

Progressive Agenda for the States 2006

State Policy Leading America

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From the Executive Director



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Dear Friends:

For the sixth 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 66 model bills. Seventy 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 values-based policies that address our nation's most pressing problems.

I am delighted to report that, despite the conservative stranglehold on the federal level, state legislators won dozens of progressive victories in 2005. 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, about 60 percent mirror solutions featured in the *Progressive Agenda*.

With progress blocked at the federal level, state legislators shoulder a great responsibility. Now more than ever, 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 2006. Your courage, sacrifice and hard work inspire all of us here at CPA, and we dedicate this *Progressive Agenda* to you.

Sincerely,

A handwritten signature in black ink that reads "Tim McFeeley". The signature is written in a cursive, flowing style.

Tim McFeeley
Executive Director

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Introduction

Politics is the art of persuasion—communication with a purpose.

The 50 policy summaries in this *Progressive Agenda* are primarily intended to help you persuade your legislatures to enact specific measures. But this volume has a broader goal—to help you assemble a political platform that persuades voters to support progressive candidates.

The target of any persuasion message is persuadable voters. We cannot—and don't have to—convince everyone. Persuadable voters are a relatively small slice of the general public. It's a group we need to understand better.

Most persuadable voters are not like us—they are *normal* people. Unlike us, they don't think much about public policy, they don't have a policy checklist for candidates, and they don't pay attention to campaigns until the last few weeks before an election.

How do we persuade people who are so different from us? By assuring them that we share their values.

Let's first be clear that "values" does not refer to an anti-abortion, anti-gay, pro-prayer-in-schools agenda. In public policy, values are ideals that describe the kind of society we are trying to build.

So what are the policy values that we share with persuadable voters? To answer that question, progressives need to consider the proper roles of government.

Roles of government

Progressive policies fit into one of three situations: (1) Where government has no proper role because public action violates individual rights; (2) Where government acts as a referee between private, unequal interests; or (3) Where government acts to protect those who cannot reasonably protect themselves, including future generations.

Where government has no proper role, the progressive value is "freedom." The idea of freedom is deeply ingrained in American history. It is a universally popular value—one that reliably resonates with persuadable voters. Oddly, progressives rarely talk about freedom, perhaps because we are afraid that defending civil liberties makes us unpopular. But that's the point of values—to help us bridge the gap between popular ideals and less popular policies.

Where government acts as a referee, the progressive value is "opportunity." Americans fervently believe in a land of opportunity where hard work is rewarded and everyone has equal access to the American Dream. Equal opportunity means a level playing field—fair dealings between the powerful and the less powerful, the elimination of discrimination, and a quality education for all. After thoroughly poll-testing the term with persuadable voters, President Clinton made opportunity his most emphasized policy value.

Where government acts as a protector, the progressive value is “security.” Conservatives have tried to narrow the definition of security to mean only protection from domestic criminals and foreign terrorists. But, at least since the Great Depression, Americans have understood that security includes public protection of our health and well being. That’s why financial protection for the elderly is called Social Security. Security includes insuring the sick and vulnerable, safeguarding the food we eat and products we use, and preserving our environment. Persuadable voters strongly favor security when it includes them—protecting “our” security is very popular, while protecting “their” security is less popular.

Progressive versus conservative values

These progressive values distinguish us from conservatives. While progressives work to extend freedom, opportunity and security to all Americans, conservatives try to limit these rights to a select few.

Today, conservatives are trampling on our freedoms—restricting basic reproductive rights, authorizing warrantless police searches, and imposing their creationist doctrine on schoolchildren. The Terri Schiavo case is a perfect example of conservatives turning their backs on freedom and imposing government where it doesn’t belong.

At the same time, economic conservatives misuse the term freedom by equating it with markets that are “free” from government intervention. But American markets are completely dependent on a dense web of laws enforced by multiple layers of federal, state and local agencies. The dollar itself is a function of government. There are simply no “free markets” in the U.S.—only markets that are fair or unfair. Economic policy has nothing to do with freedom; it has everything to do with opportunity.

Conservatives also oppose opportunity for all. They are against ending discrimination, even though equal treatment is a precondition for equal opportunity. They don’t even begin to support equal opportunity in commerce—instead conservatives specialize in government favors, no-bid contracts, and economic development give-aways. And right-wingers seek to destroy anything that allows individuals to stand up to bigger economic forces, with labor unions, consumer protections, and anti-monopoly policies under constant attack.

As for security, consider how conservatives tried to gut Social Security. It is part of a cold-blooded plan to dismantle New Deal and Great Society programs that protect our health, our safety, and our environment. In every way—including the war on terrorism—the right wing has made our country less secure.

INTRODUCTION

This brings us to a fourth progressive value—“responsibility.” Responsibility sets progressives apart from conservatives. We take responsibility by crafting policies to extend freedom, opportunity and security to all. Responsibility is another term that was fully poll-tested and frequently employed by President Clinton.

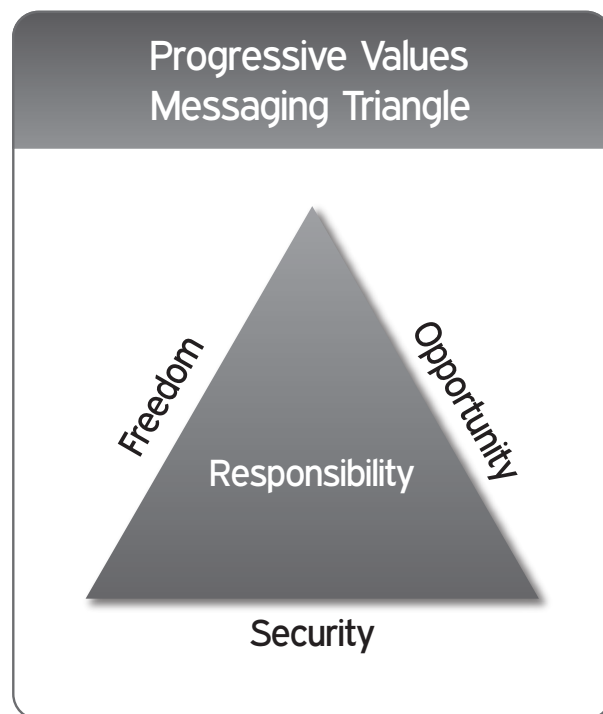
Understand that responsibility is the value most cynically skewed by conservatives. Their mantra is “personal responsibility.” Unemployment, hunger and discrimination are the individual’s problem, they say. They’re not societal problems. In other words, conservatives twist the language of responsibility to *shirk* responsibility. It’s downright Orwellian.

A progressive messaging triangle

When presented with this structure, some progressives note that the words freedom, opportunity, security and responsibility sound awfully moderate to them. Exactly! These are values that resonate with all Americans. The concept of framing is to build a bridge that connects progressives to persuadable voters. When we use these values to describe and defend progressive policies, voters understand that we’re on their side.

These four concepts can help us explain progressive political philosophy, persuade the persuadables to support our legislation, and show voters that progressive—not conservative—policies are grounded in values.

The messaging triangle illustrated below reminds us how to communicate these ideas. Before talking about a specific policy, we should emphasize the value of freedom (if government action violates individual rights), opportunity (if government should act as a referee), or security (if government should act as a protector). The value naturally leads to an explanation of the specific policy. Ideally, the point should end by explaining that the progressive position takes responsibility for solving the problem, while the conservative position abdicates responsibility.



For example, a brief statement about the minimum wage: “I believe that America should truly be a land of opportunity. But minimum wage workers have no opportunity to support themselves or their children. If a parent works full-time for the current minimum wage, the family income remains thousands of dollars below the poverty line. Raising the minimum wage directly encourages and rewards hard work. By opposing an increased minimum wage, my opponent refuses to take responsibility for providing opportunity to all Americans. I welcome that responsibility.”

In the real world, of course, we can’t repeat these terms in every sentence. We can substitute “liberty” or “basic rights” for freedom, “fair share” or “level playing field” for opportunity, “safety” or “health” for security. Or we can jump directly to responsibility: “This is the moment to take responsibility for providing a quality education to our children. By opposing legislation to attract high-quality teachers to schools most in need, my opponent is shirking that responsibility.”

This is a battle we can win

Polls consistently demonstrate that progressive policies are very popular. Americans want fair wages and benefits, consumer protections, quality education, a clean environment, and health care for all. But too many persuadable voters don’t trust us to deliver our programs because they don’t understand our political philosophy and our vision for the future.

Too often, progressives converse in insider language, or discuss a problem as if the solution were obvious, or roll out a laundry list of policies as if they speak for themselves. In those cases, the only people who are listening are the ones who already agree with us. We communicate, but don’t persuade.

The 50 policies in this year’s *Progressive Agenda* are examples of our progressive values. Use them to illustrate your overall vision for the future. Use them to fend off cynical platitudes of the right wing. Most of all, use them to persuade Americans that progressives stand for a political philosophy that they can trust.

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 must not only 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.

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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:

AFL-CIO*	Human Rights Campaign*
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Brennan Center for Justice	National Coalition to Abolish the Death Penalty*
Campaign for Tobacco-Free Kids*	National Council of La Raza*
Center on Budget and Policy Priorities*	National Employment Law Project*
Center for Responsible Lending*	National Gay and Lesbian Task Force*
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Coalition to Stop Gun Violence*	National Legislative Association on Prescription Drug Prices*
Consumers Union	National Partnership for Women and Families*
Corporation for Enterprise Development	Sentencing Project
Defenders of Wildlife	State Environmental Resource Center*
Demos*	U.S. PIRG
Economic Policy Institute*	Wider Opportunities for Women
Good Jobs First*	

*** 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.**

2006 POLICY AGENDA

Budget and Taxation

General fund balances are expected to decline by the end of 2006 because spending needs will outstrip modest revenue growth.

Balancing State Budgets

Summary:

- ▶ General fund balances in the states are projected to fall by the end of 2006.
- ▶ 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.

General fund balances in the states are projected to fall by the end of 2006.

After three years of revenue losses, state revenues returned to relatively normal levels in 2004 and 2005. Nevertheless, general fund ending balances are expected to decline by the end of 2006 because spending needs—especially Medicaid—will outstrip modest revenue growth.¹

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

In addition to short-term budget problems, 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 shortfalls.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.

A wide variety of policies are available to increase revenues.

Nobody likes to raise taxes or cut government services, but most legislatures will be forced to do one or both in 2006. 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.⁴ Since 2002, 35 state legislatures (AL, AK, AR, CT, DE, GA, HI, ID, IL, IN, KS, KY, LA, ME, MD, MA, MI, MN, NE, NH, NV, NJ, NM, NY, OH, PA, RI, SD, TN, UT, VT, VA, WA, WV, WY) and the District of Columbia have raised tobacco taxes. Voters in Arizona, Colorado, Montana, Oklahoma, Oregon and Washington increased their tobacco taxes by state-wide referendum. In 2005, seven states (ID, KY, ME, MN, NH, OH, WA) raised their tobacco taxes, providing by far the most significant net revenue increase of any tax: over one billion dollars.⁵ 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, while 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 health care and law enforcement costs of drinking.⁶ In 2005, both Kentucky and Washington increased their alcohol excise taxes, resulting in \$14.4 and \$22 million increases, respectively, in state revenues.⁷

- ▶ **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. Thirteen states (CT, IL, ME, MD, MA, MN, NE, NJ, NC, RI, VT, WA, WI) have taken action to decouple from the federal estate tax. Five other states (KS, NY, OH, OR, VA) were never coupled to the federal estate tax.⁸ Washington's new estate tax, which uses a rate structure different from federal law, will generate \$39.9 million in 2005.⁹
- ▶ **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 increase in tax rates for taxpayers who earn above \$500,000. Similarly, a November 2004 California referendum instituted a one percent surtax on taxpayers earning over \$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 need to 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 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.¹⁰
- ▶ **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. CT and RI 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.
- ▶ **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.

BALANCING STATE BUDGETS POLICY SUMMARY

► **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. This tax loophole has been closed in 26 states, most recently in 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 is 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.”

► **Corporate Income Tax**—Decouple from the federal qualified production activities income depreciation. Twenty-nine states will lose a total of \$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.¹²

► **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 base 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.¹³

► **Sales Tax**—Delete exemptions on some products. Each state has different sales tax exemptions. Some are progressive (e.g. exemptions for food, medicines 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 or 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. There, 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.¹⁴ In 2005, Kentucky, North Dakota and Washington raised the gasoline tax, while Georgia lowered it.

► **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.

BALANCING STATE BUDGETS POLICY SUMMARY

Endnotes

- 1 National Conference of State Legislatures, "State Budget & Tax Actions 2005: Preliminary Report," 2005; Elizabeth McNichol, "State Fiscal Crisis Lingers: Cuts Still Loom," Center on Budget and Policy Priorities, February 15, 2005.
- 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 Campaign for Tobacco-Free Kids, "Voters Across the Country Support Significant Increases in State Cigarette Taxes," June 25, 2003.
- 5 "State Budget & Tax Actions 2005: Preliminary Report."
- 6 American Medical Association, "Americans overwhelmingly support increase in state alcohol taxes," *U.S. Newswire*, May 4, 2004.
- 7 "State Budget & Tax Actions 2005: Preliminary Report."
- 8 Elizabeth McNichol, "Many States Are Decoupling From the Federal Estate Tax Cut," Center on Budget and Policy Priorities, July 19, 2005.
- 9 "State Budget & Tax Actions 2005: Preliminary Report."
- 10 Ibid.
- 11 Nicholas Johnson, "Federal Tax Changes Likely To Cost States Billions Of Dollars In Coming Years," Center on Budget and Policy Priorities, June 2003.
- 12 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.
- 13 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.
- 14 Nicholas Johnson, "Should States Suspend Their Gasoline Taxes?" Center on Budget and Policy Priorities, September 8, 2005.

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-subsidary 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.

BALANCING STATE BUDGETS POLICY MODEL

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 clearly to 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, 2006 and shall apply to tax returns filed for any tax year beginning on or after January 1, 2006.

Earned Income Tax Credit

Summary:

- ▶ 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 non-bureaucratic.
- ▶ 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 most recently in 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 2005, qualifying families with two or more children receive up to \$4,400, and families with one child receive up to \$2,662. Workers with no dependent children are only eligible to receive a maximum of \$399 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, while 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 non-bureaucratic.

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.

Fourteen states and the District of Columbia have adopted or substantially increased their EITCs since 2000. 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.

Endnotes

- 1 U.S. Bureau of Labor Statistics and Bureau of the Census, "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 Center on Budget and Policy Priorities, "The 2005 Earned Income Tax Credit Estimates," 2005.
- 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.

STATE EARNED INCOME TAX CREDITS BASED ON THE FEDERAL EITC	
State	Percentage of the Federal EITC
Refundable Credits	
Colorado	10% (currently suspended; projected to be reinstated in 2006)
District of Columbia	35%
Illinois	5%
Indiana	6%
Kansas	15%
Maryland*	20%
Massachusetts	15%
Minnesota	33% on average, varies with earnings
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	4.92%
Virginia	20%, effective in 2006
* 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.	

Earned Income Tax Credit

Earned Income Tax Credit Act

Summary: The Earned Income Tax Credit Act would provide 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 “[State] 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, 2006.

For policy toolkits covering more than
100 state issues, visit

www.stateaction.org

Tobacco Taxes

Summary:

- ▶ 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 2003, 31 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 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 2003, 31 states have increased their tobacco taxes.

Since the beginning of 2003, the average state cigarette tax has increased from 62 to 91.7 cents per pack. Twenty-six state legislatures (AL, AK, AR, CT, DE, GA, HI, ID, KS, KY, ME, MI, MN, NV, NH, NJ, NM, NC, OH, PA, RI, SD, VA, VT, WV, WY) raised cigarette taxes. Colorado, Montana, Oklahoma, Oregon and Washington increased tobacco taxes by statewide referendum. Most of the recent tax increases were quite large—60 cents or more per pack. Sixteen 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 Rhode Island's \$2.46. Nineteen state tobacco taxes are 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, 2005.

Rank	State	Tax (¢ / pack)
1	Rhode Island	246
2	New Jersey	240
3	Washington	202.5
4	Maine	200
4	Michigan	200
6	Montana	170
7	Alaska	160
8	Connecticut	151
8	Massachusetts	151
10	New York	150
11	Hawaii	140
12	Pennsylvania	135
13	Ohio	125
14	Minnesota	123
15	Vermont	119
16	Arizona	118
16	Oregon	118
18	Oklahoma	103
19	DC	100
19	Maryland	100
21	Illinois	98
22	New Mexico	91
23	California	87
24	Colorado	84
25	Nevada	80
25	New Hampshire	80
27	Kansas	79
28	Wisconsin	77
29	Utah	69.5
30	Nebraska	64
31	Wyoming	60
32	Arkansas	59
33	Idaho	57
34	Indiana	55.5
35	Delaware	55
35	West Virginia	55
37	South Dakota	53
38	North Dakota	44
39	Alabama	42.5
40	Texas	41
41	Georgia	37
42	Iowa	36
42	Louisiana	36
44	Florida	33.9
45	Kentucky	30
45	North Carolina*	30
45	Virginia	30
48	Tennessee	20
49	Mississippi	18
50	Missouri	17
51	South Carolina	7
Overall Average		91.7
Major Tobacco States' Average		25.7
Other States' Average		100.5

* Another 5-cent increase will take effect 7/1/06.

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, 2006.

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 285.

2006 POLICY AGENDA

Business and Labor

Over a period of decades, both workplace policies and the makeup of the workforce have changed dramatically. Government policy needs to adjust to the challenges of today's economy.

Corporate Accountability

Summary:

- ▶ 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 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 economic development 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.² 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 to businesses 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 37.³

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.⁴ 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.⁵ 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 economic development 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 reveals 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," health care benefits, or full-time hours—to incentives such as tax abatements, revenue bonds, and investment tax credits.⁶ Job quality standards promote fiscal responsibility, since they help to avoid the phenomenon of taxpayers subsidizing 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 corporate accountability 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 two federal agencies, 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*, Vol. 20, No. 1, Winter 2004.
- 2 Mafruza Khan with Greg LeRoy, "Missing the Bus: How States Fail to Connect Economic Development with Public Transit," *Good Jobs First*, September 2003.
- 3 Philip Mattera and Mafruza Khan, "Jail Breaks: Economic Development Subsidies Given to Private Prisons," *Good Jobs First*, October 2001.
- 4 Greg LeRoy and Sara Hinkley, "No More Secret Candy Store: A Grassroots Guide to Investigating Development Subsidies," *Good Jobs First*, March 2002.
- 5 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.
- 6 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 one million dollars 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.

CORPORATE ACCOUNTABILITY POLICY MODEL

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, within or outside of 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.

CORPORATE ACCOUNTABILITY POLICY MODEL

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 [state's open records act, 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, 2006.

Equal Pay

Summary:

- ▶ Millions of women and people of color continue to suffer wage discrimination.
- ▶ The gender wage gap results in an average annual loss of more than \$4,000 per American family.
- ▶ The wage gap is the result of both discrimination and the concentration of women and people of color in a narrow range of undervalued and underpaid jobs.
- ▶ Existing laws are hard to enforce and do not address the problem of occupations that are undervalued because they are dominated by women or people of color.
- ▶ Equal pay is good business and can boost the economy.
- ▶ States can enact legislation that strengthens enforcement of existing laws, addresses the causes of unequal pay, and requires equal pay for equivalent jobs.
- ▶ States have led the way in closing the wage gap for two decades.

Millions of women and people of color continue to suffer wage discrimination.

According to the U.S. Census Bureau, women who work full-time earn 77 cents for every dollar earned by men.¹ African American women earn 69 cents and Latinas earn 57 cents for every dollar paid to white male workers. Men of color also experience wage discrimination. African American men earn 73 cents and Latinos earn only 66 cents for every dollar paid to their white male counterparts.²

The gender wage gap results in an average annual loss of more than \$4,000 per American family.³

If married women were paid the same as men who do comparable work, their family incomes would rise and their family poverty rates would fall. If single working mothers earned as much as men who do comparable work, their poverty rates would be cut in half.⁴ Over her lifetime, each woman loses between \$700,000 and \$2 million in earnings because of wage discrimination.⁵

The wage gap is the result of both discrimination and the concentration of women and people of color in a narrow range of undervalued and underpaid jobs.

