes (including tax credits), the Self-Sufficiency Standard provides an accurate measure of the income needs of families at the most minimal level—no Happy Meals, take-out pizza or cable TV are figured in the calculation.

The Self-Sufficiency Standard has already been calculated for 35 states.

Wider Opportunities for Women (WOW) has calculated the Self-Sufficiency Standard for 35 states (AL, AZ, CA, CO, CT, DE, FL, GA, HI, IL, IN, IA, KY, LA, MD, MA, MS, MO, MT, NE, NV, NJ, NY, NC, OK, PA, SD, TN, TX, UT, VA, WA, WV, WI, WY), New York City and the District of Columbia.[4] In a number of states, the process of calculating a Standard has convinced agencies to use it as a policy tool for making more effective program decisions for low-income families.

States are adopting the Self-Sufficiency Standard as an official measure of the cost-of-living.

The state of Connecticut first required the calculation of a self-sufficiency measurement in 1998, and in 2001 the state required this measurement to be recalculated biannually. Since then, the Self-Sufficiency Standard has been used to target job training opportunities to the low-income and displaced workers who need them the most. Hawaii, Illinois and West Virginia have adopted the Self-Sufficiency Standard by state legislation. State agencies in other states have incorporated the Self-Sufficiency Standard into their direct service and program development and evaluation. In Pennsylvania, welfare and workforce development caseworkers use the Self-Sufficiency Standard and the Pennsylvania Online Self-Sufficiency Budget Worksheet to help clients understand what jobs or career paths will pay wages that will help them move toward self-sufficiency. In Virginia, the Department of Social Services uses the Self-Sufficiency Standard to evaluation outcomes for several programs. The Wyoming Governor's Planning Office supported the development of the Standard for their state and subsequently created an online Self-Sufficiency Calculator. Workforce Investment Boards (WIBs) in AZ, CA, CT, IL, ME, MD, MA, MN, MT, OR, PA, VT, WA and WI have defined and implemented the concept of self-sufficiency in pursuit of an economically-sound community and thriving workforce.[5]

This policy summary relies in large part on information from Wider Opportunities for Women.

Endnotes

1 U.S. Department of Health and Human Services, "2006 Federal Poverty Guidelines," February 2006.

2 Wider Opportunities for Women, "Coming Up Short," 2004.

3 Lake Snell Perry & Associates, "A National Survey of American Attitudes Towards Low-Wage Workers and Welfare Reform," 2000.

4 To review any of the 37 Self-Sufficiency Standard reports, see www.sixstrategies.org.

5 Wider Opportunities for Women, "Reality Check: Promoting Self-Sufficiency in the Public Workforce System—A Promising Practices Guide to Workforce Boards," February 2006.

Self-Sufficiency Standard

Self-Sufficiency Standard Act

Summary: The Self-Sufficiency Standard Act establishes a realistic official measurement of the minimum income families need to survive.

SECTION 1. SHORT TITLE

This Act shall be called the "Self-Sufficiency Standard Act."

SECTION 2. SELF-SUFFICIENCY STANDARD

(A) DEFINITION—In this section, "self-sufficiency standard" means a calculation of the income an employed adult requires to meet his or her family's needs, including, but not limited to, housing, food, dependent care, transportation, and medical costs.

(B) SELF-SUFFICIENCY STANDARD

1. The [Office of Policy and Management] shall contract with a private consultant to develop a self-sufficiency standard by January 1, 2008. This standard shall take into account geographical variations in costs, the age and number of children in a family, and any state or federal public assistance benefit received by a family.
2. Not later than March 1, 2008, the [Office of Policy and Management] shall distribute the self-sufficiency standard to all state agencies that counsel individuals who seek education, training or employment. Those state agencies shall use the self-sufficiency standard to assist individuals in establishing personal financial goals and estimating the amount of income such individuals may need to support their families.
3. The self-sufficiency standard shall not be used to analyze the success or failure of any program or determine eligibility or benefit levels for any state or federal public assistance program.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

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www.stateaction.org

Smart Start Child Care

- ✱ There is a shortage of quality, affordable childcare options in communities across America.
- ✱ Securing reliable child care is an everyday struggle for millions of American families.
- ✱ Budget cuts are taking their toll on the well-being of thousands of children.
- ✱ The Smart Start program pioneered in North Carolina is one viable solution.
- ✱ Smart Start is a proven success.
- ✱ Smart Start increases access to child care, improves its quality, and makes it more affordable.
- ✱ Other states have adopted childcare programs modeled after Smart Start.

There is a shortage of quality, affordable childcare options in communities across America.

The need for child care has never been greater. Today, mothers make up two-thirds of all women in the workforce—double their presence in 1960.[1] Sixty-four percent of mothers with children under six and 53.8 percent with infants less than one year old are now in the workforce.[2]

Securing reliable child care is an everyday struggle for millions of American families.

In nearly every state in the country, full-time day care for a four-year old child costs more than a year's tuition at a four-year public college.[3] This cost is barely affordable for many moderate-income families, let alone for the low-income families who are raising more than one-third of America's children.[4]

Budget cuts are taking their toll on the well-being of thousands of children.

Facing budget crises and shrinking federal funds from the Temporary Assistance for Needy Families (TANF) and Child Care and Development Block Grant (CCDBG) programs, states have substantially reduced childcare subsidies for low-income working families. These cuts lengthened waiting lists for child care by ten percent in just one year.[5] By 2009, the President's budget would eliminate funding for about 365,000 childcare slots.[6]

The Smart Start program pioneered in North Carolina is one viable solution.