Although the wage gap can be partially explained by differences in education, experience and time in the workforce, a significant portion is the result of discrimination. U.S. employers pay hundreds of millions of dollars annually to settle wage discrimination claims.⁶ In 2004, for example, Boeing Company agreed to pay between \$40 and \$72 million, Morgan Stanley agreed to pay \$54 million, and Abercrombie & Fitch agreed to pay \$50 million to settle lawsuits over

gender and racial discrimination.⁷ Further, more than half of all women workers hold sales, clerical, service or caregiving jobs (child care, elder care, and nursing). These professions pay less than equivalent jobs held by men.

Existing laws are hard to enforce and do not address the problem of occupations that are undervalued because they are dominated by women or people of color.

Federal and state equal pay laws have been in effect for decades, yet wage discrimination continues. Not only are these laws poorly enforced, but they do not apply to the problem of unequal pay for *equivalent* work in *different* jobs. It is possible to compare different jobs within an organization to determine equivalent work. American employers have used job evaluation studies to set pay and rank for different jobs within a company for several decades. These evaluations take into consideration factors such as skill, effort, responsibility and working conditions. In fact, two out of three workers are employed by businesses that use some form of job evaluation. The federal government's job evaluation system, which covers nearly two million employees, has been in use for over 70 years.

Equal pay is good business and can boost the economy.

One survey found that businesses leaders consider the elimination of wage discrimination between different jobs to be "good business," and say that equal pay is necessary to remain competitive.⁸ Furthermore, higher wages for women and people of color increase their purchasing power, which strengthens the economy. Equal pay would not bust the budgets of businesses or governments. Pay adjustments tend to

be modest and are phased in over a period of years. In Minnesota, where equal pay legislation was implemented for public sector employees over a four-year period, the cost was only 3.7 percent of the state's payroll budget. In the state of Washington, equal pay for state employees, implemented over an eight-year period, cost only 2.6 percent of overall personnel expenditures.

States can enact legislation that strengthens enforcement of existing laws, addresses the causes of unequal pay, and requires equal pay for equivalent work.

One option, the Equal Pay Remedies and Enforcement Act, enhances existing laws and establishes a multi-sector Equal Pay Commission to study the extent, causes and consequences of wage disparities. The Commission provides the research needed to craft state-specific policies. Another option, the Fair Pay Act, prohibits pay differentials between women and men and between minority and non-minority workers in jobs that are equal or require equivalent skill, effort, responsibility and working conditions. Exceptions are made for differentials based on *bona fide* seniority, merit or other legitimate factors.

States have led the way in closing the wage gap for over two decades.

In 1982, Minnesota first implemented equal pay for all public sector employees. States have continued to be the source of innovative solutions for narrowing the wage gap. In 2005, Hawaii prohibited gender-based wage discrimination and established a pay equity task force to recommend remedies for wage inequities, and Maryland created a commission to study disparities between the pay of men and women and between whites and minorities. In 2003, Illinois enacted a law that prohibits wage discrimination on the basis of gender, New Mexico and Utah passed bills that required pay equity studies, and the West Virginia legislature created an equal pay commission.

Endnotes

- 1 Using 2004 median annual earnings from the U.S. Census Bureau, "Current Population Survey," 2005.
- 2 Ibid.
- 3 AFL-CIO & Institute for Women's Policy Research, "Equal Pay for Working Families: National and State Data on the Pay Gap and its Costs," 1999.
- 4 Ibid.
- 5 Evelyn Murphy, *Getting Even: Why Women Don't Get Paid Like Men—And What to Do About It*, 2005.
- 6 Ibid.
- 7 For a description of these and other wage discrimination suits, see "Sex Discrimination Cases," WAGE: Women Are Getting Even, 2005.
- 8 National Committee on Pay Equity, "Questions and Answers on Pay Equity," 2000.

Equal Pay

Equal Pay Remedies and Enforcement Act

Summary: The Equal Pay Remedies and Enforcement Act strengthens penalties against wage discrimination and forms a commission to study how to achieve pay equity.

SECTION 1. SHORT TITLE

This Act shall be called the “Equal Pay Remedies and Enforcement Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Despite federal and state laws that ban discrimination in employment and pay in both the private and public sectors, wage differentials persist between women and men and between minorities and non-minorities in the same jobs, and in jobs that require equivalent composites of skill, effort, responsibility and working conditions.
2. Wage discrimination not only harms individual women and people of color, it also depresses living standards, contributes to higher poverty rates among female-headed and minority households, prevents the maximum utilization of available labor resources, causes labor disputes that burden commerce, and violates the state’s expressed policy against discrimination.
3. Many occupations are dominated by individuals of the same sex, race or national origin, and discrimination in hiring, job assignment, and promotion has played a role in establishing and maintaining segregated workforces.
4. Current remedies imposed on employers who practice discrimination in pay between men and women, and between minorities and non-minorities, have proven to be only partially effective in eliminating such wage disparities.
5. Understanding the full extent and causes of wage disparities between men and women and between minorities and non-minorities in the private and public sectors would enable the state to take more effective measures to reduce disparities and to eliminate discrimination in wage-setting.

(B) PURPOSE—This law is enacted to protect the health and welfare of individual residents and improve the overall labor environment by correcting and deterring discriminatory wage practices based on sex, race, and national origin, developing reliable data about the extent of such wage discrimination, and providing greater understanding about its causes.

SECTION 3. ENHANCED PENALTIES

After section XXX [citation to remedial section of the state equal pay law], the following new paragraphs shall be inserted:

- (A) Any employer who violates section(s) [citation to section(s) prohibiting wage discrimination] shall additionally be liable for such compensatory and punitive damages as may be appropriate.
- (B) Any employer found liable by virtue of a final judgment under this Act for any monetary damages provided thereunder shall pay to the state a civil penalty equal to ten percent of the amount of damages owed. Such civil penalty shall be used by the state solely for the purpose of carrying out its responsibilities for the administration and enforcement of this section, the administration of the Equal Pay Commission, and the enforcement of [insert name(s) of other state employment discrimination laws].

SECTION 4. EQUAL PAY COMMISSION

- (A) Within 90 days of the effective date of this Act, the [Secretary of Labor] shall appoint a Commission of nine members, to be known as the “Equal Pay Commission.”
- (B) Membership of the Commission shall be as follows:
 1. Two representatives of businesses in the state, who are appointed from among individuals nominated by state business organizations and business trade associations.
 2. Two representatives of labor organizations, who have been nominated by a state labor federation chartered by a federation of national or international unions, that admits local unions as members, and exists primarily to carry on educational, legislative and coordinating activities.
 3. Two representatives of organizations whose objectives include the elimination of pay disparities between men and women and between minorities and non-minorities, and who have undertaken advocacy, educational or legislative initiatives in pursuit of that objective.
 4. Three individuals, drawn from higher education or research institutions, who have experience and expertise in the collection and analysis of data concerning such pay disparities and whose research has already been used in efforts to promote the elimination of those disparities.
- (C) The Commission shall make a full and complete study of:
 1. The extent of wage disparities, in both the public and private sectors, between men and women, and between minorities and non-minorities.
 2. Those factors that cause, or that tend to cause, such disparities, including segregation of women and men, and of minorities and non-minorities across and within occupations; payment of lower wages for occupations traditionally dominated by women and minorities; child-rearing responsibilities; and education and training.
 3. The consequences of such disparities on the economy and on affected families.
 4. Actions, including proposed legislation, that are likely to lead to the elimination and prevention of such disparities.
- (D) The Commission shall, no later than 12 months after its members are appointed, make its report to the [Secretary of Labor], who shall in turn transmit it to the Governor.
- (E) The Commission’s report shall include the results of its study as well as recommendations, legislative and otherwise, for the elimination and prevention of disparities in wages between men and women, and between minorities and non-minorities.

SECTION 5. EFFECTIVE DATE—This Act shall take effect on July 1, 2006.

EQUAL PAY POLICY MODEL

Fair Pay Act

Summary: The Fair Pay Act prohibits wage discrimination between equivalent jobs.

SECTION 1. SHORT TITLE

This Act shall be called the "Fair Pay Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Despite federal and state laws that ban discrimination in pay in both the public and private sectors, wage differentials persist between women and men and between minorities and non-minorities in the same jobs, and in jobs that require equivalent composites of skill, effort, responsibility and working conditions.
2. The existence of such wage differentials depresses wages and living standards; reduces family incomes, contributing to higher poverty rates experienced by female-headed and minority households; prevents the maximum utilization of available labor resources; tends to cause labor disputes, thereby burdening and obstructing commerce; constitutes an unfair method of competition; and [insert a state specific finding, e.g., "constitutes an unfair labor practice under state law or violates the state's public policy against discrimination."]
3. Discrimination in wage-setting practices has played a role in depressing wages of women and minorities.
4. Many occupations are dominated by individuals of the same sex, race or national origin, and discrimination in hiring, job assignment, and promotion has played a role in establishing and maintaining segregated workforces.
5. Eliminating discrimination in compensation based on sex, race or national origin would have many positive effects, including providing a solution to problems in the economy created by discriminatory wage differentials; reducing the number of working women and people of color who earn low wages, thereby lowering their incidence of poverty during normal working years and in retirement; and promoting stable families by raising family incomes.

(B) PURPOSE—It is the purpose of this Act to correct—and as rapidly as practicable, to eliminate—discriminatory wage practices based on sex, race or national origin.

SECTION 3. FAIR PAY

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

(A) DEFINITIONS—In this section:

1. "Employer" means [cite existing definition in state employment law].
2. "Employee" includes any permanent full-time or part-time employee and any temporary employee who has worked for a period of at least three months. "Employee" shall not include any individual employed by his or her parents, spouse or child.
3. "Equivalent jobs" means jobs or occupations that are equal within the meaning of the Equal Pay Act of 1963, 29 U.S.C. 206(d), or jobs or occupations that are dissimilar but whose requirements are equivalent, when viewed as a composite of skill, effort, responsibility and working conditions.
4. "Person" means an individual, partnership, association, corporation or other legal entity, including the state and all of its political agencies and subdivisions.

5. "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.
6. "Market rates" means the rates that employers within a prescribed geographic area actually pay, or are reported to pay for specific jobs, as determined by formal or informal surveys, wage studies, or other means.
7. "Wages and wage rates" shall include all compensation in any form that an employer provides to employees in payment for work done or services rendered, including but not limited to base pay, bonuses, commissions, awards, tips, or various forms of non-monetary compensation, if provided in lieu of or in addition to monetary compensation, and that have economic value to an employee.

(B) PROHIBITION AGAINST DISCRIMINATION IN WAGES

1. It shall be an unlawful employment practice, in violation of this section, for an employer to discriminate between employees on the basis of sex, race or national origin by:
 - a. Paying wages to employees at a rate less than the rate paid to employees of the opposite sex, or of a different race or national origin, for work in equivalent jobs; or
 - b. Paying wages to employees in a job that is dominated by employees of a particular sex, race or national origin at a rate less than the rate at which such employer pays to employees in another job that is dominated by employees of the opposite sex, or of a different race or national origin, for work on equivalent jobs.
2. It shall not be an unlawful employment practice for an employer to pay different wage rates to employees where such payments are made pursuant to:
 - a. A *bona fide* seniority or merit system;
 - b. A system that measures earnings by quantity or quality of production; or
 - c. Any *bona fide* factor other than sex, race or national origin, provided that wage differentials based on varying market rates for equivalent jobs, or the differing economic benefits to the employer of equivalent jobs, shall not be considered differentials based on *bona fide* factors other than sex, race or national origin.
3. An employer who pays wages in violation of this section shall not, in order to comply with the provisions of this section, reduce the wages of any employee.
4. No labor organization, or agents that represent employees of an employer that is subject to any provision of this section, shall cause or attempt to cause such an employer to discriminate against an employee in violation of this section.
5. The [State Department of Labor or other appropriate agency] shall promulgate regulations that specify the criteria for determining whether a job is dominated by employees of a particular sex, race or national origin. Criteria shall include, but not be limited to, factors such as whether the job has ever been formally classified as, or traditionally considered to be, a "male" or "female" or "white" or "minority" job; whether there is a history of discrimination against women or people of color with regard to wages, assignments or access to jobs, or other terms and conditions of employment; and the demographic composition of the workforce in equivalent jobs (e.g., numbers or percentages of women, men, white persons, and people of color). The regulations shall not include a list of jobs.

EQUAL PAY POLICY MODEL

(C) OTHER PROHIBITED ACTS

It shall be an unlawful employment practice in violation of this section for an employer:

1. To take adverse actions or otherwise discriminate against any individual because such individual has opposed any act or practice made unlawful by this section; has sought to enforce rights protected under this section; or has testified, assisted or participated in any manner in an investigation, hearing or other proceeding to enforce this section; or
2. To discharge, or in any other manner discriminate against, coerce, intimidate, threaten or interfere with any employee or any other person because an employee inquired about, disclosed, compared or otherwise discussed an employee's wages, or because an employee exercised, aided or encouraged any other person to exercise any right granted or protected by this section.

(D) WAGE DISCLOSURE, RECORDKEEPING AND REPORTING REQUIREMENTS

1. Upon commencement of an individual's employment, and at least annually thereafter, every employer subject to this section shall provide to each employee a written statement sufficient to inform the employee of his or her job title, wage rate, and how the wage is calculated. This notice shall be supplemented whenever an employee is promoted or reassigned to a different position with the employer, provided that the employer is not required to issue supplemental notifications for temporary reassignments that are of no more than three months in duration.
2. Every employer subject to this section shall make and preserve records that document the wages paid to employees, and that document and support the method, system, calculations and other bases used to establish, adjust and determine the wage rates paid to said employer's employees. Every employer subject to this section shall preserve records and make reports from the records as shall be prescribed by the [State Department of Labor or other appropriate agency].
3. The regulations promulgated under this section relating to the form of reports required shall provide for protection of the confidentiality of employees, and shall expressly require that reports shall not include the names or other identifying information from which readers could discern the identities of employees. The regulations may also identify circumstances that warrant a prohibition on disclosure of reports or information identifying the employer.
4. The [State Department of Labor] may use the information and data it collects pursuant to this section for statistical and research purposes, and may compile and publish such studies, analyses, reports and surveys, based on the information and data, as it considers appropriate.

(E) ENFORCEMENT

1. This section may be enforced by a private cause of action under [appropriate section of state law].
2. 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 procedures to receive, investigate and attempt to resolve complaints, and to bring actions in any court of competent jurisdiction to recover appropriate relief for aggrieved employees.
3. In any action under this section in which an employee prevails:
 - a. The employee shall be awarded monetary relief, including back pay in an amount equal to the difference between the employee's actual earnings and what the employee would have earned but for the employer's unlawful practices, and an additional amount in punitive damages as appropriate.
 - b. The employer shall be enjoined from continuing to discriminate against employees, and the employer may be ordered to take such additional affirmative steps as are necessary, including reinstatement or reclassification of affected workers, to ensure an end to unlawful discrimination.

- c. The employer shall pay a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action.

(F) STATUTE OF LIMITATIONS

An action may be brought under this section not later than two years after the date of the last event constituting the alleged violation for which the action is brought.

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, 2006.

High Road Economic Development

Summary:

- ▶ High road policies promote high-wage, worker-friendly, and publicly accountable economic development.
- ▶ Companies that pay low wages and provide few benefits create a burden on state governments.
- ▶ It is simply bad economics for a state to subsidize the creation of low-road jobs.
- ▶ A growing number of state and local governments are adopting high road policies.
- ▶ It makes economic sense for states to require subsidy recipients to pay a living wage.
- ▶ It makes economic sense for states to require subsidy recipients to provide health insurance.
- ▶ It makes economic sense for states to require subsidy recipients to provide employees with training opportunities.
- ▶ The Minimum Standards for Subsidized Jobs Act requires businesses that receive state economic development subsidies to provide economically sustainable jobs to their employees.

High road policies promote high-wage, worker-friendly, and publicly accountable economic development.

States and their municipalities give about \$50 billion to private companies every year in the name of economic development, through corporate income tax credits, property tax abatements, low-interest loans, enterprise zones, tax increment financing, and economic development grants.¹ These government subsidy programs tend to support “low road” economic development: the creation of low-wage, dead-end jobs that provide little benefit to employees or communities.² A “high road” strategy uses government leverage to compel businesses to act in a socially responsible manner. High road policies result in better and more secure jobs, a stronger tax base, and economic growth that benefits employees, corporations and governments.³

Companies that pay low wages and provide few benefits create a burden on state governments.

When businesses provide low-wage, low-benefits jobs, their workers are forced to rely upon taxpayer-funded programs, such as subsidized housing, child care, and Medicaid. Wal-Mart is a prime example. 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.⁴ In Georgia, over 10,000 children with a parent who works at Wal-Mart—one child for every four Wal-Mart employees in the state—are enrolled in Georgia’s SCHIP program, at a cost of \$10 million to taxpayers.⁵ Businesses that bring low-road jobs into a community displace other businesses in the area and replace good jobs with bad jobs.⁶

It is simply bad economics for a state to subsidize the creation of low-road jobs.

It makes no sense for governments to spend taxpayers’ money to encourage the creation of jobs that ultimately burden the state. The state should get its money’s worth by supporting economic development that raises, not lowers, the living standards of working families. Public dollars should be spent to promote the public good.

A growing number of state and local governments are adopting high road policies.

By 2003, at least 43 states, 41 cities, and five counties had attached job quality standards to some government contracts or subsidies. This represents an improvement over 2000, when 37 states, 25 cities, and four counties had job quality standards.⁷

It makes economic sense for states to require subsidy recipients to pay a living wage.

The federal minimum wage of \$5.15 per hour is simply insufficient to support a family. A wage earner who works full-time at the minimum wage earns about \$10,700 a year—\$5,390 below the 2005 poverty line for a family of three, and \$8,650 below the poverty line for a family of four. Clearly, the creation of sub-poverty level jobs does not lead to a self-sufficient workforce or provide the basis for sustainable economic growth.

It makes economic sense for states to require subsidy recipients to provide health insurance.

Seventy percent of the 45 million Americans without health insurance are full-time workers or their dependents. Only 55 percent of workers who earn less than seven dollars an hour have access to job-based health insurance.⁸ Twenty-nine states have programs that require companies that receive government contracts or subsidies to provide health insurance—a major improvement over 2000, when just 17 states had such a requirement.⁹

It makes economic sense for states to require subsidy recipients to provide employees with training opportunities.

Unskilled workers in jobs with little or no opportunity to gain new skills can get stuck in a cycle of dependency as they try to provide for themselves and their families. Education and training are essential elements of any sustainable economic development strategy. To attract businesses over the long term, a region must develop the skills of its workforce.

The Minimum Standards for Subsidized Jobs Act requires businesses that receive state economic development subsidies to provide economically sustainable jobs to their employees.

The model legislation requires that, in order to receive an economic development subsidy, a company must:

- ▶ Pay a minimum hourly wage of at least one dollar more than the federal or state minimum wage.
- ▶ Offer all full-time employees access to a good health insurance plan.
- ▶ Offer job training programs to at least 20 percent of its workers.
- ▶ Not have been adjudicated in violation of any federal, state or local laws for at least five years.

Endnotes

- 1 Peter Fisher and Alan Peters, "The Failures of Economic Development Incentives," *Journal of the American Planning Association*, Vol. 70, No. 1, Winter 2004.
- 2 See Greg LeRoy, *The Great American Job Scam: Corporate Tax Dodging and the Myth of Job Creation*, 2005.
- 3 For a fuller discussion of high road economic policy, visit www.cows.org or www.highroadnow.org.
- 4 Susan Chambers, Wal-Mart Executive Vice President for Benefits, "Supplemental Benefits Documentation: Board of Directors Retreat FY06," Wal-Mart Stores, Inc. (internal document given to the *New York Times*), October 2005.
- 5 Reed Abelson, "States Are Battling Against Wal-Mart Over Health Care," *New York Times*, November 1, 2004.
- 6 Philip Mattera and Anna Purinton, "Shopping for Subsidies: How Wal-Mart Uses Taxpayer Money to Finance Its Never-Ending Growth," *Good Jobs First*, May 2004.
- 7 Anna Purinton, "The Policy Shift to Good Jobs: Cities, States and Counties Attaching Job Quality Standards to Development Subsidies," *Good Jobs First*, November 2003.
- 8 Families USA, "Going Without Health Insurance," March 2003.
- 9 "The Policy Shift to Good Jobs."

High Road Economic Development

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, 2006 and shall apply to any economic development subsidy awarded or renewed on or after October 1, 2006.