North Carolina established the "Smart Start Initiative" to provide funding and technical assistance to county-level public-private partnerships for design and implementation of childcare programs that focus on local community needs. The program is designed to increase access to child care for all families, improve quality of care, make child care affordable, and to provide placement referrals, parental education, and literacy programs.

Smart Start is a proven success.

Over the life of the program, Smart Start has been evaluated extensively and repeatedly found to be a success. At the core of this success is the fact that solutions are locally implemented and locally funded by both the public and private sectors. The program allows counties to engage local expertise and resources to address their own specific needs. The process ensures community ownership and enthusiasm among a broad base of constituencies. Because Smart Start is "owned" by a variety of stakeholders and offers benefits to an array of families, the program has developed the broad-based support necessary for expansion.

Smart Start increases access to child care, improves its quality, and makes it more affordable.

Through both new construction and improvement of facilities, over 56,000 new childcare slots were created in North Carolina between 1993 and 2002.[7] Smart Start programs tackle the key problem of recruiting and retaining childcare providers. The T.E.A.C.H. Early Childhood Project offers thousands of scholarships to childcare providers for professional training and development. The WAGE$ program provides wage incentives to preschool teachers to advance their education. After just five years, 30 percent of preschool classes were classified as providing "good" or "excellent" care, up from 14 percent in 1994.[8] In 2003, 82 percent of childcare workers in North Carolina had college degrees.[9] Smart Start earmarks 30 percent of funding to help children who live in poverty. More than 93,000 receive subsidized services each month, up from 60,000 in 1995. Smart Start has also been able to lower overall costs to the government by at least ten percent by soliciting contributions from businesses and volunteers. Local partnerships are required to raise one dollar in cash for every ten dollars they receive from state funds. Corporate sponsors have contributed millions of dollars.

Child care is a profitable investment for our communities.

There is a strong consensus among researchers that childcare programs provide a substantial payoff. Studies estimate that early childhood programs generate a return of at least three dollars for every dollar spent. Even economists who are skeptical about government programs note the benefits of high-quality early childhood development programs. Follow-up studies of poor children who have participated in these programs have found solid evidence of markedly improved academic performance, lower rates of criminal conduct, and higher adult earnings than their non-participating peers. If nationwide programs started next year, benefits would exceed costs by $31 billion within 25 years.[10]

Other states have adopted childcare programs modeled after Smart Start.

Early childhood initiatives modeled on Smart Start have been implemented in several other states, including AL, AK, AR, CO, GA, IA, KS, KY, MI, OK, SC, TX, VT and WY. Wyoming enacted its law in 2006. In addition, Maine recently doubled its state investment in child care by offering grants, a revolving loan fund, and tuition assistance for child care providers, as well as tax credits to businesses that assist with childcare expenses or offer on-site care. Also in 2006, Washington Governor Christine Gregoire announced a plan to work with the Gates Foundation to improve early education and child care.

Endnotes

1 Children's Defense Fund, "Child Care Basics," 2001.

2 Bureau of Labor Statistics, "Employment Characteristics of Families in 2005," 2006.

3 Children's Defense Fund, "The State of America's Children 2004," 2004.

4 National Center for Children in Poverty, "Basic Facts About Low-Income Children: Birth to Age 18," September 2006.

5 Children's Defense Fund, "Low-income families' access to child care shrinks as states cut child care assistance programs," March 15, 2004.

6 Richard Kogen and David Kamin, "President's Budget Contains Large Cuts in Domestic Discretionary Programs," Center on Budget and Policy Priorities, June 7, 2004.

7 North Carolina Smart Start, "Smart Start's Impact on North Carolina's Children, Families, and Communities," 2002.

8 Carolyn Kroll and Michele Rivest, *Sharing the Stories: Lessons Learned from Five Years of Smart Start*, 2000.

9 "Smart Start's Annual Report to the Community," June 2003.

10 Louise Stoney and Mildred Warner, "Child Care as Economic Development: Theoretical and Empirical Challenges," presented to the Child Care Research Bureau, April 2003; Robert Lynch, "Exceptional Returns: Economic, Fiscal, and Social Benefits of Investment in Early Childhood Development," Economic Policy Institute, 2004.

Smart Start Child Care

Smart Start Child Care Act

Summary: The Smart Start Child Care Act creates public-private partnerships to provide high-quality child-care and early learning services throughout the state.

SECTION 1. SHORT TITLE

This Act shall be called the "Smart Start Child Care Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The future well being of the state depends upon all of our children.
2. Every child can benefit from, and should have access to, high-quality childcare and early learning services.
3. The state can assist parents in their role as the primary caregivers and educators of preschool children.
4. There is a need to explore innovative approaches and strategies to aid parents and families in the education and development of preschool children.

(B) PURPOSE—This law is enacted by the legislature to support the education and welfare of preschool children by expanding the availability of high-quality, affordable child care in every county in the state.