Minimum Wage

Summary:

- ▶ 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 17 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—\$5,390 below the 2005 poverty line for a family of three, and \$8,650 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 \$8.10.¹ The real, inflation-adjusted value of the minimum wage in 2005 is at its lowest point in 50 years.²

Only 17 states have a minimum wage greater than \$5.15 per hour.

Seventeen states (AK, CA, CT, DE, FL, HI, IL, ME, MA, MN, NJ, NY, OR, RI, VT, WA, WI) and the District of Columbia have a minimum wage greater than the federal, the highest being \$7.63 in Washington as of January 2006. Twenty-five states (AR, CO, GA, ID, IN, IA, KY, MD, MI, MO, MT, NE, NV,³ NH, NM, NC, ND, OK, PA, SD, TX, UT, VA, WV, WY) match the federal minimum of \$5.15. Two states (KS, OH) have a minimum wage that is lower than the federal, and six (AL, AZ, 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 workforce, depending on the state.⁴ 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.

Working women would benefit more than any other group from a minimum wage increase. 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.⁵

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.⁶ 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.⁷ In November 2004, voters in both Florida and Nevada approved constitutional amendments to increase the minimum wage to \$6.15, including automatic cost-of-living increases each year. In both cases, the measure was approved by decisive margins: 71 to 29 percent in Florida and 68 to 32 percent in Nevada.

Endnotes

- 1 Based on the Consumer Price Index for Urban Wage Earners and Clerical Workers computed by the U.S. Bureau of Labor Statistics.
- 2 AFL-CIO, "Minimum Wage: Myths and Realities," 2003.
- 3 In November 2004, Nevada voters approved a constitutional amendment to raise the minimum wage to \$6.15, with future cost-of-living increases. That amendment must be approved again in November 2006 before it can take effect.
- 4 Economic Policy Institute, "Step Up, Not Out: The Case for Raising the Federal Minimum Wage for Workers in Every State," 2001.
- 5 Ibid.
- 6 Economic Policy Institute, "The Impact of the 1996-97 Minimum Wage Increase," 1998.
- 7 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, 2006.
3. On September 30, 2006, 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, 2006.

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Sick Leave Protection

Summary:

- ▶ More than 59 million Americans have no paid sick leave benefits.
- ▶ The denial of sick leave benefits is bad for workers and bad for business.
- ▶ Furthermore, 86 million Americans are unable to take paid sick days to care for children.
- ▶ Sick children and elderly parents suffer when their working relatives cannot take time off to care for them.
- ▶ Leave benefits strengthen businesses.
- ▶ Almost every state provides paid sick leave to state employees that covers the illnesses of employees and their family members.
- ▶ Some states also provide limited forms of leave benefits for all workers.
- ▶ Seven states guarantee flexible sick leave.
- ▶ Americans strongly support paid sick leave.

More than 59 million Americans have no paid sick leave benefits.¹

Forty-seven percent of all private-sector employers in the United States do not provide a single day of paid sick leave to their employees. In fact, fewer and fewer companies have paid sick leave programs—the percentage of medium and large companies with paid sick leave plummeted from 70 percent in 1986 to only 56 percent in 1997.² As a result, millions of Americans go to work while sick because they cannot afford to take unpaid leave until their health improves.

The denial of sick leave benefits is bad for workers and bad for business.

When sick employees continue to work, they take longer to recover and may spread their illness to co-workers. The effect on employers is equally detrimental. Businesses that rely on sick workers suffer from lower productivity, higher employee turnover, and decreased morale.

Furthermore, 86 million Americans are unable to take paid sick days to care for children.³

The federal Family and Medical Leave Act of 1993 (FMLA) guarantees unpaid leave for family illness or childbirth, but most Americans cannot afford to take advantage of it. Of American workers who qualify for leave under the FMLA, 78 percent say they do not use it because they cannot afford to go without pay.⁴ The financial hardship for those who do take unpaid leave forces nearly one in ten onto public assistance.⁵ The guarantee of unpaid leave is meaningless if workers can't afford to use it.

Sick children and elderly parents suffer when their working relatives cannot take time off to care for them.

In one survey, 41 percent of working parents said they had missed medical appointments or delayed treatments for their children, which places their children's health at risk.⁶ Moreover, 25 percent of Americans care for elderly relatives who frequently need assistance when they become sick.⁷ Americans shouldn't have to choose between paying the bills and caring for family.

Leave benefits strengthen businesses.

Businesses can improve employee morale and control costs if they provide leave benefits. According to the bipartisan Commission on Family Leave, the vast majority of employers—84 percent—reported that the benefits of providing leave under the FMLA offset or outweighed its costs. In many cases, there were no costs at all: over three-fourths of all businesses surveyed reported no ill effects on productivity or company growth. Moreover, 98 percent of employees who took family leave returned to work for the same employer, and 77 percent of employers reported cost savings because of decreased turnover.⁸

Almost every state provides paid sick leave to state employees that covers the illnesses of employees and their family members.

Every state provides at least nine paid sick days annually to its employees, and all except Louisiana and Mississippi allow leave time to be used to care for family members.⁹

SICK LEAVE PROTECTION POLICY SUMMARY

Some states also provide limited forms of leave benefits for all workers.

California, Hawaii, New Jersey, New York and Rhode Island have Temporary Disability Insurance (TDI) systems that provide partial wage replacement for employees who are temporarily disabled for medical reasons, including pregnancy and childbirth. California's TDI program allows workers to collect as much as 55 percent of their wages for up to six weeks while they take time off to care for a new infant or a seriously ill family member, is entirely employee-funded, and costs employees about \$27 a year. Minnesota pioneered a public program that provides low-income working parents with subsidies to care for infants under age one. Montana adopted a similar program in 2003.

Seven states guarantee flexible sick leave.

In 2005, Maine enacted a law that requires businesses with 25 or more employees to allow those who have accrued sick and vacation time to use it to care for sick family members. Since 2002, California, Connecticut, Hawaii, Minnesota, Washington and Wisconsin have enacted similar laws. Although these new laws do not provide additional leave to workers, they make legal what many employees have had to do covertly in order to balance their work and family responsibilities.

Americans strongly support paid sick leave.

Eighty-two percent of women and 75 percent of men surveyed in 1998 favored the idea of a new insurance program that would provide families with partial wage replacement when a worker takes family or medical leave.¹⁰ In 2002, 79 percent of working women surveyed said that access to paid family and medical leave is more important to them than increased pay, promotions or job flexibility.¹¹

This policy brief relies in large part on information from the National Partnership for Women and Families.

WHY WORKERS HAVE TAKEN FAMILY AND MEDICAL LEAVE:¹²

- ▷ **52% to care for their own serious illness**
- ▷ **26% to care for a new child or for a maternity-related disability**
- ▷ **13% to care for a seriously ill parent**
- ▷ **12% to care for a seriously ill child**
- ▷ **6% to care for a seriously ill spouse**

(Sum is greater than 100% because some take more than one leave.)

Endnotes

- 1 Vicky Lovell, "No Time to Be Sick: Why Everyone Suffers When Workers Don't Have Paid Sick Leave," Institute for Women's Policy Research, 2004.
- 2 Ibid.
- 3 Department of Labor, "Balancing the Needs of Families and Employers: Family and Medical Leave Surveys," 2000.
- 4 Ibid.
- 5 Ibid.
- 6 Jody Heymann, "The Widening Gap: Why America's Working Families Are in Jeopardy and What Can Be Done About It," 2000.
- 7 "Balancing the Needs of Families and Employers."
- 8 Ibid.
- 9 National Partnership for Women and Families, "Get Well Soon: Americans Can't Afford to Be Sick," June 2004.
- 10 Lake Snell Perry and Associates, "Family Matters: A National Survey of Women and Men," conducted for the National Partnership for Women and Families, February 1998.
- 11 Lake Snell Perry and Associates, "Ask a Working Woman Survey," Conducted for AFL-CIO, March 2002.
- 12 "Balancing the Needs of Families and Employers."

Sick Leave Protection

Sick Leave Protection Act

Summary: The Sick Leave Protection Act guarantees employees the right to sick leave and allows them to use sick leave for themselves or to care for family members who are ill.

SECTION 1. SHORT TITLE

This Act shall be called the "Sick Leave Protection Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Working Americans need to take time off for their own health care needs or to perform essential care-taking responsibilities for their family members, including children, spouses, parents, parents-in-law, and others for whom they are caretakers.
2. However, the majority of middle income Americans lack paid leave for self-care or to care for a family member. Low-income Americans are significantly worse off. Of low-income families (the poorest 25 percent), 76 percent lack regular sick leave. For families in the next two quartiles, 63 percent and 54 percent, respectively, lack regular sick leave. Even in the highest income quartile, 40 percent of families lack regular sick leave. Less than half of workers who have paid sick leave can use it to care for ill children.
3. It is in the state's interest to ensure that workers from all socioeconomic groups can care for their own health and the health of their families while prospering at work.

(B) PURPOSE—This Act is enacted to protect the health and safety of workers and their families by requiring employers to provide a minimum level of paid sick leave including leave for family care.

SECTION 3. SICK LEAVE PROTECTION

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

(A) DEFINITIONS—In this section:

1. "Child" means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is:
 - a. Under eighteen years of age; or
 - b. Eighteen years of age or older and incapable of self-care because of a mental or physical disability.
2. "Employee" and "Employer" have the same meanings as in [cite the State Fair Labor Standards Act but ensure that the definition covers state and local government employees].
3. "Grandparent" means a parent of a parent.
4. "Health care professional" means a person licensed under federal or state law to provide health care services.
5. "Parent" means a biological, foster or adoptive parent, stepparent, legal guardian, or an individual who stood *in loco parentis* when a person was a child.
6. "Pro rata" means the proportion of each of the benefits offered to full-time employees that are offered to part-time employees that, for each benefit, is equal to the ratio of part-time hours worked to full-time hours worked.

7. "Secretary" means the Secretary of the Department of [Labor].
8. "Sick leave" means an increment of compensated leave provided by an employer to an employee as a benefit of employment for use by the employee during an absence from employment for personal or family illness described in subsection (C)(1).
9. "Spouse" means a husband, wife or domestic partner.

(B) ACCUMULATION OF PAID SICK LEAVE

1. An employer shall provide each employee not less than:
 - a. Ten days of sick leave with pay annually for employees working 30 or more hours per week; or
 - b. A *pro rata* number of days of sick leave with pay annually for employees working less than 30 hours per week on a year-round basis; or 1,250 hours throughout the year involved.
2. Sick leave shall accrue at least monthly and may be used as accrued.
3. For periods of sick leave that are shorter than a normal workday, leave shall be counted on an hourly basis, or in the smallest increment that the employer's payroll system uses to account for absences or use of leave.
4. If the schedule of an employee varies from week to week, a weekly average of the hours worked over the 12-week period prior to the beginning of a sick leave period shall be used to calculate the employee's normal workweek for the purpose of determining the amount of sick leave to which the employee is entitled.

(C) USE OF PAID SICK LEAVE

1. Sick leave accrued under this section may be used by an employee for any of the following:
 - a. An absence resulting from a physical or mental illness, injury or medical condition of the employee.
 - b. An absence resulting from obtaining professional medical diagnosis or care, or preventive medical care, for the employee.
 - c. An absence for the purpose of caring for a child, parent, grandparent, spouse, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, who has any of the conditions or needs for diagnosis or care described in paragraph (a) or (b).
2. An employee shall make a reasonable effort to schedule leave in a manner that does not unduly disrupt the operations of the employer.
3. If a period of sick leave exceeds three consecutive days, an employer may require the employee to produce a document signed by a health care professional certifying the medical need for sick leave.

(D) EFFECT ON CURRENT LEAVE POLICIES

1. An employer with a leave policy that provides paid leave options shall not be required to modify such policy, if such policy offers an employee the option, at the employee's discretion, to take paid sick leave that is at least equivalent to the sick leave required by this section.
2. An employer may not eliminate or reduce leave in existence on the date of enactment of this Act, regardless of the type of such leave, in order to comply with the provisions of this Act.

(E) EDUCATION AND POSTING REQUIREMENT

1. The Secretary shall develop, implement and maintain a program to educate employees about the rights granted to them under this section.

SICK LEAVE PROTECTION POLICY MODEL

2. Each employer shall post and keep posted a notice, in a form and at a location approved by the Secretary, delineating the rights granted to employees by this section.

(F) ENFORCEMENT

1. An employer shall not discharge, threaten to discharge, demote, suspend, discipline, or otherwise discriminate against an employee because the employee exercised, or attempted to exercise, any right under this section, or filed a complaint, testified, or assisted in any proceeding under this section.
2. 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 procedures to receive, investigate and attempt to resolve complaints, and to bring actions in any court of competent jurisdiction to recover appropriate relief for aggrieved employees. This section may also be enforced by a private cause of action under [appropriate section of state law].
3. In any action under this section in which an employee prevails:
 - a. The employee shall be awarded monetary relief, including back pay in an amount equal to the difference between the employee's actual earnings and what the employee would have earned but for the employer's unlawful practices, and an additional amount in punitive damages, as appropriate.
 - b. The employer shall pay a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action.
 - c. The employer shall be enjoined from continuing to violate this section, and the employer may be ordered to take such additional affirmative steps as are necessary.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2006. However, in the case of a collective bargaining agreement in effect on the effective date, this Act shall take effect on the date of the termination of such agreement or on July 1, 2007, whichever is earlier.

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Unemployment Insurance—Options For Reform

Summary:

- ▶ 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, NC, ND, PA, NY and VA, were under considerable financial pressure in 2005. A few states will continue 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 can 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.

For example:

- ▶ **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 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 benefitted 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 North Carolina and Michigan 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, 2006.

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, 2006.

BUSINESS AND LABOR RESOURCES

Corporate Accountability

AFL-CIO

Corporation for Enterprise Development: Business Incentives Reform Clearinghouse

Good Jobs First

Equal Pay

9to5, National Association of Working Women

AFL-CIO

American Federation of State, County and Municipal Employees

Business and Professional Women

Institute for Women's Policy Research

National Education Association

Women's Bureau

U.S. Department of Labor

Women's Institute for Secure Retirement

High Road Economic Development

AFL-CIO Working for America Institute

Center on Wisconsin Strategy

Policy Matters Ohio

Worker Center

King County Labor Council, AFL-CIO

Minimum Wage

AFL-CIO

Coalition on Human Needs

Economic Policy Institute

Sick Leave Protection

AFL-CIO

Economic Opportunity Institute

National Employment Law Project

National Parenting Association

National Partnership for Women and Families

UI—Options for Reform

AFL-CIO

Center on Budget and Policy Priorities

Economic Policy Institute

National Employment Law Project

A full index of resources with contact information can be found on page 285.

2006 POLICY AGENDA

Civil Rights and Liberties

At the very core of our democracy lies a commitment to basic human rights. There is no more crucial role for government than to protect individuals from persecution and discrimination.

Gay and Transgender Anti-Discrimination

Summary:

- ▶ Seventy-four percent of gay, lesbian or bisexual individuals have been the victims of discrimination because of their sexual orientation.
- ▶ In 34 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 25 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 because of their sexual orientation.¹

Thousands of individuals report employment discrimination based on sexual orientation in states that forbid such discrimination.² Gays, lesbians and bisexuals 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 34 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 16 states (CA, CT, HI, IL, ME, MD, MA, MN, NV, NH, NJ, NM, NY, RI, VT, 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 1,975 private companies, nonprofits and unions in the United States have adopted anti-discrimination policies that cover sexual orientation. One hundred forty-one 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.

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.⁵ Sixty-one percent of Americans also favor laws to prevent employment discrimination against transgender people.⁶

GLBT ANTI-DISCRIMINATION POLICY SUMMARY

More than 25 percent of Americans live in jurisdictions that include “gender identity or expression” in their anti-discrimination laws.⁷

Transgender people—whether they are transsexual or simply identify with the gender opposite from their biological sex—are often targeted for discrimination. Six states (CA, HI, IL, MN, NM, RI), the District of Columbia, and more than 70 local jurisdictions have passed laws that explicitly prohibit discrimination based on an individual’s gender identity or expression. Just ten years ago, only four percent of Americans lived in jurisdictions that banned discrimination on the basis of gender identity or expression.⁸

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

- ▶ 16 states and the District of Columbia
- ▶ More than 290 cities or counties
- ▶ 464 of the Fortune 500 companies
- ▶ More than 1,975 private companies, non-profit organizations, and labor unions
- ▶ More than 550 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 General Accounting Office, “Sexual Orientation-Based Employment Discrimination,” July 9, 2002.
- 3 “Inside-OUT.”
- 4 Equality Forum, “Fortune 500 Project,” October 31, 2005.
- 5 “Inside-OUT.”
- 6 Human Rights Campaign, “Public Perceptions of Transgender People,” 2002.
- 7 National Gay and Lesbian Task Force, “Glass Nearly Half Full,” January 2005.
- 8 Ibid.

Gay and Transgender 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, 2006.

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100 state issues, visit

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Marriage Equality

Summary:

- ▶ 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 14 nations, including Belgium, Denmark, Germany, Spain, Iceland, Netherlands, Portugal and Sweden, already 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, by 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 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.

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. In 2004, New Jersey and Maine enacted laws that provide registered domestic partners many of the state-conferred rights and responsibilities of spouses. Seven states (CA, CT, HI, ME, MA, NJ, VT) formally recognize same-sex couples. Also in 2004, California enacted legislation that requires insurance companies to offer the same coverage to registered same-sex partners that they offer to married 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 several dozen 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, “Tables of Laws in the United States Code Involving Marital Status, by Category,” 1997.
- 2 U.S. Census Bureau, “Married-Couple and Unmarried-Partner Households,” 2003.

Marriage Equality

Marriage Equality Act

Summary: The Marriage Equality Act allows same-sex couples to marry.

SECTION 1. SHORT TITLE

This Act shall be called the “Marriage 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.

(B) PURPOSE—This law is enacted so that same-sex couples shall be eligible to marry in the same manner and with the same requirements as different-sex couples, and that marriages between same-sex couples legally performed outside of the state shall be recognized in the same manner and with the same requirements as marriages performed between different-sex couples outside of the state.

SECTION 3. MARRIAGE EQUALITY

- (A) In section XXX, after “The following marriages are prohibited:” delete “a marriage between persons of the same sex.”
- (B) In section XXX, paragraph XXX [any language that blocks marriage equality] is deleted.
- (C) In section XXX, insert: “No provision of state or local law shall be construed to prohibit, or prevent the recognition of, marriages between persons of the same gender.”

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

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.

MARRIAGE EQUALITY POLICY MODEL

(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, 2006.

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, 2006.

Racial Profiling

Summary:

- ▶ 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 2005 report by the U.S. Department of Justice found that police were significantly more likely to carry out some type of search on an African American (10.2 percent of drivers stopped) or Latino (11.4 percent) driver than on a white driver (3.5 percent). The report also found that African Americans and Latinos were three times more likely than whites to experience force or threat of force during a police stop.³ 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.⁴ A study of traffic citations in Massachusetts between 2001 and 2003 found that non-whites, particularly African Americans and other males, were significantly more likely than whites to receive citations and be subjected to searches.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 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.⁹

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 24 states collect such data today.¹⁰

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 lead to a reasonable fear of police officers, alienate communities, 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.¹¹

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

In 2005, Arkansas, Florida, Kansas, Montana, New Jersey, and Tennessee adopted or strengthened racial profiling laws. Twenty-six 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) 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.¹²

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, "Contacts between Police and the Public: Findings from the 2002 National Survey," April 2005.
- 4 American Civil Liberties Union, "The Persistence of Racial Profiling in Rhode Island: An Update," August 2005.
- 5 Jack McDevitt, et al., "Massachusetts Racial and Gender Profiling Final Report," Northeastern University Institute on Race and Justice, May 4, 2004.
- 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 American Sikh Council, "Your Sikh Neighbors," 2001.
- 10 Racial Profiling Data Collection Resource Center at Northeastern University.
- 11 U.S. Department of Justice, "A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned," November 2000.
- 12 Racial Profiling Data Collection Resource Center at Northeastern University.

Racial Profiling

Racial Profiling Prevention Act

Summary: The Racial Profiling Prevention Act protects citizens from unfair 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, 2006. The forms described in section (D) shall be developed and distributed by October 1, 2006. 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, 2007.

CIVIL RIGHTS AND LIBERTIES RESOURCES

Gay and Transgender Anti-Discrimination

Equality Federation

Human Rights Campaign

Lambda Legal Defense and Education Fund

National Center for Lesbian Rights

National Gay and Lesbian Task Force

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 285.

2006 POLICY AGENDA

Consumer Protection

Since the 1970s, a wide range of laws have been enacted to protect Americans from defective products and negligent business practices, leveling the playing field between big businesses and individuals.

Eminent Domain

Summary:

- ▶ The U.S. Supreme Court recently ruled that municipalities have broad eminent domain authority to take homes from some and give the land to others for private use.
- ▶ The Fifth Amendment of the U.S. Constitution addresses the power of eminent domain.
- ▶ It is well-established that governments can and should use eminent domain when there is a clear public need.
- ▶ In many recent cases, eminent domain has turned into a form of corporate subsidy.
- ▶ The classic example of eminent domain abuse occurred in the Poletown neighborhood of Detroit.
- ▶ Eminent domain is used most often against minorities, the elderly, and lower-income homeowners.
- ▶ Americans strongly favor limits on the use of eminent domain.
- ▶ Some states have imposed limits on the power of eminent domain.
- ▶ Other states have imposed a moratorium on the taking of homes solely for economic development projects.

The U.S. Supreme Court recently ruled that municipalities have broad eminent domain authority to take homes from some and give the land to others for private use.

In *Kelo v. City of New London*, the Supreme Court ruled that it is constitutional for the city government to seize 15 working-class homes from their owners and turn the land over to private companies for the construction of upscale housing, shops, restaurants, and an office for the pharmaceutical giant Pfizer.¹ In effect, the court ruled that anyone's home could be condemned if a local government decides to transfer the property to another owner in order to promote economic development. Justice Sandra Day O'Connor, who was among the dissenters in the 5-4 decision, called the ruling "pretty scary."²

The Fifth Amendment of the U.S. Constitution addresses the power of eminent domain.

The end of the Fifth Amendment is called the "takings clause." It says "...nor may private property be taken for public use without just compensation." In dispute is the meaning of the words "public use." The phrase clearly includes takings for government-owned facilities like roads, schools and military bases—but what about privately-owned facilities?

It is well-established that governments can and should use eminent domain when there is a clear public need.

No one doubts that the government should step in when a property becomes a public nuisance and the owner fails to make necessary repairs. When a municipality condemns such a property, it is usually razed

and sold to another private owner. American courts also settled nearly 200 years ago that governments can use eminent domain to transfer land to railroads, public utilities, and other privately-owned businesses if their services are clearly needed by the general public.³

In many recent cases, eminent domain has turned into a form of corporate subsidy.

Some local governments have taken private homes, not because they are blighted or the land is needed for public facilities, but because they stand in the way of an upscale housing development or big box store. In the worst cases, the developers decide which houses to take, and local governments go along in the name of economic development. Seizure of land for private development is often just one part of a subsidy package that may also include property tax abatements, sales tax exemptions, income tax credits, and low interest loans.⁴

The classic example of eminent domain abuse occurred in the Poletown neighborhood of Detroit.

In 1980, General Motors proposed that it would build a new plant in Detroit employing 6,000 workers if the city provided 500 contiguous acres accessible by highway and rail. City leaders selected the Poletown neighborhood, a working class area that was half Polish American and half African American. The city condemned 1,500 homes, two schools, a hospital, and 16 churches. Ultimately, the area was cleared and the land—worth about \$300 million—was sold to GM for \$8 million. Detroit also granted GM a 12-year, 50 percent tax abatement for the new plant. In exchange

for uprooting 3,400 people from their homes, the city got a plant that employed only 3,000 at its peak. The 1981 Michigan Supreme Court ruling that approved the Poletown taking was very similar to *Kelo v. City of New London*. In 2004, however, the Michigan court reversed *Poletown Neighborhood Council v. City of Detroit*, finding that the state constitution's "public use" clause required a demonstration of clear public necessity or blight.⁵

Eminent domain is used most often against minorities, the elderly, and lower-income homeowners.

The NAACP, AARP, the Southern Christian Leadership Conference, and other groups filed an *amici curiae* brief in the U.S. Supreme Court seeking to rein in inappropriate uses of eminent domain. Their brief describes how "well-cared-for properties owned by minority and elderly residents have repeatedly been taken so that private enterprises could construct superstores, casinos, hotels and office parks."⁶ These groups are singled out for condemnations in part because they are less likely or less able to defend themselves in court.

Americans strongly favor limits on the use of eminent domain.

A Quinnipiac University poll found that 88 percent of Connecticut voters oppose the use of eminent domain to take private property for economic development projects.⁷ Ninety-three percent of New Hampshire residents oppose the seizure of private land for economic development, according to a University of New Hampshire poll.⁸

Some states have imposed limits on the power of eminent domain.

By 2004, at least 12 states (AR, FL, ID, IL, KY, ME, MA, MT, NH, SC, WA, WV) had some restrictions on the power of eminent domain. Alabama, Delaware, Nevada, Texas and Utah enacted permanent limits on eminent domain in 2005.

Other states have imposed a moratorium on the taking of homes solely for economic development projects.

In 2005, legislatures in California and Ohio approved moratoriums on eminent domain to study the extent of the problem and design the best remedy for abuse. A moratorium is a cautious approach which recognizes that there is no one-size-fits-all solution.

Endnotes

- 1 *Kelo v. City of New London*, 125 S. Ct. 2655, June 23, 2005.
- 2 Jon Kamman, "O'Connor notes 'scary' court decision: Eminent domain 'touched nerve'," *Arizona Republic*, September 20, 2005.
- 3 Carla Main, "How Eminent Domain Ran Amok," *Policy Review*, Hoover Institution, No. 133, October-November 2005.
- 4 Greg LeRoy, "Eminent Complaints," *TomPaine.com*, July 8, 2005.
- 5 "How Eminent Domain Ran Amok."
- 6 Brief of *Amici Curiae* NAACP, AARP, Hispanic Alliance of Atlantic County, Citizens in Action, Cramer Hill Resident Association, and Southern Christian Leadership Conference in Support of Petitioners, *Kelo v. City of New London*, No. 04-108, 2004.
- 7 "Connecticut voters say 11-1 stop eminent domain," Quinnipiac University Poll, July 28, 2005.
- 8 Beverley Wang, "Welcome to Hotel Souter? Eminent domain ruling triggers backlash," *Associated Press*, July 24, 2005.

Eminent Domain

Eminent Domain Moratorium Act

Summary: The Eminent Domain Moratorium Act imposes a two-year moratorium on the seizure of homes for economic redevelopment, and commissions a study to recommend an appropriate remedy for eminent domain abuse.

SECTION 1. SHORT TITLE

This Act shall be called the “Eminent Domain Moratorium Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. In *Kelo v. City of New London*, the U.S. Supreme Court ruled that municipalities have broad eminent domain authority to take homes from some and give the land to others for private use.
2. It is well-established that governments can and should use eminent domain when property becomes uninhabitable or there is a clear public need. But the power of eminent domain has been used much more broadly in recent years.
3. It is unacceptable for local governments to take private homes, not because they are blighted or the land is needed for public facilities, but because they stand in the way of a new private commercial development.
4. It is essential to clearly and fairly draw a line between permissible and impermissible use of eminent domain. This is a difficult question that is best answered by the imposition of a moratorium and creation of a study commission.

(B) PURPOSE—This law is enacted to study the use and misuse of the power of eminent domain.

SECTION 3. EMINENT DOMAIN MORATORIUM

(A) DEFINITIONS—In this section:

1. “Owner-occupied residential real property” means a single-family residence or a unit within a common interest development that is occupied by the owner or owners of record during the effective dates of this section, or a duplex where at least one-half of the duplex is occupied by the owner or owners of record during the effective dates of this section.
2. “Private use” means any use other than as a public facility or a public works that is owned and operated by the public entity.

(B) MORATORIUM

1. No community redevelopment agency, or any community development commission or joint powers agency that has the authority of a community redevelopment agency, shall exercise the power of eminent domain to acquire owner-occupied residential real property if ownership of the property will be transferred to a private party or private entity.
2. The requirements of this section shall apply to both new and pending eminent domain projects, except that it shall not apply to projects if a resolution of necessity was adopted pursuant to [cite state law] prior to the effective date of this section. For purposes of this provision, eminent domain power is exercised when an attempt is made to acquire a property if it is stated or otherwise implied that the property may be taken by eminent domain.
3. This section shall remain in effect only until April 1, 2008, and as of that date is repealed.

(C) STUDY OF EMINENT DOMAIN

1. There is established a commission to be known as the Commission on Eminent Domain.
2. Members of the Commission shall be appointed by the Governor in consultation with the President of the Senate and the Speaker of the House.
3. The Commission shall be composed of 15 members, of whom at least five shall be public officials or private organization, academic or business leaders who have special knowledge or expertise on the benefits of the broad use of eminent domain, and at least five shall be public officials or private organization, academic or business leaders who have special knowledge or expertise on the benefits of restricted use of eminent domain.
4. The appointments of the initial members of the Commission shall be made not later than 30 days after the date of enactment of this Act.
5. The Governor shall designate one member to serve as the Chair of the Commission.
6. Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.
7. Not later than 30 days after all initial members of the Commission have been appointed, the Commission shall hold its first meeting.
8. The Commission shall meet at the call of the Chair.
9. A majority of the members of the Commission shall constitute a quorum for conducting business, but a lesser number of members may hold hearings.
10. The Commission shall adopt rules and procedures to govern its proceedings.

(D) DUTIES OF THE COMMISSION

1. The Commission shall conduct a thorough study of all matters relating to the power of eminent domain and whether its use comports with constitutional principles and general requirements of fairness, justice, equality and due process.
2. The Commission shall, at a minimum, study and report on:
 - a. All exercises of the power of eminent domain by public entities to acquire residential property for private use completed between January 1, 2000 and January 1, 2005. This information shall set forth separate categories for owner-occupied and non-owner-occupied residential property.
 - b. The declared purposes for each of those acquisitions.
 - c. The initial offer of just compensation for each of those acquisitions.
 - d. The final offer of just compensation for each of those acquisitions.
 - e. The total compensation paid for each of those acquisitions, including the acquisition price and relocation payments.
 - f. The current owners of those real properties.
 - g. The current uses of those real properties.

(E) REPORT—Not later than January 1, 2008, the Commission shall submit a report to the Governor, legislature and the public that consists of its statement of findings and conclusions, and its recommendations for legislative and administrative actions.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

Financial Privacy

Summary:

- ▶ Almost ten million Americans were victims of identity theft in 2004, at a cost of \$52 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 non-affiliated 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 ten million Americans were victims of identity theft in 2004, at a cost of \$52 billion.¹

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.² The average victim lost about \$4,000 and spent 81 hours to resolve the problem.³

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.⁴ 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.⁵

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.⁶

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 non-affiliated companies.

The financial services industry may argue 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 non-affiliated businesses.⁷

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.⁸

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 26, 2005.
- 2 First Data Corporation, “New Identity Theft Survey Reveals Latest Count of Victims, Need for Greater Protection,” May 17, 2005.
- 3 Jon Swartz, “Survey: ID theft takes time to wipe clean,” *USA Today*, July 28, 2005.
- 4 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.
- 5 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.
- 6 Ibid.
- 7 *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.
- 8 “Poll: Privacy Rights Under Attack,” *CBS News/New York Times*, October 2, 2005.

Financial Privacy

Financial Information Privacy Act

Summary: The Financial Information Privacy Act prohibits financial institutions from sharing private customer information with nonaffiliated 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;

FINANCIAL PRIVACY POLICY MODEL

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, 2006.

For policy toolkits covering more than
100 state issues, visit

www.stateaction.org

Identity Theft

Summary:

- ▶ Identity theft is one of the fastest growing crimes in America.
- ▶ Businesses and consumers alike lose billions of dollars annually because of 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 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 because of 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 \$4,000 and 81 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 was stolen.⁵ For example, in 2005:

- ▶ The personal data of 145,000 Americans—including names, addresses, Social Security numbers, and credit reports—was 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—an obvious flaw. 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 Trans Union. A security freeze allows customers to control access to their credit files. Participating customers are issued a passcode, like an ATM PIN. The 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 by Congress in December 2003, was a legislative defeat for consumer advocates—it preempted states from enacting strong credit and privacy laws in several important areas. However, FACTA 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.

Twenty-one states (AR, CA, CT, DE, FL, GA, IL, IN, LA, ME, MN, MT, NV, NJ, NY, NC, ND, RI, TN, TX, WA) have enacted legislation that requires companies to notify individuals when a breach of security occurs that makes them susceptible to identity theft. Except for California, all of these states enacted their security breach notification laws in 2005.

States have enacted security freeze laws.

Twelve states (CA, CO, CT, IL, LA, ME, NV, NJ, NC, TX, VT, WA) have versions of security freeze legislation, eight of them (CO, CT, IL, ME, NV, NJ, NC, WA) enacted in 2005. Eight states (CA, CO, CT, LA, ME, NV, NJ, NC) make the security freeze available to all consumers, which maximizes its value as a preventive tool. Illinois, Texas and Vermont offer the freeze only to victims of identity theft. 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.

This policy summary relies in large part on information from U.S. PIRG and Consumers Union.⁶

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 Jon Swartz, "Survey: ID theft takes time to wipe clean," *USA Today*, July 28, 2005.
- 5 Privacy Rights Clearinghouse, "A Chronology of Data Breaches Reported Since the ChoicePoint Incident," October 19, 2005.
- 6 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, 2006.

IDENTITY THEFT POLICY MODEL

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.

IDENTITY THEFT POLICY MODEL

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 [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 [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, 2007, you should lift the freeze at least three business days before applying; between July 1, 2007 and July 1, 2008 you should lift the freeze at least one business day before applying; and after July 1, 2008 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, 2006.

Payday Lending

Summary:

- ▶ Every year, over five million American 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.
- ▶ Although 14 states prohibit payday loans, only three have strong laws.
- ▶ In 2004, Georgia enacted the strongest payday lending law to date.

Every year, over five million American 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. Depending on the number of days between the loan and payday, 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 pay them off 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.² Only one percent of payday loans go to first-time borrowers.³ Predatory payday lending fees—those extracted from borrowers caught in a cycle of repeated transactions—cost American families at least \$3.4 billion each year.⁴ As the industry proliferates, this cost is increasing rapidly.

Predatory payday lending disproportionately impacts women and African Americans.

Sources both inside and outside the industry suggest that payday lending impacts women disproportionately. A national survey conducted in May 2004 shows that two out of three payday borrowers were women.⁵ An Illinois study found that over 60 percent of payday borrowers sued by a major payday lender were women.⁶ An industry newsletter describes the customer base as being over 60 percent women.⁷ 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."⁸ 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.⁹ Another North Carolina study found that African American households are almost twice as likely to borrow from a payday lender as white households.¹⁰

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* recently reported that across the nation, payday lending shops now outnumber McDonald's restaurants.

State laws generally fail to stop predatory payday lending practices.

Thirty-four 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, SC, SD, TN, TX, UT, VA, WA, WY) have laws or regulations that specifically permit payday loans.¹¹ Two other states, New Mexico and Wisconsin, have no

small loan usury caps that apply to payday loans, effectively authorizing payday lending practices.¹² 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 on these loans.¹³

Although 14 states prohibit payday loans, only three have strong laws.

Fourteen states (AK, CT, GA, ME, MD, MA, MI, NJ, NY, NC, PA, RI, VT, WV) prohibit payday loans through small loan interest rate caps, usury laws, or specific prohibitions on check cashing.¹⁴ However, of these, only Georgia, Maryland and Massachusetts have statutes that prevent local companies from partnering with out-of-state banks to evade the prohibition on payday lending. Recent Federal Deposit Insurance Corporation (FDIC) regulations don't solve the problem of local companies that partner with out-of-state banks. Guidelines issued by the FDIC in March 2005 require payday lenders to develop minimum standards in order to retain their partnerships with FDIC banks. The guidelines advise banks not to make payday loans to customers who have had such loans outstanding from any lender for more than three of the previous 12 months. Assuming a typical payday loan of two weeks, the FDIC guidelines would still permit six transactions before requiring banks to offer borrowers a longer-term credit product. Most predatory payday lending would continue.

In 2004, Georgia enacted the strongest payday lending law to date.

Georgia's law, which was upheld in federal appeals court in 2005, caps small loans at 60 percent APR, prescribes harsh penalties for violators of the state's lending and consumer protection laws, and explicitly bars non-bank lenders from partnering with out-of-state institutions in order to avoid the state usury limit. Prior to the law, Advance America made \$1 million per month in Georgia alone.¹⁵ Since the law took effect in May 2004, the company has suspended lending operations and closed 32 stores in that state.¹⁶ Illinois and Nevada strengthened their payday lending laws in 2005 by capping loan amounts and interest rates.

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

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 Ibid.
- 4 Ibid.
- 5 Patricia Cirillo, "Payday Advance Consumer Satisfaction Survey," Cypress Research Group, May 2004.
- 6 "Greed: An In-depth Study of the Debt Collection Practices, Interest Rates, and Customer Base of a Major Illinois Payday Lender," Monsignor John Egan Campaign for Payday Loan Reform, March 2004.
- 7 Trihouse Enterprises, "Payday Loan Industry Newsletter," Issue 3-10, 2003.
- 8 "A Business Plan for The Cash Exchange," on file with the Center for Responsible Lending.
- 9 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.
- 10 Michael Stegman, Robert Faris, "Payday Lending: a Business Model that Encourages Chronic Borrowing," Center for Community Capitalism, University of North Carolina, 2003.
- 11 Jean Ann Fox, "Unsafe and Unsound: Payday Lenders Hide Behind FDIC Bank Charters to Peddle Usury," Consumer Federation of America, March 2004.
- 12 Ibid.
- 13 Ibid.
- 14 Ibid.
- 15 Andy Peters, "Lender fined \$400,000 for overcharging customers," *Macon (GA) Telegraph*, August 27, 2004.
- 16 U.S. Securities and Exchange Commission, "Form 8-K: Advance America Cash Advance Centers, Inc.," September 14, 2005.

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) FINDING—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, 2006.

CONSUMER PROTECTIONS RESOURCES

Eminent Domain

Castle Coalition

Good Jobs First

Financial Privacy

Consumer Federation of California Education
Foundation

Consumers Union

Electronic Privacy Information Center

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 285.

2006 POLICY AGENDA

Criminal Justice

Since the late 1980s, a string of tough-on-crime statutes have caused an unprecedented increase in the prison population, fueled the use of private prisons, and multiplied state criminal justice costs.

Death Penalty Reform

Summary:

- ▶ In recent years, dozens of innocent people have been sentenced to death.
- ▶ Since the U.S. Supreme Court reinstated the death penalty in 1976, post-conviction proceedings have caused the release of one person from death row for every seven executed.
- ▶ At least 23 innocent people were executed in the United States during the 20th century.
- ▶ Minority defendants are more frequently convicted in capital cases and are executed in disproportionate numbers.
- ▶ While the public has supported capital punishment in theory, Americans now object to it in practice.
- ▶ A new federal law gives states a strong financial incentive to offer post-conviction DNA testing.
- ▶ States have implemented death penalty moratoriums.
- ▶ States have created Innocence Commissions.

In recent years, dozens of innocent people have been sentenced to death.

Between 1977 and 2005, more than 120 people were released from death rows in 25 states because of evidence that proved their innocence.¹ For example:

- ▶ In 2004, charges against Earnest Willis were dropped after he spent more than a dozen years on death row in Texas. Willis had been convicted of killing two women by setting fire to a house, but new evidence demonstrated that the fire was accidental, not arson.
- ▶ In 2003, a jury took less than an hour to acquit John Thompson at his retrial for a New Orleans murder. Just five weeks before his scheduled execution, Thompson's attorney discovered blood analysis evidence that had been withheld by prosecutors that ultimately led to the retrial and acquittal.
- ▶ In 2002, Ray Krone was released from death row by the state of Arizona after DNA tests confirmed his innocence.
- ▶ In 2001, charges were dropped against Charles Fain, a Vietnam veteran who spent over 18 years on Idaho's death row. He was released after new forensic tests contradicted an expert's testimony at trial that hairs found on the victim's body were Fain's.
- ▶ In 2000, Virginia Governor James Gilmore pardoned Earl Washington after DNA testing found no trace of him at the scene of the murder for

which he was convicted. "We came breathtakingly close to executing a man who wasn't guilty of the crime," said State Senator Janet Howell.

Since the U.S. Supreme Court reinstated the death penalty in 1976, post-conviction proceedings have caused the release of one person from death row for every seven executed.