SECTION 3. SMART START CHILD CARE

After section XXX, the following new section XXX shall be inserted:

(A) SMART START COMMISSION

1. The Smart Start Commission is established within the Department of [Health and Human Services].
2. The mission of the Commission is to expand the availability of high-quality, affordable child care in every county in the state. The Commission shall fulfill its mission by coordinating and funding Local Smart Start Partner organizations. Local Smart Start Partners shall develop and implement child care programs, and the Commission shall hold those partners accountable for the financial and programmatic integrity of the programs.
3. The Commission shall consist of the following members:
   a. The Secretary of [Health and Human Services], or the Secretary's designee.
   b. The Superintendent of Public Schools, or the Superintendent's designee.
   c. The President of the state university system, or the President's designee.

d. Three members of the public appointed by the governor, three members appointed by the Speaker of the House, and three members appointed by the President of the Senate. Among these nine members, there must be at least one childcare provider, healthcare provider, early childhood educator, representative of the business community, representative of the philanthropic community, and a parent.

e. An additional member, who shall serve as the presiding officer, shall be appointed by the governor.

4. Public members of the Commission shall serve for two-year terms and may be reappointed.
5. All members of the Commission shall avoid conflicts of interest and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who might benefit directly or indirectly from the disbursement of funds shall abstain from participation in any decision or deliberations regarding the disbursement of funds.

(B) OPERATION OF SMART START COMMISSION

1. The Commission shall develop a long-term plan for providing childcare and early learning services throughout the state, accept proposals from Local Smart Start Partners to deliver childcare and early learning services, and allocate funds to implement those proposals.
2. The Commission shall give Local Smart Start Partners the maximum flexibility and discretion practicable in developing their proposals.
3. The Commission shall develop a formula to allocate direct services funds appropriated for this purpose. However, the Commission may adjust its allocations by up to ten percent on the basis of assessments of the performance of Local Partners. The Commission may contract with outside firms to conduct performance assessments.
4. The Commission shall develop and implement a comprehensive standard fiscal accountability plan to ensure the fiscal integrity and accountability of state funds appropriated to it and granted to Local Partners. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. All Local Partners shall be required to participate in the standard fiscal accountability plan.
5. In the event that the Commission determines that a Local Partner is not fulfilling its responsibilities under the grant, the Commission may suspend all funds until the Local Partner demonstrates that these defects are corrected. At its discretion, the Commission may assume the managerial responsibilities for the Local Partner's programs and services until the Commission determines that it is appropriate to return the programs and services to the Local Partner.

(C) LOCAL SMART START PARTNERS

1. In order to receive state funds, the following conditions shall be met:

a. The Local Partner is a nonprofit 501(c)(3) corporation that has as its mission the delivery of high-quality early childhood education and development services for children and families.

b. The Local Partner shall develop a comprehensive, collaborative, long-range plan of services to children and families for the service delivery area.

c. The Local Partner shall agree to adopt procedures for its operations that are comparable to [the state open meetings and open public records laws].

d. The Local Partner shall adopt procedures to ensure that all personnel who provide services to young children and their families know and understand their responsibility to report suspected child abuse or neglect, as defined in [cite state law].

e. The Local Partner shall participate in the uniform, standard fiscal accountability plan adopted by the Commission, and shall be subject to audit and review by the State Auditor.

(D) ANNUAL REPORT—The Commission shall make a report no later than December 1 of each year to the legislature that shall include the following:

1. A description of the program and significant services and initiatives.
2. A history of Smart Start funding and the previous fiscal year's expenditures.
3. The number of children served by each type of service.
4. The type and quantity of services provided.
5. The results of the previous year's evaluations of the programs and services.
6. A description of significant policy and program changes.
7. Any recommendations for legislative action.

(E) FUNDING

1. The Commission shall receive funds from the state and any other public or private source. With the approval of the Secretary of [Health and Human Services], these funding sources may include federal programs such as Head Start.
2. The Commission shall require Local Partners to match grants at a ratio of at least one dollar raised from private sources for every ten dollars granted from Commission funds. The Commission may require higher ratios of matching funds for all Local Partners, some Local Partners, or particular projects of Local Partners.
3. The Commission shall ensure that granted funds do not replace current county and municipal expenditures for childcare and early learning.
4. Not less than 30 percent of the funds spent in each year of each Local Partner's direct services allocation shall be used to expand childcare subsidies. The Commission may increase this percentage requirement up to a maximum of 50 percent when, based upon a significant local waiting list for subsidized child care, the Commission determines a higher percentage is justified.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

Impact of the Childcare and Early Education Sector on the Economy Act

Summary: The Impact of the Childcare and Early Education Sector on the Economy Act commissions a study of the costs and benefits of childcare and early education programs.

SECTION 1. SHORT TITLE

This Act shall be called the "Impact of the Childcare and Early Education Sector on the Economy Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. There is a shortage of high-quality childcare and early education options in communities throughout [State].
2. Childcare and early education programs provide a substantial economic payoff to their communities.
3. It is crucial for the governor and legislators to obtain reliable, objective information about the economic benefits and burdens of investing in expanded childcare and early education programs in [State].

(B) PURPOSE—This law is enacted to study the economic impact on the state economy of quality childcare and early education programs for children aged zero to four years, and afterschool programs for children aged five to 12 years.

SECTION 3. ECONOMIC IMPACT OF CHILDCARE AND EARLY EDUCATION SECTOR

(A) DEFINITIONS—In this section:

1. "Department" means the Department of [Economic Development].
2. "Child care and early education" includes:
    a. Licensed full-day childcare and early education programs and centers.
    b. Licensed part-time childcare and early education programs and centers.
    c. Head Start and Early Head Start programs.
    d. Public pre-schools.
    e. Family childcare homes.
    f. Afterschool programs for children aged five to 12.

(B) STUDY OF THE ECONOMIC IMPACT OF THE CHILDCARE INDUSTRY—The Department shall conduct a study of the economic impacts on the state economy of quality childcare and early education programs for children aged zero to four, and afterschool programs for children aged five to 12.

(C) NATURE OF THE STUDY—The study shall include:

1. An evaluation of child care and early education as a sector of the economy, including:
    a. Number of workers directly employed at childcare and early education facilities, and the gross value of their wages.
    b. Gross receipts of the industry, that is, total number of dollars that flow into the sector in the form of payments for care from parents and from public and private subsidies.
    c. Value of goods and services purchased by the childcare and early education industry.
    d. Federal dollars that flow to the state for child care and early education.
2. An evaluation of the degree to which available child care and early education:
    a. Enables parents to work outside the home and earn income.
    b. Enables parents to attend educational programs.
    c. Decreases absenteeism at work, reduces turnover, or increases productivity.
    d. Attracts businesses to the state.
3. An analysis of demographic data to identify the relative gap between the needs in [State] and available resources, and the return to the economy if that gap is closed, including:
    a. Number of children aged zero to 12 with both parents in the labor force, or with their single parent in the labor force.
    b. Trends of likely future growth in the number of children aged zero to 12 in the population for the next decade.
    c. Demographic makeup of parents in the labor force and demographic makeup of adults with children who might wish to join the labor force.
    d. Cost of child care and early education, and its relationship to family income.
    e. Availability of child care.
    f. Number of children eligible for state or federal aid.
    g. Number of children eligible for, but not receiving, state or federal aid.
4. A review of available literature on the impact of childcare and early education programs on children's future ability to contribute to the workforce, including:
    a. An evaluation of school readiness at kindergarten and first grade.
    b. An evaluation of positive outcomes in school, from elementary through high school graduation.

c. An evaluation of resulting savings in public spending, for example from:

(1) Less likelihood of being assigned to special education classes relative to those not in quality care or preschool;

(2) Greater likelihood of graduation from high school;

(3) Less likelihood of involvement with the criminal justice system and prison;

(4) Greater likelihood of being employed;

(5) Less likelihood of being on public assistance.

(D) REPORT—The Department shall report the results of this study to the governor and the legislature on or before January 1, 2008.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2007.

WORKFORCE INVESTMENTS RESOURCES

Microenterprice Development

Aspen Institute

Corporation for Enterprise Development

Public Access to Wireless Internet

Baller Herbst Law Group

Pew Internet and American Life Project

Self-Sufficiency Standard

Economic Policy Institute

Wider Opportunities for Women

Smart Start Child Care

Children's Defense Fund

Center for Law and Social Policy

Legal Momentum

North Carolina Smart Start and the North Carolina Partnership for Children

A full index of resources with contact information can be found on page 291.

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9to5, National Association of Working Women
152 W. Wisconsin Avenue,
Suite 408
Milwaukee, WI 53203
414-274-0925
www.9to5.org

AARP
601 E Street NW
Washington, DC 20049
888-687-2277
www.aarp.org

Advancement Project
1730 M Street NW, Suite 910
Washington, DC 20036
202-728-9557
www.advancementproject.org

AFL-CIO
815 16th Street NW
Washington, DC 20006
202-637-5000
www.aflcio.org

AFL-CIO Working for America Institute
815 16th Street NW
Washington, DC 20006
202-974-8100
www.workingforamerica.org

Alan Guttmacher Institute
1301 Connecticut Avenue NW,
Suite 700
Washington, DC 20036
877-823-0262
www.agi-usa.org

Alliance for Retired Americans
888 16th Street NW
Washington, DC 20006
202-974-8222
www.retiredamericans.org

American Bar Association
321 N. Clark Street
Chicago, IL 60610
312-988-5000
www.abanet.org

American Bar Association Juvenile Justice Center
740 15th Street NW, 7th Floor
Washington, DC 20005
202-662-1506
www.abanet.org/crimjust/juvjus/
home.html

American Cancer Society
901 E Street NW, Suite 510
Washington, DC 20004
800-ACS-2345
www.cancer.org

American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
212-344-3005
www.aclu.org

American Civil Liberties Union of Florida
4500 Biscayne Boulevard,
Suite 340
Miami, FL 33137
305-576-2336
www.aclufl.org

American Federation of State, County and Municipal Employees
1625 L Street NW
Washington, DC 20036
202-429-1000
www.afscme.org

American Federation of Teachers
555 New Jersey Avenue NW
Washington, DC 20001
202-879-4400
www.aft.org

American Heart Association National Center
7272 Greenville Avenue
Dallas, TX 75231
800-242-8721
www.americanheart.org

American Lung Association
61 Broadway, 6th Floor
New York, NY 10006
212-315-8700
www.lungusa.org/tobacco

Americans for Gun Safety
2000 L Street NW, Suite 702
Washington, DC 20036
202-775-0300
www.americansforgunsafety.com

Americans for Nonsmokers' Rights
2530 San Pablo Avenue, Suite J
Berkeley, CA 94702
510-841-3032
www.no-smoke.org