The releases were not due to a system that works—rather, many of the released proved their innocence only thanks to unpaid lawyers and activists.

At least 23 innocent people were executed in the United States during the 20th century.

There were more than 400 known cases of wrongful conviction for capital offenses in the U.S. between 1900 and 1991, according to Amnesty International. Most were upheld on appeal, and evidence that proved defendants' innocence emerged years after sentencing. At least 23 individuals were executed before exonerating evidence surfaced.

Minority defendants are more frequently convicted in capital cases and are executed in disproportionate numbers.

A study by leading researchers on race and capital punishment, law professor David Baldus and statistician George Woodworth, revealed that the odds of receiving a death sentence are nearly four times higher if the defendant is black. The researchers obtained the results after analyzing and controlling for case differences, such as severity of the crime and background of the defendant.

DEATH PENALTY REFORM POLICY SUMMARY

While the public has supported capital punishment in theory, Americans now object to it in practice.

- ▶ Americans believe innocent people have been executed. A May 2003 Gallup poll found that 73 percent of Americans believe that an innocent person has been executed within the past five years. Only 22 percent believe no wrongful execution has happened.
- ▶ Americans strongly support a suspension of the death penalty. A March 2001 Hart Research poll found that 72 percent of the public favored “a suspension of the death penalty until questions about its fairness can be studied.” Only 20 percent were opposed.
- ▶ The same poll reported that 91 percent agreed states should “give convicted persons on death row the opportunity to have DNA tests conducted in order to prove their innocence.” Only two percent disagreed. Americans overwhelmingly believe death row inmates should have the right to use DNA testing to prove their innocence.

A new federal law gives states a strong financial incentive to offer post-conviction DNA testing.

States are eligible for DNA testing 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.² Thirteen states (AL, AK, HI, IA, MA, MS, NH, OR, SC, SD, VT, WV, WY) do not have any post-conviction DNA access law. Ohio’s DNA law sunset in October 2005 and Florida’s is scheduled to sunset in July 2006. A few other states do not qualify for DNA testing grants because their laws are not broad enough to meet the minimum requirements of the Justice for All Act.

States have implemented death penalty moratoriums.

Illinois Governor George Ryan implemented the first statewide moratorium on executions in January 2000, after Illinois had executed 12 men and freed 13 innocent men from death row since reinstating the death penalty in 1976. In 2002, Maryland Governor Parris Glendening followed suit, implementing a moratorium while a study was conducted on the fairness of sentencing practices with a specific focus on racial disparities. Glendening’s successor lifted the moratorium and executions resumed in 2004.

States have created Innocence Commissions.

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 mistakes in the future.

This policy brief relies in large part on information from the Innocence Project and the National Coalition Against the Death Penalty.

Endnotes

- 1 Death Penalty Information Center, “Innocence and the Death Penalty,” 2005.
- 2 H.R. 5107, Public Law 108-405, signed October 30, 2004.

Death Penalty Reform

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 non-profit 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.

DEATH PENALTY REFORM POLICY MODEL

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
 - e. 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's convicted felons 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, 2006.

DEATH PENALTY REFORM POLICY MODEL

Death Penalty Moratorium Act

Summary: The Death Penalty Moratorium Act temporarily suspends use of the death penalty while a commission studies its fairness.

SECTION 1. SHORT TITLE

This Act shall be called the “Death Penalty Moratorium Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. The administration of the death penalty should be consistent with the state’s fundamental principles of justice, equality and due process.
2. The fairness of the administration of the death penalty has recently come under serious scrutiny, specifically raising questions of racial disparity [details specific to your state here].

(B) PURPOSE—This law is enacted by the legislature to ensure fairness in the operation of the state’s death penalty and guarantee that innocent persons are not put to death.

SECTION 3. DEATH PENALTY MORATORIUM

The state shall not carry out any sentence of death imposed under state law until the legislature considers the final findings and recommendations of the Commission on the Death Penalty in the report submitted under section 4, and enacts legislation that repeals this section and implements or rejects the guidelines and procedures recommended by the Commission.

SECTION 4. COMMISSION ON THE DEATH PENALTY

(A) ESTABLISHMENT—There is established a commission to be known as the Commission on the Death Penalty (in this title referred to as the “Commission”).

(B) MEMBERSHIP

1. Members of the Commission shall be appointed by the Governor in consultation with the President of the Senate and the Speaker of the House.
2. The Commission shall be composed of 15 members, of whom:
 - a. Three members shall be state prosecutors.
 - b. Three members shall be attorneys experienced in capital defense.
 - c. Two members shall be current or former state judges.
 - d. Two members shall be current or former state law enforcement officials.
 - e. Five members shall be individuals from the public or private sector who have knowledge or expertise, whether by experience or training, in matters to be studied by the Commission, which may include:
 - (i) Officers or employees of the state or local governments.
 - (ii) Members of academia, nonprofit organizations, the religious community, or business.
 - (iii) Other interested individuals.

3. In appointing the members of the Commission, the Governor shall, to the maximum extent practicable, ensure that the membership of the Commission is fairly balanced with respect to the opinions of the members of the Commission regarding support for or opposition to the use of the death penalty.
4. The appointments of the initial members of the Commission shall be made not later than 30 days after the date of enactment of this Act.
5. The Governor shall designate one member appointed under subsection (B)(1) to serve as the Chair of the Commission.
6. Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.
7. Not later than 30 days after all initial members of the Commission have been appointed, the Commission shall hold its first meeting.
8. The Commission shall meet at the call of the Chair.
9. A majority of the members of the Commission shall constitute a quorum for conducting business, but a lesser number of members may hold hearings.

(C) RULES AND PROCEDURES—The Commission shall adopt rules and procedures to govern its proceedings.

SECTION 5. DUTIES OF THE COMMISSION

(A) IN GENERAL—The Commission shall conduct a thorough study of all matters relating to the administration of the death penalty at the state level to determine whether it comports with constitutional principles and requirements of fairness, justice, equality and due process.

(B) MATTERS STUDIED—The matters studied by the Commission shall include the following:

1. Racial disparities in capital charging, prosecuting and sentencing decisions.
2. Disproportionality in capital charging, prosecuting and sentencing decisions based on, or in correlation to, the geographic location and income status of defendant, or any other factor resulting in such disproportionality.
3. Adequacy of representation of capital defendants, including consideration of the American Bar Association “Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases” (adopted February 1989) and Association policies intended to encourage competency of counsel in capital cases (adopted February 1979, February 1988, February 1990, and August 1996).
4. Incidence of innocent persons sentenced to death, and the reasons the wrongful convictions have occurred.
5. Procedures to ensure that persons sentenced to death have access to forensic evidence and modern testing of such evidence, including DNA testing, when such testing could result in new evidence of innocence.
6. Any other law or procedure to ensure that death penalty cases are administered fairly and impartially, in accordance with the state Constitution.

DEATH PENALTY REFORM POLICY MODEL

(C) REPORT

1. Not later than one year after the date of enactment of this Act, the Commission shall submit a preliminary report to the Governor and the legislature that contains a preliminary statement of findings and conclusions.
2. Not later than two years after the date of enactment of this Act, the Commission shall submit a report to the Governor and the legislature that contains a detailed statement of its findings and conclusions, together with its recommendations for legislative and administrative actions.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

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, 2006.

Electronic Recording of Interrogations

Summary:

- ▶ 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.
- ▶ Six states—AK, IL, ME, MN, NM and WI—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 It is estimated that 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 against the suspect 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 suspects’ 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 provides officers with the opportunity to retrieve leads and 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

ELECTRONIC RECORDING OF INTERROGATIONS POLICY SUMMARY

Six states—AK, IL, ME, MN, 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. In 2005, the Wisconsin Supreme Court ordered electronic recording of all juvenile interrogations. Two other states, Minnesota and Alaska, have employed the practice for years. The Minnesota Supreme Court decided that custodial interrogations must be recorded “to ensure the fair and equitable presentation of evidence at trial” in 1984.⁸ In 1985, the Alaska Supreme Court ruled that an unexcused failure to record custodial interrogations violated the suspect’s right to due process under the state constitution.⁹ Other major jurisdictions that require electronic recording include Austin, 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.¹⁰ 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.”¹¹ 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 that they incorrectly thought was solved.

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*, Vol. 2, No. 1, 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*, Vol. 95, No. 3, 2005.
- 8 *Minnesota v. Scales*, 518 N.W.2d 587 (Minn. 1984).
- 9 *Stephan v. State*, 711 P.2d 1156 (Alaska 1985).
- 10 William Geller, “Police Videotaping of Suspect Interrogations and Confessions,” Report to the National Institute of Justice, 1992.
- 11 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 a motion picture, audiotape, videotape or digital 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 and ends when the interview has completely finished.

(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 presumed inadmissible.

ELECTRONIC RECORDING OF INTERROGATIONS POLICY MODEL

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, 2006. Section 3 of this Act shall take effect on July 1, 2007.

Eyewitness Identification

Summary:

- ▶ Every year, thousands of Americans are accused or convicted of serious crimes because of mistaken eyewitness identification.
- ▶ In traditional police lineups, 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.
- ▶ Three strategies substantially improve eyewitness identifications: “blind” lineup administrators, specific instructions to witnesses, and sequential presentation.
- ▶ 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 false 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 150 individuals who were convicted of crimes and subsequently exonerated by DNA evidence, nearly 75 percent involved mistaken eyewitness identification.³

In traditional police lineups, 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.

In the late 1990s, the National Institute of Justice (NIJ) convened a technical working group of law enforcement officers, prosecution and defense lawyers, and researchers to explore the development of improved procedures for the collection and preservation of eyewitness evidence. In 1999, NIJ issued “Eyewitness Evidence: A Guide for Law Enforcement,” which was followed in 2003 by “Eyewitness Evidence: A Trainer’s Manual for Law Enforcement.” These handbooks recommend specific techniques to improve the reliability of eyewitness identification.

Three strategies substantially improve eyewitness identifications: “blind” lineup administrators, specific instructions to witnesses, and sequential presentation.

These recommendations are presented in their order of importance:

- ▶ **“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.

EYEWITNESS IDENTIFICATION POLICY SUMMARY

- ▶ **Specific instructions**—The rate of inaccurate identifications is strongly affected by whether or not 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 nonverbal cues from the administrator.
- ▶ **Sequential presentation**—In a traditional lineup, called a “simultaneous” lineup, all individuals are presented to the witness at once. This lineup procedure is the most common whether the individuals are physically standing in front of the witness or they are presented in an array of photographs. A “sequential” lineup presents the individuals one at a time with the expectation that there are several lineup members to be shown. With each live person or photograph, the witness decides: “Is this person the culprit or not?” The sequential lineup makes it much less likely that a witness will select whoever looks most like the culprit relative to the other lineup members. When the culprit is absent from a lineup, the sequential process reduces mistaken identifications by half.⁷ It is crucial, however, that sequential lineups be presented by a “blind” administrator. Studies have found that without a “blind” administrator, sequential lineups actually increase mistaken identifications.

States and localities have adopted eyewitness identification reforms.

New Jersey has implemented “sequential double-blind” as its standard lineup procedure. Illinois has a pilot program to test “sequential double-blind” procedures in a few jurisdictions. North Carolina and Wisconsin encourage law enforcement to voluntarily adopt these procedures. A number of cities and counties have also implemented these eyewitness identification reforms, including Boston, Seattle, Winston-Salem, NC, and Madison, WI.

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

Endnotes

- 1 Brian Cutler and Steven Penrod, *Mistaken identification: The eyewitness, psychology and law*, 1995.
- 2 Gary Wells et al., “Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads,” *Law and Human Behavior*, Vol. 22, No. 6, 1998.
- 3 Innocence Project, “Mistaken Eyewitness Identifications,” 2005.
- 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.

Eyewitness Identification

Eyewitness Identification Reform Act

Summary: The Eyewitness Identification Reform Act improves the reliability of eyewitness identification by requiring police to use lineup procedures recommended by the National Institute of Justice.

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. Law enforcement experts now recognize the problem of mistaken identifications and recommend solutions.
4. Three procedures recommended by the National Institute of Justice substantially improve eyewitness identifications: “blind” lineup administrators, specific instructions to witnesses, and sequential presentation.

(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. “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.
3. “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.
4. “Lineup” means a photo lineup or live lineup.
5. “Lineup administrator” means the person who conducts a lineup.

(B) EYEWITNESS IDENTIFICATION PROCEDURES

1. Lineups conducted by state, county and local law enforcement officers shall meet the following requirements:
 - a. The lineup administrator shall be a person who does not know which person in the lineup is the suspect.
 - b. Before a lineup, the eyewitness shall be instructed that the perpetrator might or might not be presented in the lineup, and that the lineup administrator does not know the suspect’s identity.
 - c. Individuals in the lineup shall be presented sequentially, not simultaneously. However, if for any rea-

EYEWITNESS IDENTIFICATION POLICY MODEL

son the lineup administrator knows which person in the lineup is the suspect, the lineup must be presented simultaneously, not sequentially.

2. Law enforcement officers shall make a written record of a lineup, including the following information:
 - a. The date, time and location of the lineup.
 - b. The names of every person present at the lineup.
 - c. The words used by the eyewitness in any identification, including words that describe the eyewitness' certainty of identification.
 - d. Whether it was a photo lineup or live lineup.
 - e. How many photos or individuals were presented in the lineup.
 - f. Whether the lineup administrator knew which person in the lineup was the suspect.
 - g. Whether before the lineup the eyewitness was instructed that the perpetrator might or might not be presented in the lineup, and that the lineup administrator did not know who was the suspect.
 - h. Whether the lineup was simultaneous or sequential.
 - i. The signature of the eyewitness.

(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 October 1, 2006.

Gun Violence Prevention

Summary:

- ▶ Gun violence claimed the lives of nearly 30,000 Americans in 2003.
- ▶ The Brady law is one of the most efficient law enforcement tools available and has prevented more than 1.2 million illegal firearms transactions through licensed gun dealers.
- ▶ Forty percent of gun transactions nationwide occur through unlicensed sellers and no-questions-asked private deals that require no background checks.
- ▶ More than 65 million handguns are in circulation in the United States today, a number that increases by two million each year.
- ▶ Several policies would reduce violence by regulating the distribution of firearms.
- ▶ Many states have strong laws that regulate firearms transfers by unlicensed sellers.
- ▶ Americans—including gun owners—strongly support gun restrictions.

Gun violence claimed the lives of more than 30,000 Americans in 2003.¹

For every person who dies from a gunshot, at least two others are seriously wounded. Nearly 100,000 Americans pass through the doors of hospital emergency rooms every year with serious or fatal gun injuries. The medical and social costs of gun violence in the United States are estimated to be \$100 billion per year.²

The Brady law is one of the most efficient law enforcement tools available and has prevented more than 1.2 million illegal firearms transactions through licensed gun dealers.³

Federal law prohibits convicted felons, individuals convicted of violent misdemeanors, domestic abusers, juveniles, and people with serious mental illnesses from buying or owning guns. The Brady law requires background checks on individuals who seek to purchase handguns to screen for prohibited purchasers. But the Brady law's application is limited because it only applies to licensed gun dealers.

Forty percent of gun transactions nationwide occur through unlicensed sellers and no-questions-asked private deals that require no background checks.⁴

In most states, private gun sales are totally unregulated. Guns can be sold anonymously from homes, in back rooms, and on the street—without any legal oversight. Lax gun laws allow criminals and other prohibited gun buyers to easily obtain guns. This gaping loophole in federal law, and in most state laws, may explain why 88 percent of traced crime guns have changed hands through at least one private transaction.⁵

More than 65 million handguns are in circulation in the United States today, a number that increases by two million each year.⁶

Handguns are extremely durable products that can be circulated from buyer to buyer, easily outliving their owners. These weapons remain functional and deadly for years. That is why it is essential to apply commonsense regulations, like the Brady law's background checks, to all gun transactions.

Several policies would reduce violence by regulating the distribution of firearms.

In the absence of federal standards, states can curtail the flow of guns to prohibited purchasers by giving police the tools to keep guns out of the wrong hands. The harder it is for gun sellers to hide their activities, the easier it is to prevent criminal access to firearms. States can:

- ▶ Require background checks for all transactions at gun shows.
- ▶ Institute background checks on all gun sales by unlicensed sellers.
- ▶ Require handgun licensing and registration.
- ▶ Prohibit the transfer of semiautomatic assault weapons. This is especially urgent because the federal assault weapons ban expired in 2004.

GUN VIOLENCE PREVENTION POLICY SUMMARY

Many states have strong laws that regulate firearms transfers by unlicensed sellers.

In 2005, Illinois enacted a law that mandates background checks for purchasers at gun shows. IN, MD, MI, MO, NE, NC and PA have laws that require criminal background checks on all handgun sales. CA, CT, HI, MA, NJ and NY have taken regulation a step further and require the licensing and registration of handguns.

Americans—including gun owners—strongly support gun restrictions.

A September 2004 Harris Poll reported that 60 percent of Americans favor “stricter gun control,” while only 32 percent favor “less strict gun control.” The same poll found that 71 percent of Americans favor and only 26 percent oppose “a ban prohibiting the sale of assault rifles and high capacity ammunition magazines.” A 2001 Lake Snell Perry and Associates poll found that: 92 percent of Americans and 86 percent of gun owners favor criminal background checks for all gun sales; 85 percent of Americans and 73 percent of gun owners favor handgun licensing; and 83 percent of Americans and 72 percent of gun owners favor the registration of all new handguns.

This policy summary relies in large part on information from the Coalition to Stop Gun Violence.

Endnotes

- 1 Donna Hoyert, Hsiang-Ching Kung and Betty Smith, “Deaths: Preliminary Data for 2003,” National Vital Statistics Report, U.S. Centers for Disease Control and Prevention, February 28, 2005.
- 2 Philip Cook and Jens Ludwig, “Gun Violence: The Real Costs,” 2000.
- 3 Bureau of Justice Statistics, “Background Checks for Firearm Transfers, 2004,” NCJ 210117, October 2005.
- 4 Philip Cook and Jens Ludwig, “Guns in America: National Survey on Private Ownership and Use of Firearms, National Institute of Justice Research in Brief,” May 1997.
- 5 Bureau of Alcohol, Tobacco and Firearms, “Crime Gun Trace Reports (2000): National Report,” 2000.
- 6 “Guns in America: National Survey on Private Ownership and Use of Firearms, National Institute of Justice Research in Brief.”

Gun Violence Prevention

One Handgun A Month Act

Summary: The One Handgun A Month Act combats illegal gun trafficking by limiting individuals to the purchase of no more than one handgun in any 30-day period.

SECTION 1. SHORT TITLE

This Act shall be called the “One Handgun A Month Act.”

SECTION 2. ONE HANDGUN A MONTH

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

(A) DEFINITION—In this section:

“Handgun” means a firearm described in 18 U.S.C. 921(a)(29).

(B) LIMIT ON HANDGUN TRANSFERS

1. Except as provided in this section, no person shall receive transfer of more than one handgun in any 30-day period, and no person shall transfer to any individual more than one handgun in any 30-day period.
2. The [State Police] shall establish a centralized system to ensure compliance with this section.
3. The limit on handgun transfers shall not apply to:
 - a. Any law enforcement officer or agency; or
 - b. Any person licensed under 18 U.S.C. 923 for the purpose of acquiring handguns as inventory.

(C) PENALTIES

Any person who violates any provision of this section shall, if convicted, be fined not more than \$5,000 or be imprisoned for not more than one year, or both.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

Universal Background Checks Act

Summary: The Universal Background Checks Act ensures that the transfer of a firearm is preceded by a thorough background check of the intended recipient of that firearm.

SECTION 1. SHORT TITLE

This Act shall be called the “Universal Background Checks Act.”

SECTION 2. UNIVERSAL BACKGROUND CHECKS

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

- (A) A person shall not transfer or receive transfer of any firearm unless the transferee has first passed a background check identical to the background check required under 18 U.S.C. 922(t) for transfers by federal firearms licensees. The background check required under this section must be conducted by a person licensed under 18 U.S.C. 923 or by a law enforcement agency.
- (B) Any person licensed under 18 U.S.C. 923 and whose licensed premises are within the state shall, upon request by a transferor of a firearm who is not licensed under 18 U.S.C. 923, conduct a background check on the intended recipient of that firearm, following the same procedures as if the transfer involved a firearm in the inventory of the licensed dealer. For this service, the person licensed under 18 U.S.C. 923 may charge a fee of up to five dollars per background check.
- (C) This section shall not apply to:
 - 1. The transfer of a firearm to a law enforcement officer or agency.
 - 2. The transfer of a curio or relic, as defined under 27 C.F.R. 178.11.
 - 3. The transfer of a firearm to a person licensed under 18 U.S.C. 923.
- (D) Any person who violates any provision of this section shall upon conviction be fined not more than \$1,000 for the first offense, or \$5,000 for each subsequent offense.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

GUN VIOLENCE PREVENTION POLICY MODEL

Gun Owner Accountability Act

Summary: The Gun Owner Accountability Act ensures that law enforcement officials have reliable information to trace the ownership of guns used in crime.