Amnesty International USA
Program to Abolish the Death Penalty
600 Pennsylvania Avenue SE,
5th Floor
Washington, DC 20003
202-544-0200
www.amnestyusa.org/abolish

INDEX OF RESOURCES

Annie E. Casey Foundation Juvenile Detention Alternatives Initiative
701 St. Paul Street
Baltimore, MD 21202
410-547-6600
www.aecf.org

Appleseed Foundation
727 15th Street NW, 11th Floor
Washington, DC 20005
202-347-7960
www.appleseeds.net

Association of Community Organizations for Reform Now
739 8th Street SE
Washington, DC 20003
888-55-ACORN
www.acorn.org

Aspen Institute
One Dupont Circle NW, Suite 700
Washington, DC 20036
202-736-5800
www.aspeninstitute.org

Baller Herbst Law Group
2014 P Street NW, Suite 200
Washington, DC 20036
202-833-5300
www.baller.com

Ballot Initiative Strategy Center
1025 Connecticut Avenue NW, Suite 216
Washington, DC 20009
202-223-2373
www.ballot.org

Brady Campaign to Prevent Gun Violence
1225 Eye Street NW, Suite 1100
Washington, DC 20005
202-898-0792
www.bradycampaign.org

Brennan Center for Justice
161 Avenue of the Americas, 12th Floor
New York, NY 10013
212-998-6730
www.brennancenter.org

Business and Professional Women
1900 M Street NW, Suite 310
Washington, DC 20036
202-293-1100
www.bpwusa.org

California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812
916-322-2990
www.arb.ca.gov

California Immigrant Welfare Collaborative
926 J Street, Suite 701
Sacramento, CA 95814
916-448-6762
www.nilc.org/ciwc

Caltech-MIT Voting Technology Project
California Institute of Technology
1200 E. California Boulevard, MC 228-77
Pasadena, CA 91125
626-395-4089
www.vote.caltech.edu

Campaign for the Civic Mission of Schools-Council for Excellence in Government
1301 K Street NW, Suite 450 West
Washington, DC 20005
202-728-0418
www.civicmissionofschools.org

Campaign for Criminal Justice Reform-The Justice Project
1725 Eye Street NW, 4th Floor
Washington, DC 20006
202-638-5855
www.cjreform.org

Campaign for Tobacco-Free Kids
1400 Eye Street, Suite 1200
Washington, DC 20005
202-296-5469
www.tobaccofreekids.org

Castle Coalition
901 N. Glebe Road, Suite 900
Arlington, VA 22203
703-682-9320
www.castlecoalition.org

Catholics for a Free Choice
1436 U Street NW, Suite 301
Washington, DC 20009
202-986-6093
www.cath4choice.org

Center for Community Action and Environmental Justice
P.O. Box 33124
Riverside, CA 92519
951-360-8451
www.ccaej.org

Center for Law and Social Policy
1015 15th Street NW, Suite 400
Washington, DC 20005
202-906-8000
www.clasp.org

Center for Nonprofits and Voting
30 Winter Street, 10th Floor
Boston, MA 02108
617-357-8683
www.massvote.org

Center for Reproductive Rights
120 Wall Street
New York, NY 10005
917-637-3600
www.crlp.org

Center for Responsible Lending
910 17th Street NW, Suite 500
Washington, DC 20006
202-349-1850
www.responsiblelending.org

Center for Women Policy Studies
1776 Massachusetts Avenue NW, Suite 450
Washington, DC 20036
202-872-1770
www.centerwomenpolicy.org

Center on Budget and Policy Priorities
820 First Street NE, Suite 510
Washington, DC 20002
202-408-1080
www.cbpp.org

Center on Wisconsin Strategy
University of Wisconsin-Madison
1180 Observatory Drive, Room 7122
Madison, WI 53706
608-263-3889
www.cows.org

Children's Defense Fund
25 E Street NW
Washington, DC 20001
202-628-8787
www.childrensdefense.org

Citizens United for Alternatives to the Death Penalty
2603 Dr. Martin Luther King, Jr. Highway
Gainesville, FL 32609
800-973-6548
www.cuadp.org

Coalition for Fire-Safe Cigarettes
1 Batterymarch Park
Quincy, MA 02169
617-984-7275
www.firesafecigarettes.org

Coalition for Juvenile Justice
1710 Rhode Island Avenue NW, 10th Floor
Washington, DC 20036
202-467-0864
www.juvjustice.org

Coalition on Human Needs
1120 Connecticut Avenue NW, Suite 910
Washington, DC 20036
202-223-2532
www.chn.org

Coalition to Stop Gun Violence
1023 15th Street NW, Suite 301
Washington, DC 20005
202-408-0061
www.csgv.org

Common Cause
1250 Connecticut Avenue NW, Suite 600
Washington, DC 20036
202-833-1200
www.commoncause.org

Community Coalition for Environmental Justice
2820 East Cherry
Seattle, WA 98122
206-720-0285
www.ccej.org

Community Reinvestment Association of North Carolina
114 W. Parrish Street, 2nd Floor
P.O. Box 1929
Durham, NC 27702
919-667-1557
www.cra-nc.org

Consumer Federation of America
1620 Eye Street NW, Suite 200
Washington, DC 20036
202-387-6121
www.consumerfed.org

Consumers Union
1666 Connecticut Avenue NW, Suite 310
Washington, DC 20009
202-462-6262
www.consumersunion.org

Corporation for Enterprise Development-Business Incentives Reform Clearinghouse
777 North Capitol Street NE, Suite 800
Washington, DC 20002
202-408-9788
www.cfed.org

Database of State Incentives for Renewable Energy
North Carolina State University
Raleigh, NC 27695
919-515-5666
www.dsireusa.org

Death Penalty Focus
870 Market Street, Suite 859
San Francisco, CA 94102
415-243-0143
www.deathpenalty.org

INDEX OF RESOURCES

Death Penalty Information Center
1101 Vermont Avenue NW,
Suite 701
Washington, DC 20005
202-289-2275
www.deathpenaltyinfo.org

Defenders of Wildlife
1130 17th Street NW
Washington, DC 20036
800-989-8981
www.defenders.org

Democracy 21
1825 Eye Street NW, Suite 400
Washington, DC 20006
202-429-2008
www.democracy21.org

DemocracyWorks
44 Capitol Avenue, Suite 102
Hartford, CT 06106
860-727-1157
www.democracyworksct.org

Democracy South
304B 49th Street
Virginia Beach, VA 23451
757-428-0645
www.democracysouth.org

Dēmos
220 5th Avenue, 5th Floor
New York, NY 10001
212-633-1405
www.demos-usa.org

Drug Policy Alliance
70 West 36th Street, 16th Floor
New York, NY 10018
212-613-8020
www.drugpolicy.org

Economic Opportunity Institute
1900 North Northlake Way,
Suite 237
Seattle, WA 98103
206-633-6580
www.econop.org

Economic Policy Institute
1660 L Street NW, Suite 1200
Washington, DC 20036
202-775-8810
www.epinet.org

Education Commission of the States
700 Broadway, Suite 1200
Denver, CO 80203
303-299-3600
www.ecs.org

eHealth Initiative
818 Connecticut Avenue NW,
Suite 500
Washington, DC 20006
202-624-3270
www.ehealthinitiative.org

Election Protection Coalition
People for the American Way
2000 M Street NW, Suite 400
Washington, DC 20036
202-467-4999
www.electionprotection2004.org

Electronic Privacy Information Center
1718 Connecticut Avenue NW,
Suite 200
Washington, DC 20009
202-483-1140
www.epic.org

Environmental Justice Resource Center at Clark Atlanta University
223 James P. Brawley Drive
Atlanta, GA 30314
404-880-6911
www.ejrc.cau.edu

Equal Justice USA/ Moratorium Now!
P.O. Box 5206
Hyattsville, MD 20782
301-699-0042
www.quixote.org/ej

Equality Federation
2370 Market Street, Suite 386
San Francisco, CA 94114
415-377-7771
www.equalityfederation.org

FairVote
6930 Carroll Avenue, Suite 610
Takoma Park, MD 20912
310-270-4616
www.fairvote.org

Families Against Mandatory Minimums
1612 K Street NW, Suite 700
Washington, DC 20006
202-822-6700
www.famm.org

Families USA
1201 New York Avenue,
Suite 1100
Washington, DC 20005
202-628-3030
www.familiesusa.org

Fannie Mae Corporation
3900 Wisconsin Avenue NW
Washington, DC 20016
202-752-7000
www.fanniemae.com

Fannie Mae Foundation
4000 Wisconsin Avenue NW,
Suite One
Washington, DC 20010
202-274-8000
www.fanniemaefoundation.org

Federal Election Commission
999 E Street NW
Washington, DC 20463
800-424-9530
www.fec.gov

Feminist Majority Foundation
1600 Wilson Boulevard,
Suite 801
Arlington, VA 22209
703-522-2214
www.feminist.org

Freddie Mac Foundation
8250 Jones Branch Drive
McLean, VA 22102
703-918-8888
www.freddiemacfoundation.org

Gay, Lesbian, Straight Education Network
90 Broad Street, 2nd Floor
New York, NY 10004
212-727-0135
www.glsen.org

Good Jobs First
1616 P Street NW
Washington, DC 20036
202-232-1616
www.goodjobsfirst.org

Hawaii Department of Education
P.O. Box 2360
Honolulu, HI 96804
808-837-8012
reach.k12.hi.us

Henry J. Kaiser Family Foundation
2400 Sand Hill Road
Menlo Park, CA 94025
650-854-9400
www.kff.org

Human Rights Campaign
1640 Rhode Island Avenue NW
Washington, DC 20036
202-628-4160
www.hrc.org

Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118
212-290-4700
www.hrw.org

Innocence Project
Benjamin N. Cardozo
School of Law
100 5th Avenue, 3rd Floor
New York, NY 10011
212-364-5340
www.innocenceproject.org

Institute for Women's Policy Research
1707 L Street NW, Suite 750
Washington, DC 20036
202-785-5100
www.iwpr.org

Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224
202-622-2000
www.irs.gov

International Association of Chiefs of Police
515 North Washington Street
Alexandria, VA 22314
703-836-6767
www.theiacp.org

Johns Hopkins Center for Gun Policy and Research
624 N. Broadway
Baltimore, MD 21205
410-614-3243
www.jhsph.edu/gunpolicy

Join Together
Boston University School of
Public Health
One Appleton Street, 4th Floor
Boston, MA 02116
617-437-1500
www.jointogether.org/gv

Lambda Legal Defense and Education Fund
120 Wall Street, Suite 1500
New York, NY 10005
212-809-8585
www.lambdalegal.org

Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW,
Suite 400
Washington, DC 20005
202-662-8600
www.lawyerscomm.org

Leadership Conference on Civil Rights
1629 K Street NW, Suite 1000
Washington, DC 20006
202-466-3311
www.civilrights.org

League of United Latin American Citizens
2000 L Street NW, Suite 610
Washington, DC 20036
202-833-6130
www.lulac.org

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League of Women Voters
1730 M Street NW, Suite 1000
Washington, DC 20036
202-429-1965
www.lwv.org

Learning Point Associates
1825 Connecticut Avenue NW
Washington, DC 20009
800-252-0283
www.learningpt.org

Legal Momentum
National Organization for Women
Legal Defense and
Education Fund
1522 K Street, NW, Suite 550
Washington, DC 20005
202-326-0040
www.legalmomentum.org

**Making Wages Work-
The Finance Project**
1401 New York Avenue NW,
Suite 800
Washington, DC 20005
202-628-4200
www.financeproject.org

Marijuana Policy Project
P.O Box 77492
Washington, DC 20013
www.mpp.org

**Maryland Citizen's Health
Initiative**
2600 St. Paul Street
Baltimore, MD 21218
410-235-9000
www.healthcareforall.com

Million Mom March
1225 Eye Street NW, Suite 1100
Washington, DC 20005
202-898-0792
www.millionmommarch.org

**Murder Victims' Families for
Reconciliation**
6911 Richmond Highway,
Suite 206
Alexandria, VA 22306
703-721-1888
www.mvfr.org

NAACP National Voter Fund
2001 L Street NW, Suite 1050
Washington, DC 20036
202-898-0960
www.naacpnvf.org

NARAL Pro-Choice America
1156 15th Street NW, Suite 700
Washington, DC 20005
202-973-3000
www.naral.org

**National Association for the
Advancement of Colored
People (NAACP)**
4805 Mt. Hope Drive
Baltimore, MD 21215
410-486-9100
www.naacp.org

**National Association of
Criminal Defense Lawyers**
1150 18th Street NW, Suite 950
Washington, DC 20036
202-872-8600
www.nacdl.org

**National Center for Lesbian
Rights**
870 Market Street, Suite 570
San Francisco, CA 94102
415-392-6257
www.nclrights.org

**National Coalition on Black
Civic Participation**
1900 L Street NW, Suite 700
Washington, DC 20036
202-659-4929
www.bigvote.org

**National Coalition to Abolish
the Death Penalty**
1717 K Street NW, Suite 510
Washington, DC 20036
202-331-4090
www.ncadp.org

**National Commission on
Federal Election Reform**
University of Virginia
2201 Old Ivy Road
Charlottesville, VA 22904
804-924-7236
www.reformelections.org

**National Conference of State
Legislatures**
7700 East First Place
Denver, CO 80230
303-364-7700
www.ncsl.org

National Consumer Law Center
77 Summer Street, 10th Floor
Boston, MA 02110
617-542-8010
www.nclc.org

National Council of La Raza
1126 16th Street NW
Washington, DC 20036
202-785-1670
www.nclr.org

**National Disability Rights
Network**
900 Second Street NE, Suite 211
Washington, DC 20002
202-408-9514
www.ndrn.org

National Education Association
1201 16th Street NW
Washington, DC 20036
202-833-4000
www.nea.org

National Employment Law Project
55 John Street, 7th Floor
New York, NY 10038
212-285-3025
www.nelp.org

National Gay and Lesbian Task Force
1325 Massachusetts Avenue NW, Suite 600
Washington, DC 20005
202-393-5177
www.thetaskforce.org

National Immigration Law Center
3435 Wilshire Boulevard, Suite 2850
Los Angeles, CA 90010
213-639-3900
www.nilc.org

National Juvenile Defender Center
1350 Connecticut Avenue NW, Suite 304
Washington, DC 20036
202-452-0010
www.njdc.info

National Juvenile Detention Association
Eastern Kentucky University
301 Perkins Building
Richmond, KY 40475
859-622-6259
www.njda.com

National Legislative Association on Prescription Drug Prices
P.O. Box 492
Hallowell, ME 04347
207-662-5597
www.nlarx.org

National Low Income Housing Coalition
757 15th Street NW, 6th Floor
Washington, DC 20005
202-662-1530
www.nlihc.org

National Organization for the Reform of Marijuana Laws
1600 K Street NW, Suite 501
Washington, DC 20006
202-483-5500
www.norml.org

National Parenting Association
1841 Broadway, Room 808
New York, NY 10023
212-315-2333
www.parentsunite.org

National Partnership for Women and Families
1875 Connecticut Avenue NW, Suite 650
Washington, DC 20009
202-986-2600
www.nationalpartnership.org

National Rural Housing Coalition
1250 Eye Street NW, Suite 902
Washington, DC 20005
202-393-5229
www.nrhcweb.org

National Voting Rights Institute
27 School Street, Suite 500
Boston, MA 02108
617-724-3900
www.nvri.org

Native American Rights Fund-Native Vote Election Protection Project
1301 Connecticut Avenue NW, Suite 200
Washington, DC 20036
202-466-7767
www.nativevote.org

Natural Resources Defense Council
40 West 20th Street
New York, NY 10011
212-727-2700
www.nrdc.org

New Jersey Policy Perspective
145 W. Hanover Street
Trenton, NJ 08618
609-393-1145
www.njpp.org