SECTION 1. SHORT TITLE

This Act shall be called the "Gun Owner Accountability Act."

SECTION 2. RECORDS OF TRANSFER

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

- (A) For every firearm transferred in the state on or after January 1, 2007, the [State Police] shall maintain a record of transfer that contains the name, current address, and driver's license number or state identification card number of the recipient of the firearm; the date of the transfer; the make, model and serial number of the firearm; and the name, address and, if applicable, federal firearms license number of the transferor.
- (B) Once each year, the [State Police] shall confirm that each person for whom such a record exists is the owner of record of that firearm, identified by make, model and serial number, unless and until the person provides to the [State Police] one of the following:
 - 1. Reliable evidence that the firearm has been lawfully transferred, including the name, current address, and driver's license number or state identification card number of the legal recipient;
 - 2. A copy of a report of the theft of the firearm filed with a law enforcement agency; or
 - 3. Reliable evidence that the firearm has been destroyed.
- (C) The [State Police] may collect from each person for whom a record of transfer exists a fee, not to exceed five dollars per firearm per year, to cover the costs of administering the program established by this section.
- (D) Any person who violates any provision of this section, including a refusal to pay any fees authorized by this section, shall upon conviction be fined not more than \$5,000 or be imprisoned for not more than one year, or both.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

Handgun Buyer Licensing Act

Summary: The Handgun Buyer Licensing Act ensures that every person who wishes to acquire a handgun first demonstrates at least a minimum level of knowledge and skill in the safe and lawful handling, storage and use of handguns, and has proven to a law enforcement agency that he or she is not prohibited by law from acquiring or possessing a handgun.

SECTION 1. SHORT TITLE

This Act shall be called the “Handgun Buyer Licensing Act.”

SECTION 2. HANDGUN BUYER LICENSING

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

(A) DEFINITIONS—In this section:

1. “Handgun” means a firearm described in 18 U.S.C. 921(a)(29).
2. “Law enforcement agency” means the office of the Sheriff of any county or the office of the Chief of Police of any city or municipality.

(B) HANDGUN BUYER LICENSE

1. A person shall not transfer or receive transfer of any handgun unless the transferee displays a valid handgun buyer license and one other government-issued identification card bearing the transferee’s name, date of birth, current address, signature, and photograph.
2. Upon receipt of a written application, a local law enforcement agency shall, within 14 days, provide a handgun buyer license, unless the local law enforcement agency finds that the applicant is not qualified to receive a handgun buyer license.
3. An applicant shall be qualified to receive a handgun buyer license if he or she:
 - a. Has completed a safe handling course approved by the [Superintendent of State Police] that covers all of the following topics:
 - (1) The basic operation of pistols and revolvers.
 - (2) Safe procedures for loading and unloading pistols and revolvers.
 - (3) The operation of safety devices found on pistols or revolvers.
 - (4) Basic rules of safe handling of firearms.
 - (5) Safe storage of firearms and ammunition.
 - (6) Current laws governing the possession, transfer and use of firearms.
 - (7) Current laws governing the lawful use of lethal force.
 - b. Has passed a test of the knowledge and skills covered in the safe handling course.
 - c. Has provided to the law enforcement agency a full set of fingerprints for the purpose of conducting a background check.
 - d. Is not prohibited by the laws of [State] or of the United States from acquiring or possessing a firearm.
 - e. Is, at the time such determination is made, a current resident of [State], as demonstrated by a current mortgage stub, residential rental receipt, utility bill, or other comparable document in the name of the intended recipient and bearing a valid address in [State].
4. A handgun buyer license shall be valid for four years after it is issued. The local law enforcement agency may collect an application fee of up to \$20 to defray costs.

GUN VIOLENCE PREVENTION POLICY MODEL

5. The denial of, or failure to timely issue, a handgun buyer license may be appealed to the [Superintendent] of State Police. The [Superintendent] shall have the authority to promulgate rules in order to comply with this section.
6. A local law enforcement agency shall revoke a handgun buyer license if, after it is issued, the licensee becomes prohibited by the laws of [State] or of the United States from acquiring or possessing a firearm, or the licensee is no longer a current resident of [State].
7. This section shall not require the display of a handgun buyer license by:
 - a. Any law enforcement officer or agency; or
 - b. Any person licensed under 18 U.S.C. 923 for the purpose of receiving a handgun as inventory.
8. No civil liability shall arise from any action or inaction on the part of a local law enforcement agency in connection with either the approval or denial of a handgun buyer license.
9. Any person who willfully violates any provision of this section, or a person who attempts through misrepresentation to obtain a handgun in violation of this section, shall upon conviction be fined not more than \$10,000 or imprisoned for not more than one year, or both.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

Assault Weapons Protection Act

Summary: The Assault Weapons Protection Act bans the purchase, sale or transfer of semiautomatic assault weapons.

SECTION 1. SHORT TITLE

This Act shall be called the “Assault Weapons Protection Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds:

1. Semiautomatic assault weapons are military-style guns designed to rapidly kill large numbers of people. The shooter can simply point, rather than carefully aim, the weapon to quickly spray a wide area with a hail of bullets.
2. According to FBI data, one in five law enforcement officers slain in the line of duty between 1998 and 2001 was killed with an assault weapon.
3. For many years, gun manufacturers have made, marketed and sold to civilians semiautomatic versions of military assault weapons designed with features specifically intended to increase lethality for military applications.
4. Assault weapons have been used in some of America’s most notorious murders, including the 1999 massacre at Columbine High School and the 2002 Washington, D.C.-area sniper shootings.

(B) PURPOSE—This law is enacted to protect the health and safety of state residents by prohibiting the purchase, sale or transfer of semiautomatic assault weapons.

SECTION 3. ASSAULT WEAPONS PROTECTION

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

(A) DEFINITIONS—In this section:

1. “Assault weapon” means:
 - a. Any semiautomatic or pump-action rifle or semiautomatic pistol that is capable of accepting a detachable magazine and that also possesses any of the following:
 - 1) If the firearm is a rifle, a pistol grip located behind the trigger.
 - 2) If the firearm is a rifle, a stock in any configuration, including but not limited to a thumbhole stock, a folding stock, or a telescoping stock, that allows the bearer of the firearm to grasp the firearm with the trigger hand such that the web of the trigger hand, between the thumb and forefinger, can be placed below the top of the external portion of the trigger during firing.
 - 3) If the firearm is a pistol, a shoulder stock of any type or configuration, including but not limited to a folding stock or a telescoping stock.
 - 4) A barrel shroud.
 - 5) A muzzle brake or muzzle compensator.
 - 6) Any feature capable of functioning as a protruding grip that can be held by the hand that is not the trigger hand, except an extension of the stock along the bottom of the barrel that does not substantially or completely encircle the barrel.
 - b. Any pistol that is capable of accepting a detachable magazine at any location outside of the pistol grip.

GUN VIOLENCE PREVENTION POLICY MODEL

- c. Any semiautomatic pistol, or any semiautomatic center-fire rifle, with a fixed magazine that has the capacity to accept more than ten rounds of ammunition.
 - d. Any shotgun capable of accepting a detachable magazine.
 - e. Any shotgun with a revolving cylinder magazine.
 - f. Any conversion kit or other combination of parts from which an assault weapon, as defined herein, can be assembled.
2. "Large-capacity detachable magazine" means a magazine which functions to deliver one or more ammunition cartridges into the firing chamber, which can be removed from the firearm without the use of any tool, and which has the capacity to hold more than ten rounds of ammunition.
 3. "Barrel shroud" means a covering, other than a slide, that is attached to, or that substantially or completely encircles the barrel of a firearm and that allows the bearer of the firearm to hold the barrel with the non-shooting hand while firing the firearm, without burning that hand. The term shall not include an extension of the stock along the bottom of the barrel that does not substantially or completely encircle the barrel.
 4. "Muzzle brake" means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.
 5. "Muzzle compensator" means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.
 6. "Conversion kit" means any part or combination of parts designed and intended for use in converting a firearm into an assault weapon.

(B) PROHIBITION ON ASSAULT WEAPONS

1. No person shall manufacture, possess, purchase, sell or otherwise transfer any assault weapon, or assault weapon conversion kit.
2. No person shall possess or have under his or her control at one time both:
 - a. A semiautomatic or pump-action rifle or semiautomatic pistol capable of accepting a detachable magazine, and
 - b. A large-capacity detachable magazine capable of use with that firearm.
3. This section shall not apply to:
 - a. Any law enforcement agency or officer acting within the scope of his or her profession.
 - b. Any person licensed under 18 U.S.C. 923 for the purpose of selling an assault weapon or large-capacity detachable magazine to a law enforcement agency.
 - c. The possession of an unloaded assault weapon or large-capacity detachable magazine for the purpose of permanently relinquishing it to a law enforcement agency, pursuant to regulations adopted for such purpose by [the State Police]. Any assault weapon relinquished pursuant to this paragraph shall be destroyed.
 - d. An assault weapon that has been permanently disabled so that it is incapable of discharging a projectile.
 - e. The possession of an assault weapon while lawfully engaged in shooting at a duly licensed, lawfully operated shooting range.
 - f. The possession of an assault weapon during lawful participation in a sporting event that is officially sanctioned by a club or organization established in whole or in part for the purpose of sponsoring sport shooting events.
 - g. The possession of an assault weapon or large-capacity detachable magazine by a person who received the weapon by inheritance, bequest or succession, as long as the person complies with

this section within 30 days of receipt.

- h. The possession of an assault weapon that was legally possessed on the effective date of this Act, only if the person legally possessing the assault weapon has complied with all of the requirements of paragraph 4 of this section.
- 4. In order to continue to possess an assault weapon that was legally possessed on the effective date of this Act, the person possessing the assault weapon must:
 - a. Within 90 days following the effective date of this Act, submit to a background check identical to the background check conducted in connection with the purchase of a firearm from a licensed gun dealer.
 - b. Immediately register the assault weapon with the [State Police] pursuant to regulations adopted for such purpose.
 - c. Safely and securely store the assault weapon pursuant to regulations adopted for such purpose by the [State Police]. The [State Police] may, no more than once per year, conduct an inspection to ensure compliance with this subsection.
 - d. Annually renew both the registration and the background check.
 - e. Possess the assault weapon only on property owned or immediately controlled by the person, or while engaged in the legal use of the assault weapon at a duly licensed firing range, or while traveling to or from either of these locations for the purpose of engaging in the legal use of the assault weapon, provided that the assault weapon is stored unloaded and in a separate locked container during transport.
 - f. Pay a fee to the [State Police] for each registration and registration renewal, provided that such fee may not exceed the costs incurred by the [State Police] in administering the registration program.

(C) PENALTIES

Any person who willfully violates the provisions of this section shall upon conviction be fined not more than \$10,000 or imprisoned for not more than two years, or both.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

Juvenile Detention Reform

Summary:

- ▶ An alarmingly high number of children accused of crimes are jailed before trial.
- ▶ The statutory purpose of pretrial detention—to hold only youths who are a danger to the community or at risk of flight—is largely ignored.
- ▶ Most youths in pretrial detention centers are nonviolent, relatively minor offenders.
- ▶ Current detention practices disproportionately affect young people of color.
- ▶ Confinement worsens outcomes for most young offenders.
- ▶ Detention reform cuts recidivism rates.
- ▶ Detention reform redirects tax dollars to more cost-effective home- and community-based programs.
- ▶ States are adopting detention reform.

An alarmingly high number of children accused of crimes are jailed before trial.

On an average day, an estimated 27,000 youths reside in locked pretrial detention centers. This number has grown by 72 percent since the early 1990s despite a steady decline in crimes committed by juveniles.¹ Each year, more than 600,000 children and teens cycle through secure detention facilities in the United States.²

The statutory purpose of pretrial detention—to hold only youths who are a danger to the community or at risk of flight—is largely ignored.

Far too often, locked detention is used as an easy place to “park” bothersome and troubled young people who have been accused—but not convicted—of offenses.³

Most youths in pretrial detention centers are nonviolent, relatively minor offenders.

Nearly 70 percent of youths in pretrial detention are held for nonviolent offenses. More than half are aged 15 or younger, and a third are aged 14 or younger.⁴ And fully one-third of juveniles in detention are status offenders—their offenses would not be considered as crimes if committed by adults.⁵ In almost half of status cases, the most serious offense is running away from home.⁶

Current detention practices disproportionately affect young people of color.

Between 1983 and 1997, juvenile detention rates for minorities grew 76 percent, while rates for whites actually declined. Throughout this period, four of every five newly detained youths were minorities.⁷

Confinement worsens outcomes for most young offenders.

Pretrial detention is appropriate for those who present a danger to others or who are unlikely to report for trial. But for most youths, detention makes their situation worse. Putting young, nonviolent children in close contact with more hardened offenders provides a higher education in criminal behavior for some and a physical danger for others. Experts have found that detention increases long-term recidivism rates.⁸ Detention also increases the likelihood that children will be placed out of their homes in the future—even when controlling for offense, prior history, and other factors.⁹ And detention leads to more suicide attempts, stress-related illnesses, and psychiatric problems.¹⁰

Detention reform cuts recidivism rates.

Communities across the country have found that keeping juveniles out of secure detention helps both young people and their communities.¹¹ For example, a San Francisco study of 1,500 high-risk youths who completed an alternative-to-detention program found that the program participants were 26 percent less likely to be re-arrested than similar youths released from secure detention facilities.¹² Youths in alternative pretrial programs benefit from better mental health assessments and treatment, as well as stronger connections with family, school, religious and community supports—all factors that contribute to lower recidivism.

JUVENILE DETENTION REFORM POLICY SUMMARY

Detention reform redirects tax dollars to more cost-effective home- and community-based programs.

Detention is very expensive. One detention bed costs \$1.25 to \$1.5 million dollars over 20 years.¹³ Detention alternatives have been proven to save money. In Cook County, Illinois, for example, a combination of accelerated case processing, use of a model objective risk assessment instrument, and a network of community-run reporting centers has saved millions of dollars.¹⁴

States are adopting detention reform.

In 2005, Mississippi enacted sweeping juvenile justice reforms that include new controls on juvenile detention facilities. New Mexico now prohibits juvenile detention unless an objective assessment demonstrates substantial risk of harm to self or others, or a youth is at risk of leaving the court's jurisdiction.¹⁵ North Dakota developed a system of short-term community holding sites throughout the state where youths receive one-on-one attention from trained adult advocates, including social workers, teachers, clergy and volunteers. The results of such detention reforms have been positive—community safety is preserved, youths are held in the least restrictive setting for the shortest period of time in facilities as close to home as possible, and valuable resources are freed up.

This policy summary relies in large part on information from the Coalition for Juvenile Justice.

Endnotes

- 1 Coalition for Juvenile Justice, "Unlocking the Future: Detention Reform in the Juvenile Justice System," January 2004.
- 2 Rina Shore, "Kids Count Indicator Brief: Reducing the Number of Disconnected Youth," Annie E. Casey Foundation, July 2005.
- 3 "Unlocking the Future: Detention Reform in the Juvenile Justice System."
- 4 Howard Snyder and Melissa Sickmund, "Juvenile Offenders and Victims, 1999 Report," National Center for Juvenile Justice, 1999.
- 5 Deborah Busch, "By the Numbers: the role of data and information in detention reform," Annie E. Casey Foundation, *Pathways to Juvenile Justice Reform* series, 1999.
- 6 "Juvenile Offenders and Victims, 1999 Report."
- 7 Annie E. Casey Foundation, "The JDAI Story: Reducing Racial Disparities in Juvenile Detention," *Pathways to Juvenile Detention Reform*, Volume 8, 2002.
- 8 "Unlocking the Future: Detention Reform in the Juvenile Justice System."
- 9 Annie E. Casey Foundation, "Juvenile Jailhouse Rocked: Reforming Detention in Chicago, Portland and Sacramento," *AdvoCasey: Documenting Programs that Work for Kids and Families*, Fall/Winter 1999.
- 10 National Juvenile Detention Association and Youth Law Center, "Crowding in Juvenile Detention Facilities: A Problem-Solving Manual," 1998.
- 11 Beneficial results of detention reform have been reported in such diverse jurisdictions as Bernalillo County/Albuquerque (NM), Tarrant County (TX), and Santa Cruz (CA), and the states of Illinois (starting with Chicago/Cook County) and North Dakota. See "Unlocking the Future: Detention Reform in the Juvenile Justice System."
- 12 Center on Juvenile Crime and Criminal Justice, "Detention Diversion Advocacy Project Evaluation," September 1999.
- 13 American Youth Policy Forum, "Less Cost, More Safety," 2001.
- 14 Richard Mendel, "And the Walls Keep Tumbling Down: A Demonstration Project has Come and Gone but Detention Reform Continues to Gather Steam," Annie E. Casey Foundation, Spring 2003.
- 15 New Mexico Children's Code, Revised, §32A: 2.1 et seq., effective July 2003.

Juvenile Detention Reform

Juvenile Detention Reform Act

Summary: The Juvenile Detention Reform Act restricts the use of pretrial confinement to young offenders who pose a danger to society or who may flee from justice.

SECTION 1. SHORT TITLE

This Act shall be called the "Juvenile Detention Reform Act."

SECTION 2. JUVENILE DETENTION REFORM

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

(A) STANDARD FOR APPROVING DETENTION

1. A child taken into custody for an alleged criminal act shall not be placed in pretrial detention unless a detention risk assessment instrument determines that the child:
 - a. Poses a substantial risk of harm to others; or
 - b. Has demonstrated that there is a substantial risk that he or she may leave the jurisdiction of the court.
2. If a juvenile is placed into pretrial detention, a judge of the [Juvenile Court] shall, within 24 hours after the placement, consider the risk assessment instrument and review the appropriateness of pretrial detention. The Court shall not approve a placement in pretrial detention unless the state has proven by a preponderance of the evidence that:
 - a. The child poses a substantial risk of harm to others or has demonstrated that there is a substantial risk that he or she may leave the jurisdiction of the court; and
 - b. No lesser custodial restrictions would serve as an effective alternative to pretrial detention.
3. If the Court approves a placement in pretrial detention, the placement decision shall be reviewed by the Court at any pretrial conference.
4. The Department [of Juvenile Justice] shall develop and implement a detention risk assessment instrument. The instrument will be designed to reflect input from the child's family, social workers, law enforcement personnel, and the Department's staff and advisors.

(B) CONDITIONS OF DETENTION

1. Pretrial detention shall not take place at any long-term facility for adjudicated delinquents.
2. A person older than 18 shall not be detained in a juvenile detention facility.
3. Publicly-funded counsel shall be made available to the juvenile and the juvenile's family upon completion of the risk assessment instrument and before the point at which any detention hearing is held.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

For policy toolkits covering more than
100 state issues, visit

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Sentencing Reform

Summary:

- ▶ State prison populations and spending on corrections have skyrocketed.
- ▶ Many inmates become involved with the criminal justice system because of a substance abuse problem.
- ▶ A massive racial disparity in the prison population has resulted from sentencing laws.
- ▶ Sentencing reform, drug courts, and diversion programs result in major cost savings for states and taxpayers.
- ▶ Treatment in lieu of incarceration reduces recidivism, which translates to even more cost savings over time.
- ▶ States are enacting sentencing reform and drug treatment legislation.
- ▶ Americans strongly support sentencing reform.

State prison populations and spending on corrections have skyrocketed.

From 1990 to 2004, state prison populations doubled from about 685,000 to over 1.2 million. Including federal prisons and local jails, the total number of people held behind bars in the United States exceeds 2.1 million—one of every 138 residents.¹ This dramatic rise in the number of prisoners was accompanied by similar increases in cost. During the 1990s, aggregate state spending on corrections doubled from \$19 billion to \$38 billion.²

Many inmates become involved with the criminal justice system because of a substance abuse problem.

Sixty-eight percent of inmates entering jail were dependent upon or abusing drugs and alcohol in 2002. Of jail inmates who met substance dependence or abuse criteria, 70 percent were incarcerated for drug or property offenses—not violent crimes. Eighty-five percent of inmates convicted of burglary were substance abusers.³ More arrests are made for drug offenses—12 percent—than any other type of offense.⁴ Altogether, of the 1.2 million inmates in state prisons, 265,000 are imprisoned solely for drug offenses,⁵ and most of those have no prior criminal record for a violent offense.⁶

A massive racial disparity in the prison population has resulted from sentencing laws.

In 2004, African Americans—who comprise only 12 percent of the U.S. population—made up more than 40 percent of all prisoners nationwide, and 8.4 percent of all black males aged 25 to 29 were in prison.⁷ At the state level, this disparity can be even more striking. For example, a 2005 report found that while African Americans make up only 20 percent of Delaware's population, they account for 64 percent of its prison population.⁸ A similar report revealed

that African Americans comprise only 28 percent of Maryland's population, but they account for 90 percent of people incarcerated for drug offenses in that state.⁹

Sentencing reform, drug courts and diversion programs result in major cost savings for states and taxpayers.

A growing body of research proves that treatment, rather than incarceration, is the most effective tactic to fight drug abuse. An investment in drug treatment can save billions of taxpayer dollars a year—not only in prison costs, but in costs for health care, child care, transportation, and public safety. An analysis of California's diversion program—which offers treatment instead of prison to nonviolent drug offenders—showed that for each dollar spent, the state enjoyed seven dollars in savings on future costs.¹⁰ A study of Multnomah County, Oregon found that drug court there saved \$5,071 per participant per month—more than \$1.5 million in annual savings for taxpayers.¹¹

Treatment in lieu of incarceration reduces recidivism, which translates to even more cost savings over time.

It is essential that states treat offenders who are addicted to drugs in order to mitigate the long-term effects on the offenders, their families, and the public. A 2005 study showed that participants in drug courts across the country had between ten and 30 percent fewer re-arrests than a comparison group.¹² Another study showed that drug court participants had recidivism rates that were 25 percent lower than those who had not participated.¹³ In addition, offenders who receive treatment instead of incarceration are better able to hold jobs and retain custody of their children.

SENTENCING REFORM POLICY SUMMARY

States are enacting sentencing reform and drug treatment laws.

In 2005, ten states (AL, GA, LA, MT, ND, OK, TX UT, VA, WA) enacted laws that implement or expand treatment in lieu of incarceration.

Americans strongly support sentencing reform.

Public attitudes toward crime and corrections have been shifting for more than a decade. Eighty-nine percent of Americans now favor treatment instead of incarceration for first-time drug offenders. Seventy-six percent oppose “three strikes” penalties—mandatory life imprisonment for an offender convicted of a non-violent felony for the third time.¹⁴

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

Endnotes

- 1 Paige Harrison and Allen Beck, “Prisoners in 2004,” U.S. Department of Justice, Bureau of Justice Statistics, October 2005.
- 2 Ronald Snell, Corina Eckl, and Graham Williams, “State Spending in the 1990s,” National Conference of State Legislatures, July 14, 2003.
- 3 U.S. Department of Justice, Bureau of Justice Statistics, “Substance Abuse, Dependence, and Treatment of Jail Inmates, 2002,” July 2005.
- 4 Ibid.
- 5 “Prisoners in 2004.”
- 6 Sentencing Project, “Impact of Drug Policy,” 2005.
- 7 “Prisoners in 2004.”
- 8 Mike Billington, “Analysis points to bias in sentencing: In Delaware, blacks more likely to get prison time,” *The News Journal*, July 22, 2005.
- 9 Vincent Schiraldi and Jason Ziedenberg, “Race and Incarceration in Maryland,” Justice Policy Institute, October 2003.
- 10 U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration, “Substance Abuse Treatments for Adults in the Criminal Justice System,” 2005.
- 11 NPC Research, Inc., “A Detailed Cost Analysis in a Mature Drug Court Setting: A Cost-Benefit Evaluation of the Multnomah County Drug Court,” July 2003.
- 12 U.S. General Accounting Office, “Adult Drug Courts,” February 2005.
- 13 Steven Belenko, “Research on Drug Courts: A Critical Review—2001 Update,” National Center on Addiction and Substance Abuse at Columbia University, June 2001.
- 14 ABC News Poll, March 2002.

Sentencing Reform

Drug Treatment Instead of Incarceration Act

Summary: The Drug Treatment Instead of Incarceration Act diverts nonviolent drug offenders to drug treatment programs, and creates a Substance Abuse Treatment Fund to pay for such programs.

SECTION 1. SHORT TITLE

This Act shall be called the “Drug Treatment Instead of Incarceration Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Substance abuse treatment is proven to be an effective safety and health measure. Nonviolent drug-dependent offenders who receive treatment are much less likely to abuse drugs and commit future crimes, and are more likely to live healthier, more stable, and more productive lives.
2. When nonviolent persons convicted of drug possession or drug use are provided appropriate treatment instead of incarceration, communities are healthier and safer, and taxpayer dollars are saved.

(B) PURPOSE—This law is enacted to enhance public safety, improve public health, and save public funds.

SECTION 3. DRUG TREATMENT INSTEAD OF INCARCERATION

(A) DEFINITIONS—In this section:

1. “Rehabilitative treatment program” means the least restrictive rehabilitative treatment program that is appropriate, as determined by clinical assessment. Such a program shall include drug treatment provided by a certified community drug treatment program. Such a program may include one or more of the following: outpatient treatment, halfway house treatment, narcotic replacement therapy, drug education or prevention courses, vocational training, family counseling, literacy training, community service, and inpatient or residential drug treatment as needed to address severe dependence, special detoxification, or relapse situations.
2. “Nonviolent drug offense” means an offense involving the possession or sale of a controlled substance, as defined in [insert appropriate citation], that did not involve the use, attempted use, or threatened use of physical force against another person.

(B) APPROPRIATE ASSIGNMENT OF NONVIOLENT DRUG OFFENDERS

1. After arraignment, the court shall direct that a clinical assessment be performed of all persons charged with a nonviolent drug offense, with the consent of the person arrested. Such clinical assessment shall form the basis for all orders pursuant to this section.
2. There shall be a presumption that any person who would otherwise be arraigned for a nonviolent drug offense for the first time shall, prior to the entry of a guilty plea, be ordered by the court to participate in and complete a rehabilitative drug treatment program. This section shall apply to all first-time felony and all misdemeanor drug offenders.
3. Upon application by the defendant, and upon good cause shown, the court may allow a repeat nonviolent felony drug offender to plead guilty to the drug offense and subsequently order the person to participate in and complete a rehabilitative treatment program. The repeat nonviolent felony drug offender shall be sentenced in accordance with applicable provisions of the criminal code, but such sentence shall be suspended following the defendant’s participation in and completion of appropriate rehabilitative treatment.

4. Paragraphs (B)(2) and (B)(3) shall not apply to any person who:
 - a. Has been convicted within the previous five years of a felony involving the use, attempted use, or threatened use of physical force against another person.
 - b. In addition to the conviction of the nonviolent drug offense, has been convicted in the same proceeding of a felony not related to the use of drugs.
 - c. Refuses participation in a clinical assessment or rehabilitative treatment program.
 - d. Has two separate convictions for nonviolent drug offenses, has participated in two separate courses of rehabilitative treatment under this section, and is found by the court by clear and convincing evidence to be unsuitable for any available form of rehabilitative treatment.
5. If, during the course of rehabilitative treatment, the treatment provider determines that the defendant is unsuitable for the treatment being provided, but may be suitable for other rehabilitative treatment programs, the court may modify the terms of its order to ensure that the person receives the alternative treatment or program.
6. Nothing in this section precludes a defendant from declining to participate in a clinical assessment or rehabilitative treatment program. A person who declines participation shall be prosecuted and sentenced in accordance with otherwise applicable provisions of the criminal code.

(C) SUBSEQUENT PROSECUTION

1. If any person who participates in a rehabilitative treatment program pursuant to section (B) is arrested for an offense other than a nonviolent drug offense or violates a non-drug-related condition of the order directing that person to a rehabilitative treatment program, or non-drug-related condition of probation, the [District Attorney] may move to proceed with prosecution, at which time the court shall conduct a hearing. If the alleged violation is proven, the court may modify its order or the conditions of probation, or may direct prosecution to proceed.
2. If any person who participates in a rehabilitative treatment program pursuant to section (B) is arrested for a nonviolent drug possession offense, or violates a drug-related condition of the order that directs the person to a rehabilitative treatment program, or a drug-related condition of probation, the [District Attorney] may move to proceed with prosecution, and the court shall conduct a hearing. If the alleged violation is proved, and the state proves by clear and convincing evidence that such person poses a danger to the safety of other persons, the court may direct prosecution to proceed. Otherwise, the court may order that the rehabilitative treatment program be intensified or modified.
3. If the court directs prosecution to proceed, in no event shall any person who has failed to successfully complete a rehabilitative treatment offense pursuant to this section receive a sentence that exceeds the sentence to which the person would have been subject had the person declined to participate in the rehabilitative treatment program.
4. If the court directs prosecution of a first-time felony or any misdemeanor nonviolent drug offense to proceed because the defendant has failed to successfully complete a rehabilitative treatment program pursuant to this section, notwithstanding any other provision of law, the trial court shall not sentence the defendant to a term that exceeds 30 days in jail.
5. If a defendant has two separate convictions for a nonviolent possession offense, has participated in two separate courses of drug treatment, and is found by the court, by clear and convincing evidence to be unsuitable for any available form of drug treatment, the defendant is not eligible for continued probation under section (B). Notwithstanding any other provision of law, the trial court shall not sentence the defendant to a term that exceeds 90 days in jail.

SENTENCING REFORM POLICY MODEL

6. At any time after completion of treatment, a defendant subject to section (B)(2) may petition the court for dismissal of the charges. If the court finds that the defendant successfully completed the prescribed course of treatment and substantially complied with the conditions of probation, the charges against the defendant will be dismissed in accordance with section [insert appropriate citation].
7. At any time after completion of treatment, a defendant sentenced pursuant to (B)(3) may petition the court for dismissal of the charges. If the court finds the defendant successfully completed the prescribed course of treatment, the conviction on which the sentence was based shall be set aside. The plea entered by the defendant will be withdrawn and the charges dismissed.

SECTION 4. SUBSTANCE ABUSE TREATMENT TRUST FUND

(A) ESTABLISHMENT OF FUND—A special fund to be known as the “Substance Abuse Treatment Trust Fund” is created within the [Department of Justice].

1. Upon passage of this Act, \$XXXXXX shall be appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for the 2006-07 fiscal year.
2. There is hereby continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund an additional \$XXXXXX annually. These funds shall be transferred to the Substance Abuse Treatment Trust Fund on July 1 of each fiscal year.
3. Nothing in this section shall preclude additional appropriations by the legislature to the Substance Abuse Treatment Trust Fund.

(B) FUNDING ALLOCATION

1. Monies deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the [Controller] through the [State Department of Corrections] to counties to cover the costs of placing persons in and providing drug treatment programs under this Act.
2. Such monies shall be allocated to counties through a fair and equitable distribution formula as determined by the Department as necessary to carry out the purposes of this Act. That includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload.
3. The Department may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the Department has determined that demand for drug treatment services is not adequately met by existing rehabilitative treatment programs. However, nothing in this section shall be interpreted or construed to allow any entity to use funds from the Substance Abuse Treatment Trust Fund to supplant funds from any existing fund source or mechanism currently used to provide substance abuse treatment.

(C) ACCOUNTABILITY AND EVALUATION

1. The Department shall annually conduct a study to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this Act.
2. The study shall include, but not be limited to, a study of the implementation process, a review of incarceration costs, crime rates, prison and jail construction, welfare costs, the adequacy of funds appropriated, and any other issues the Department can identify.

SECTION 5. 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 the Act shall not be affected.

SECTION 6. EFFECTIVE DATE

This Act shall take effect on July 1, 2006 and its provisions shall be applied prospectively.

CRIMINAL JUSTICE RESOURCES

Death Penalty Reform

American Bar Association
American Civil Liberties Union
Amnesty International USA
Campaign for Criminal Justice Reform
Citizens United for Alternatives to the Death Penalty
Death Penalty Focus
Death Penalty Information Center
Equal Justice USA/Moratorium Now!
Human Rights Watch
Innocence Project
Murder Victims' Families for Reconciliation
National Coalition to Abolish the Death Penalty
Southern Center for Human Rights

Eyewitness Identification

Brennan Center for Justice
Innocence Project

Electronic Recording of Interrogations

Campaign for Criminal Justice Reform
Innocence Project
National Association of Criminal Defense Lawyers

Gun Violence Prevention

Americans for Gun Safety
Brady Campaign to Prevent Gun Violence
Coalition to Stop Gun Violence
Johns Hopkins Center for Gun Policy and Research
Join Together, Boston University School of Public Health
Million Mom March
Violence Policy Center

Juvenile Detention Reform

American Bar Association Juvenile Justice Center
Annie E. Casey Foundation
Coalition for Juvenile Justice
National Juvenile Detention Association
New Mexico Council on Crime and Delinquency
North Dakota Association of Counties

Sentencing Reform

Families Against Mandatory Minimums
Sentencing Project

A full index of resources with contact information can be found on page 285.



2006 POLICY AGENDA

Education

The federal No Child Left Behind Act has wreaked havoc on state education policy. How can states promote real student achievement while following arbitrary and often irrational federal rules?

Immigrants' In-State Tuition

Summary:

- ▶ Many immigrant children are ineligible for in-state college tuition rates, which effectively denies them access to a college education.
- ▶ State economies suffer when immigrant students cannot afford to attend college.
- ▶ The denial of in-state tuition rates disproportionately affects Latino students.
- ▶ Nine states have enacted laws to make higher education more accessible to long-term resident immigrant students.
- ▶ In-state tuition laws have enjoyed strong bipartisan support in many states.

Many immigrant children are ineligible for in-state college tuition rates, which effectively denies them access to a college education.

Many foreign-born children have lived in the United States for most of their lives but are denied in-state college tuition rates because they are undocumented or are in the process of obtaining legal status. Annually, an estimated 65,000 immigrant students who have lived in the U.S. for more than five years graduate from high school but face barriers to higher education.¹ These children are subject to international student tuition rates, which tend to be three to ten times higher than in-state tuition. For example, the annual in-state tuition to University of California-Berkeley is \$7,434, compared to \$25,254 for international students.² The in-state rate at California community colleges is \$26 per credit, but costs up to \$170 per credit for international students.³ These rates place college education out of reach for many immigrant students from lower-income families.

State economies suffer when immigrant students cannot afford to attend college.

State economies need a better educated workforce, so it makes little sense to deny higher education to immigrant students. College graduates earn more than high school graduates. They pay more state taxes and provide a better trained workforce for high-paying employers. States that block students who could excel in college from receiving an affordable education harm their own economic development.

The denial of in-state tuition rates disproportionately affects Latino students.

Recent census data show that Latino children are among the most rapidly increasing populations in the United States. More than one-third of all Latinos in the United States are under the age of 18.⁴ These young people will make up a large proportion of our nation's future workforce. It is especially important to encourage young Latinos to finish high school and pursue their dreams through higher education.

Nine states have enacted laws to make higher education more accessible to long-term resident immigrant students.

In 2005, New Mexico enacted a law that provides in-state tuition rates to immigrants who reside in the state and graduate from a New Mexico high school. Eight other states (CA, IL, KS, NY, OK, TX, UT, WA) adopted similar laws between 2001 and 2004. To be eligible, students are required to be state residents, have attended a high school within the state for one to three years, have graduated from a state high school (or attained an equivalent certification), and to currently attend or have been accepted to a state college or university. Students are also required to file an affidavit stating that the student has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so.

In-state tuition laws have enjoyed strong bipartisan support in many states.

Illinois legislation that allows immigrant students access to in-state tuition rates passed the House by a vote of 112 to 4, and the Senate by a vote of 55 to 1. Similar legislation in New York and Utah was broadly supported by both parties, businesses, unions, educators and the civil rights community.

This policy summary relies in large part on information from the National Council of La Raza and the National Immigration Law Center.

Endnotes:

- 1 Jeffrey S. Passel, "Further Demographic Information Relating to the DREAM Act," Urban Institute, October 2003.
- 2 University of California-Berkeley, 2005-2006 Registration Fee Schedule.
- 3 California Community Colleges Chancellor's Office, "Frequently Asked Questions—Colleges," 2005.
- 4 U.S. Census Bureau, "Annual Estimates of the Population by Age and Sex of Hispanic and Latino Origin for the United States: April 1, 2000 to July 1, 2004," 2005.

Immigrants' In-State Tuition

Access to Postsecondary Education Act

Summary: The Access to Postsecondary Education Act provides in-state university and college tuition rates to qualified immigrant students who have attended state high schools for at least two years.

SECTION 1. SHORT TITLE

This Act shall be called the "Access to Postsecondary Education Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds:

1. Many [State] immigrant high school students have lived in the state most of their lives, and are likely to remain residents. These students are precluded from obtaining an affordable college education because they do not qualify for in-state tuition rates. Without access to in-state tuition rates, many of these students are not able to attend college.
2. These students have already proven their academic eligibility and merit through their admission to the state college and university system.
3. The state's college-educated workforce will grow and economic growth will be stimulated if these students attend college.
4. This Act does not confer postsecondary education benefits on the basis of residence within the meaning of Section 1623 of Title 8 of the United States Code.

(B) PURPOSE—This law is enacted to provide educational opportunity to children who live and who have graduated from high school in [State], improving the overall economic condition of the state.

SECTION 3. ACCESS TO POSTSECONDARY EDUCATION

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

(A) QUALIFICATIONS FOR IN-STATE TUITION RATES

A student, other than a nonimmigrant alien within the meaning of paragraph 15 of subsection (a) of Section 1101 of Title 8 of the United States Code, shall qualify for in-state tuition rates at [State] state universities and colleges if he or she meets all of the following requirements:

1. High school attendance in [State] for two or more years.
2. Graduation from a [State] high school or attainment of the equivalent thereof.
3. Registration as an entering student at, or current enrollment in, a public institution of higher education in [State].
4. In the case of a person without legal immigration status, the filing of an affidavit with the institution of higher education that states that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

(B) ADMINISTRATION

1. The [Trustees of the University System] and the [Board of Governors of the Community College System] shall prescribe rules and regulations for the implementation of this section.
2. Student information obtained in the implementation of this section shall be confidential.

(C) ENFORCEMENT

A state court may award only prospective injunctive and declaratory relief to a party in any lawsuit based upon this section or based upon rules and regulations prescribed to implement this section.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

Teachers for At-Risk Schools

Summary:

- ▶ 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 lunch.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) mandates that by the end of the 2005-2006 school year, 100 percent of teachers of core academic classes must be “highly qualified” in their content area. States report that about 90 percent of teachers met the “highly qualified” requirement in September 2005.⁶ 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, Center on Education Policy, and National Center on Teacher Quality—report that state rules are so full of loopholes that the NCLB standard is meaningless.⁷

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.⁸ NCLB cannot overcome—and does not attempt to address—the non-school factors that keep poor children from achieving academic success.⁹ 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.

TEACHERS FOR AT-RISK SCHOOLS POLICY SUMMARY

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.¹⁰

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.¹¹

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.¹²

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 Ben Feller, "Teacher Ratings Called Lax," *Seattle Times*, August 22, 2005; Anne McGrath, "Can Teachers Measure Up?" *U.S. News & World Report*, September 12, 2005.
- 7 Ibid; Kati Haycock, Director of The Education Trust, Testimony before the U.S. House Education and Workforce Committee, September 29, 2005.
- 8 "Qualified Teachers for At-Risk Schools: A National Imperative," 2005.
- 9 Richard Rothstein, *Class and Schools*, 2004.
- 10 Richard Rothstein, "Teacher shortages vanish when the price is right," *New York Times*, September 25, 2002.
- 11 The Teaching Commission, "Poll Shows Strong Support for Combining Better Teacher Pay with Market Incentives, Rewards for Achievement Gains, New Accountability," April 6, 2005.
- 12 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, 2006.

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Tutoring Services—Minimum Standards

Summary:

- ▶ The No Child Left Behind Act (NCLB) compels struggling school systems to spend hundreds of millions of dollars on 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 spend millions of dollars on 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”—after-school 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 2003-04 school year, just 91 school districts around the country spent \$200 to \$300 million for supplemental services.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 requires that all teachers must 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 And 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.