New Mexico Council on Crime and Delinquency
P.O. Box 1842
Albuquerque, NM 87103
505-242-2726
www.nmccd.org

North Carolina Department of Crime Control and Public Safety
4701 Mail Service Center
Raleigh, NC 27699
919-733-2126
www.nccrimecontrol.org

North Carolina Smart Start and the North Carolina Partnership for Children
1100 Wake Forest Road
Raleigh, NC 27604
919-821-7999
www.smartstart-nc.org

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North Dakota Association of Counties
P.O. Box 877
Bismarck, ND 58502
701-328-9800
www.ndaco.org

Office of Juvenile Justice and Delinquency Prevention
810 Seventh Street NW
Washington, DC 20531
202-307-5911
www.ojjdp.ncjrs.org

People for the American Way
2000 M Street NW, Suite 400
Washington, DC 20036
202-467-4999
www.pfaw.org

Pew Internet and American Life Project
1615 L Street NW, Suite 700
Washington, DC 20036
202-419-4500
www.pewinternet.org

Physicians for a National Health Program
29 E Madison, Suite 602
Chicago, IL 60604
312-782-6006
www.pnhp.org

Planned Parenthood Federation of America
434 West 33rd Street
New York, NY 10001
212-541-7800
www.plannedparenthood.org

Policy Matters Ohio
2912 Euclid Avenue
Cleveland, OH 44115
216-931-9922
www.policymattersohio.org

Prison Moratorium Project
388 Atlantic Avenue, 3rd Floor
Brooklyn, NY 11217
718-260-8805
www.nomoreprisons.org

Progressive Leadership Alliance of Nevada
821 Riverside Drive
Reno, NV 89509
775-348-7557
www.planevada.org

Public Campaign
1320 19th Street NW, Suite M-1
Washington, DC 20036
202-293-0222
www.publicampaign.org

Public Citizen
1600 20th Street NW
Washington, DC 20009
202-588-1000
www.citizen.org

Renewable Energy Policy Project
1612 K Street, NW, Suite 202
Washington, DC 20006
202-293-2898
www.repp.org

Reproductive Freedom Project-American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2500
www.aclu.org

Right to Vote
161 Avenue of the Americas, 12th Floor
New York, NY 10013
212-992-8152
www.righttovote.org

The Robert Wood Johnson Foundation
P.O. Box 2316
Princeton, NJ 08543
888-631-9989
www.rwjf.org

Rock the Vote
1313 L Street NW, First Floor
Washington, DC 20005
202-962-9710
www.rockthevote.org

Sentencing Project
514 10th Street NW, Suite 1000
Washington, DC 20004
202-628-0871
www.sentencingproject.org

Service Employees International Union
1800 Massachusetts Avenue NW
Washington, DC 20036
202-898-3200
www.seiu.org

Smart Growth America
1707 L Street NW, Suite 1050
Washington, DC 20036
202-207-3355
www.smartgrowthamerica.com

Defenders of Wildlife
1130 17th Street NW
Washington, DC 20036
800-385-9712
www.serconline.org

Southern Center for Human Rights
83 Poplar Street NW
Atlanta, GA 30303
404-688-1202
www.schr.org

Stem Cell Research Foundation
22512 Gateway Center Drive
Clarksburg, MD 20871
877-842-3442
www.stemcellresearchfounda-tion.org

Sudan Divestment Task Force
1333 H Street NW
Washington, DC 20005
202-481-8103
www.sudandivestment.org

Texas Criminal Justice Reform Coalition
602 West 7th Street, Suite 104
Austin, TX 78701
512-441-8123
www.criminaljusticecoalition.org

Union of Concerned Scientists
2 Brattle Square
Cambridge, MA 02238
617-547-5552
www.ucsusa.org

United States Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410
202-708-1112
www.hud.gov

United States Green Buildings Council
1015 18th Street NW, Suite 508
Washington, DC 20036
202-82-USGBC
www.usgbc.org

Universal Health Care Action Network
2800 Euclid Avenue, Suite 520
Cleveland, OH 44115
216-241-8422
www.uhcan.org

Urban Institute
2100 M Street NW
Washington, DC 20037
202-833-7200
www.urban.org

USAction
1341 G Street NW, 10th Floor
Washington, DC 20005
202-624-1730
www.usaction.org

Violence Policy Center
1730 Rhode Island Avenue, Suite 1014
Washington, DC 20036
202-822-8200
www.vpc.org

Wal-Mart Watch
1730 M Street NW, Suite 601
Washington, DC 20036
202-557-7440
www.walmartwatch.com

Western Prison Project
P.O. Box 40085
Portland, OR 97240
503-335-8449
www.westernprisonproject.org

Wider Opportunities for Women
1001 Connecticut Avenue NW, Suite 930
Washington, DC 20036
202-464-1596
www.wowonline.org

Women's Bureau-U.S. Department of Labor
200 Constitution Avenue NW
Room No. S-3002
Washington, DC 20210
800-827-5335
www.dol.gov/wb

Women's Institute for Secure Retirement
1725 K Street NW, Suite 201
Washington, DC 20036
202-393-5452
www.wiser.heinz.org

Worker Center-King County Labor Council, AFL-CIO
2800 1st Avenue, Room 252
Seattle, WA 98121
206-461-8408
www.wc-kclc.org

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