The Harvard study 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

TUTORING SERVICES—MINIMUM STANDARDS POLICY SUMMARY

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, Section 1116(e), enacted 2001.
- 2 Association of Community Organizations for Reform Now and The American Institute for Social Justice, "Accountability Left Behind: While Children and Schools Face High Stakes Testing, Tutoring Companies get a Free Ride," 2004.
- 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 "Increasing Bureaucracy or Increasing Opportunities?"
- 11 No Child Left Behind Act, Section 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 are 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).

TUTORING SERVICES—MINIMUM STANDARDS POLICY MODEL

(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, 2006.

EDUCATION RESOURCES

Immigrants' In-State Tuition

California Immigrant Welfare Collaborative

National Council of La Raza

National Immigration Law Center

Teachers 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 285.



2006 POLICY AGENDA

Elections

Our election system failed in November 2000 when four to six million Americans who went to the polls were not counted in the presidential election. The system is not yet fixed.

Ballot Initiative Reform

Summary:

- ▶ Progressives and populists created the initiative process a century ago to wrest control of state policy decisions from wealthy special interest groups.
- ▶ Ironically, wealthy special interest groups have dominated the initiative process for most of the past 25 years.
- ▶ In recent elections, however, progressives have taken the offensive with ballot initiatives.
- ▶ The primary problem in the initiative process is that state laws give wealthy special interests the advantage.
- ▶ States can level the playing field by making the signature gathering process more fair.
- ▶ States can require initiative funding disclosure.
- ▶ States can make the process more fair by ensuring accurate ballot language.
- ▶ States can take several steps to improve citizen knowledge of ballot measures.

Progressives and populists created the initiative process a century ago to wrest control of state policy decisions from wealthy special interest groups.

Many of the landmark victories of the early 20th century began as ballot initiatives: women were given the right to vote before passage of the 19th Amendment; the minimum wage was increased; and an eight-hour workday was established. Over the years, however, use of the ballot initiative process declined.

Ironically, wealthy special interest groups have dominated the initiative process for most of the past 25 years.

In 1978, anti-tax crusaders in California sponsored and passed Proposition 13. The Reagan victory of 1980 allowed right-wing economic, corporate and social organizations to launch a coordinated ballot initiative attack on the working and middle classes that continues today. The right has used ballot measures to promote an extremist agenda: so-called “paycheck protection” initiatives used to silence the voices of working families; anti-affirmative action initiatives that turn back the clock on civil rights; anti-choice initiatives that place more restrictions on women’s reproductive health rights; anti-environmental initiatives that empower polluters; anti-gay initiatives that sanction discrimination; and voucher initiatives that siphon public funds from public schools.

In recent elections, however, progressives have taken the offensive with ballot initiatives.

In November 2004, progressives used ballot initiatives to increase the minimum wage in Florida and Nevada, approve stem-cell research in California, legalize medical marijuana in Montana, promote renewable energy in Colorado, and ban nuclear waste dumping in Washington. In recent years, ballot initiatives have

established public financing for candidates in Arizona, Maine and Massachusetts; promoted renewable energy and protected open spaces in California, Colorado and Utah; and increased funding for public education in Washington and Oklahoma.¹

The primary problem in the initiative process is that state laws tend to give wealthy special interests the advantage.

Contrary to popular belief, the influence of money—not the structure of the process—is compromising the integrity of ballot initiatives. Wealthy interests have huge sums of money to spend on professional signature gatherers to place virtually any measure on the ballot. In many states, wealthy interests can hide the sources of their ballot initiative funding. And wealthy interests can spend whatever it takes to communicate deceitful messages to voters about the merits of a ballot measure.

States can level the playing field by making the signature gathering process more fair.

Wealthy interests have an advantage because they can buy petition signatures through professional signature gathering companies. Maine, North Dakota and Oregon require signature gatherers to be paid by the hour rather than by the signature, which reduces the likelihood of fraud. States can also require that signature gatherers be registered voters in the state, as Maine does.

States can require initiative funding disclosure.

Wealthy individuals and organizations regularly spend millions of dollars to qualify and pass ballot measures.² Knowing which individuals and groups are funding an initiative helps voters understand the motives behind the measure—who stands to benefit and who might be adversely affected. Unfortunately,

the financial disclosure requirements for ballot measures are much weaker than those for candidates. States can hold ballot measure committees accountable by requiring full disclosure in a timely manner.

States can make the process more fair by ensuring accurate ballot language.

Because wealthy interests have the advantage in buying campaign advertising and their ads often misrepresent an initiative's effect, it is important that the official language on the ballot accurately describes the question to voters. Colorado's ballot title process is a model for reform. After initiative language has been filed with the Secretary of State, it is forwarded to a ballot title-setting board where there are several opportunities for proponent and opponent feedback, challenges and appeals. The general consensus in the state is that the language of Colorado's initiative petitions is fair, clear and accurate.

States can take several steps to improve citizen knowledge of ballot measures.

Voters need objective information about initiatives. Voters can be better informed if states:

- ▶ Establish a clearinghouse of ballot initiative information in the Secretary of State's office. The clearinghouse would make available pro and con statements from voter guides, as well as news stories, editorials and TV clips about each initiative.
- ▶ Publicize fiscal impact statements for ballot measures. Informing voters of the real budgetary impacts would go a long way toward making the process more fair. This practice is already employed in 12 states.
- ▶ Create voter guides that include a summary of each initiative and its full text, as well as a straightforward explanation of what each measure would do. Several states, including California and Colorado, distribute voter guides that explain ballot measures.

This policy brief relies in large part on information from the Ballot Initiative Strategy Center.

Endnotes

- 1 Ballot Initiative Strategy Center, "2004 Election Results: Ballot Initiative & Referendum," November 2004.
- 2 Ballot Initiative Strategy Center Foundation, "The Campaign Finance Reform Blind Spot," 2002.

Ballot Initiative Reform

Ballot Initiative Integrity Act

Summary: The Ballot Initiative Integrity Act requires that petition circulators be state voters and compensated on an hourly, not per-signature, basis.

SECTION 1. SHORT TITLE

This Act shall be called the "Ballot Initiative Integrity Act."

SECTION 2. BALLOT INITIATIVE INTEGRITY

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

(A) PROHIBITIONS

1. No person shall pay or receive payment for circulating an initiative or referendum petition where payment is based on the number of signatures collected.
2. No person shall pay or receive payment for causing others to circulate an initiative or referendum petition where payment is based on the number of signatures collected.
3. Nothing in this section shall prohibit payment for signature gathering which is not based, either directly or indirectly, on the number of signatures gathered.
4. No initiative or referendum petition shall be circulated by a person who is not a registered voter of this state.
5. No person shall pay another person for services as a circulator of an initiative or referendum petition if the circulator is not a registered voter of this state.

(B) ENFORCEMENT

1. The [State Board of Elections/Secretary of State] shall not accept or certify any initiative or referendum petitions that were collected by a person who received payment for the collection of signatures based on the number of signatures collected, or who is not a registered voter of this state.
2. Any person who willfully violates this section shall be guilty of a misdemeanor, punishable by up to one year in prison and a fine of up to \$5,000.
3. Any person who willfully swears that initiative or referendum signatures were circulated in accordance with this section, but who knows that information to be false, shall be guilty of a felony, punishable by up to two years in prison and a fine of up to \$20,000.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

Ballot Measure Campaign Disclosure Act

Summary: The Ballot Measure Campaign Disclosure Act requires all persons, groups, or entities that fund ballot measure campaigns to register and provide full financial disclosure in a timely, accurate manner.

SECTION 1. SHORT TITLE

This Act shall be called the “Ballot Measure Campaign Disclosure Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Ballot measure campaigns wield significant influence on state policy.
2. Current campaign disclosure laws are less sufficient for ballot measure campaigns than they are for political candidate campaigns.
3. Accurate and timely disclosure of fundraising and spending is especially important because there is no limit on contributions to ballot measure campaigns.
4. Stronger disclosure requirements are particularly important because soft money contributions, banned from federal campaigns, are being diverted to fund ballot measure campaigns.

(B) PURPOSE—This law is enacted to improve the democratic process for the adoption or defeat of ballot measures by providing crucial information to the public in a timely, accessible manner.

SECTION 3. DEFINITIONS

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

“Ballot measure” means an initiative, referendum, ballot question, or any matter on the ballot other than the election of a candidate to public office.

SECTION 4. BALLOT MEASURE CAMPAIGN REGISTRATION REQUIREMENTS

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

In addition to all other registration requirements, the following requirements shall apply to ballot measure campaigns:

1. Within ten days of first collecting or spending \$100 or more in an attempt to place a measure on the ballot, or to support or oppose a ballot measure, a person, group or entity shall register with the [Board of Elections] as a ballot measure committee. However, if it is within 30 days of Election Day when the measure appears on the ballot, the person, group or entity shall register as a ballot measure committee within 24 hours of collecting or spending \$100 or more.
2. If a ballot measure committee registers before a ballot measure number/letter is assigned by the [Board of Elections], the registration shall clearly describe the nature of the ballot measure and whether the committee supports or opposes such measure. If a ballot measure committee registers after a ballot measure number/letter is assigned by the [Board of Elections], the registration shall list that number/letter and whether the committee supports or opposes such measure.

BALLOT INITIATIVE REFORM POLICY MODEL

SECTION 5. BALLOT MEASURE CAMPAIGN REPORTING REQUIREMENTS

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

In addition to all other reporting requirements, the following requirements shall apply to every ballot measure committee:

1. After registering with the [Board of Elections], a ballot measure committee shall file a campaign disclosure report, as described in [citation], within ten days of the end of each calendar quarter.
2. If a ballot measure committee receives a contribution of \$1,000 or more between the closing date of the last pre-election disclosure report and Election Day, the committee shall disclose that contribution within 48 hours of receipt in a manner designated by the [Board of Elections].
3. In each campaign disclosure report, a ballot measure committee shall list, for any donation of \$100 or more, the occupation and employer of an individual, or the nature of business of a contributor that is not an individual.
4. If a ballot measure committee files a campaign disclosure report before a ballot measure number/letter is assigned by the [Board of Elections], the report shall clearly describe the nature of the ballot measure, and whether the committee supports or opposes such measure. If a ballot measure committee files a campaign disclosure report after a ballot measure number/letter is assigned by the [Board of Elections], the report shall list that number/letter and whether the committee supports or opposes such measure.
5. If a ballot measure committee collects, spends, or expects to collect or spend over \$10,000 throughout the ballot measure campaign, the committee shall file all financial disclosure reports electronically, in such form as the [Board of Elections] directs.

SECTION 6. BALLOT MEASURE CAMPAIGN REPORTING REQUIREMENTS

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

The [Board of Elections] shall make all registration forms and campaign finance reports for ballot measure committees easily accessible, searchable and sortable through the Internet.

SECTION 7. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

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Election Day Registration

Summary:

- ▶ Hundreds of thousands of Americans could not exercise their right to vote in the 2004 elections due to inefficient or discriminatory voter registration systems.
- ▶ Minority voters are disproportionately excluded from the voting process.
- ▶ Voter registration deadlines limit voter participation.
- ▶ Seven states have enacted legislation that allows voters to register on Election Day.
- ▶ States with Election Day registration have voter turnout significantly higher than the national average.
- ▶ States with Election Day registration report few problems with fraud or administrative complexity.
- ▶ States that implement Election Day registration do not face substantially higher costs.
- ▶ Election Day registration reduces the need for cumbersome provisional ballots.
- ▶ Research supports the use of Election Day registration to increase turnout of traditionally underrepresented groups.
- ▶ States are moving toward implementation of Election Day registration.

Hundreds of thousands of Americans could not exercise their right to vote in the 2004 elections due to inefficient or discriminatory voter registration systems.

Reports indicate that registration-related problems were widespread during the 2004 election. The Election Protection Coalition's Election Incident Reporting System tallied over 10,000 registration-related incidents on Election Day 2004, including voters left off the rolls and voters who never received voter cards or polling place information in the mail. Often, these voters were not given provisional ballots.¹

Minority voters are disproportionately excluded from the voting process.

According to national studies, many disfranchised voters are African Americans and Latinos who register at state agencies pursuant to the National Voter Registration Act (NVRA). The 2000 election produced a record number of complaints about the failure of new NVRA registrants to be added to voting rolls in time for Election Day, according to the Federal Election Commission.²

Voter registration deadlines limit voter participation.

Many voters do not take an interest in elections until a few weeks before Election Day, when political campaigns do most of their advertising and races inevitably tighten. Yet 36 states cut off registration opportunities 20 to 30 days before Election Day.

A series of Gallup polls in 2004 found that the proportion of Americans giving "quite a lot" of thought to the election rose from 77 percent in mid-September—shortly before voter registration usually closes—to 91 percent by mid-October.³ The 14 percent who became more interested during the final month of the campaign generally could not vote unless they were already registered.

Seven states have enacted legislation that allows voters to register on Election Day.

Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming have allowed eligible citizens to register to vote and cast a ballot on Election Day for several years.⁴ In 2005, Montana adopted a law that permits Election Day registration and voting at county election administrators' offices starting in 2006.

States with Election Day registration have voter turnout significantly higher than the national average.

In 2004, when nationwide voter turnout totaled slightly more than 60 percent, the six Election Day registration states had a combined turnout of almost 74 percent.⁵ Researchers estimate that elimination of voter registration deadlines and implementation of Election Day registration would result in an average seven percent increase in voter turnout.⁶ According to a May 2001 poll, 64 percent of nonvoters said that the option to register on Election Day would make them more likely to vote.⁷

ELECTION DAY REGISTRATION POLICY SUMMARY

States with Election Day registration report few problems with fraud or administrative complexity.

Officials report minimal problems with fraud and no unusual administrative problems in the six Election Day registration states. Indeed, Election Day registration can help address one of the most frustrating administrative problems exposed during the 2004 elections: incomplete or inaccurate registration lists that bar people from voting. In the states that use Election Day registration, the work of adding new voters has proven manageable. Election officials in these states educate registration clerks on how to make reasonable estimates of voter turnout, ensuring that polling places are adequately staffed.

Election Day registration reduces the need for cumbersome provisional ballots.

The Help America Vote Act (HAVA), enacted by Congress in 2002, requires states to offer provisional ballots to voters who claim to be registered but who are not listed on the voter rolls. Election Day registration would virtually eliminate provisional ballots and would be easier for officials to administer—and it would provide certainty to citizens that their votes are counted.

States that implement Election Day registration do not face substantially higher costs.

The most obvious cost associated with Election Day registration is increasing the number of polling place workers and training them to handle new registrations on Election Day. But, as the 2004 elections demonstrated, most states need more staffing at the polls and better training for poll workers anyway.

Research supports the use of Election Day registration to increase turnout of traditionally underrepresented groups.

Underrepresented groups—youth, people of color, and those with lower educational attainment—would gain the most from the implementation of Election Day registration.⁸ Research has found that youth are much more likely to vote if allowed to register on Election Day.⁹

States are moving toward implementation of Election Day registration.

Montana adopted a form of Election Day registration in 2005. In Connecticut, an Election Day registration bill passed the House, but it was later watered down to simply change voter registration deadlines from 14 to seven days before an election.

This policy summary relies in large part on information from D mos.

Endnotes

- 1 Election Incident Reporting System, "Nationwide Election Incidents," 2004.
- 2 Federal Election Commission, "The Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Office," July 2001.
- 3 CNN/*USA Today*/Gallup polls conducted September 11-14, 2004 and October 15-18, 2004.
- 4 A seventh state, North Dakota, does not require voter registration.
- 5 D mos, "High 2004 Turnout for States with Election Day Registration," January 10, 2005.
- 6 Craig Leonard Brians and Bernard Grofman, "Election Day Registration's Effect on U.S. Voter Turnout," *Social Science Quarterly*, Vol. 82, No. 1, March 2001.
- 7 Medill School of Journalism and Medill News Service, "America's No-Shows," Northwestern University, May 2001.
- 8 R. Michael Alvarez, Stephen Ansolabehere, and Catherine H. Wilson, "Election Day Voter Registration in the United States: How One-Step Voting Can Change the Composition of the American Electorate," Caltech-MIT Voting Technology Project Working Paper, June 2002.
- 9 Mary Fitzgerald, "Easier Voting Methods Boost Youth Turnout," CIRCLE Working Paper, February 2003.

Election Day Registration

Election Day Registration Act

Summary: The Election Day Registration Act allows qualified residents to register to vote and cast ballots on the day of a regular national, state or local election.

SECTION 1. SHORT TITLE

This Act shall be called the “[State] Election Day Registration Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Many individuals cannot vote on Election Day due to inefficiencies and mistakes in the voter registration system.
2. Precincts with predominantly minority populations are most affected by inaccurate voting rolls.
3. Election Day registration would increase voter participation in elections and strengthen our democratic institutions.
4. Election Day registration has been successfully tested in a number of states.

(B) PURPOSE—This law is enacted to improve the state’s election process, enfranchise voters, and increase civic participation by [State] citizens.

SECTION 3. ELECTION DAY REGISTRATION

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

ELECTION DAY REGISTRATION

1. An individual who is eligible to vote may register on Election Day by:
 - a. Appearing in person at the polling place for the precinct in which he or she maintains residence.
 - b. Providing proof of residence.
 - c. Completing a registration form, and making an oath in the prescribed form.
2. An individual may prove residence for purposes of registration by showing any of the following items that list a valid address in the precinct:
 - a. A [State] driver’s license or [State] identification card issued by the [Department of Motor Vehicles].
 - b. A residential lease or utility bill with a photo identification card.
 - c. A student identification card from a postsecondary educational institution in [State] accompanied by a current student fee statement.
3. Election Day registration provided in this section shall apply to all elections conducted under [cite elections code], including national, state, municipal and school district elections.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

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Voter Identification and Integrity

Summary:

- ▶ 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.
- ▶ 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 are unconstitutional.
- ▶ The real electoral integrity issue in America is mismanagement of voter registration lists.
- ▶ Under the Help America Vote Act (HAVA), all states are required to create and employ reliable statewide voter registration systems by 2006.

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 the 2000 election.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 its incidence is minimal and there is no evidence that identity fraud has ever changed the outcome of an election.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 Since October 2002, only 52 individuals have been convicted of any type of federal election fraud, while 196,139,871 ballots have been cast in federal general elections.⁵ Voter fraud is so rare largely because the risk of criminal penalties—which often include prison—far outweighs the benefit of voting twice.

Restrictive voter identification requirements don't solve voter fraud.

If there are problems 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 would be 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 would 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.

VOTER IDENTIFICATION AND INTEGRITY POLICY SUMMARY

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 are unconstitutional.

A United States District Court granted a preliminary injunction that bars Georgia from enforcing its new law requiring voters to display government-issued photo identification.¹¹ The court's 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 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 not added in time for Election Day.¹³

Under the Help America Vote Act (HAVA), all states are required to create and employ reliable statewide voter registration systems by 2006.

Modern voting technology facilitates participation and reduces fraud. Cross-checking voter lists with death and criminal conviction records helps remove duplicate or ineligible registrations and guarantees that qualified registered voter registrations are not removed erroneously. Ten states (AK, DE, HI, KY, LA, MA, MI, MN, SC, VA) have unified statewide systems. States are even more likely to guarantee fair and inclusive elections when their voter registration systems link to agencies that routinely register voters—such as driver's licensing and social services offices—so that new applications are processed without delay. AL, AK, DE, KY, LA, MA, MI, MN, OK and SC have such systems. Michigan's registration database, called the Qualified Voter File (QVF), is commonly cited as one of the best in the nation. QVF links electronically with motor

vehicle agencies and is matched against U.S. Postal Service change of address records, death records, and felony records.¹⁴

Endnotes

- 1 D mos, "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, October 18, 2005.
- 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.
- 14 "Securing the Vote."

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 state-wide 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.

VOTER IDENTIFICATION AND INTEGRITY POLICY MODEL

(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, 2006.

Voter Protection

Summary:

- ▶ 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 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.⁶

▶ 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 to go to the polls because her vote had been recorded on the clipboard. This same tactic was repeated throughout Florida.⁷

▶ 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 election would be conducted over two days. The flyer requested that Republicans vote on November 2, while Democrats should vote on November 3.⁸

▶ In Franklin County, Ohio, phone callers who alleged to represent the Board of Elections falsely informed voters that their precincts had changed, and that election officials would pick up any absentee ballots from their homes.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 the 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 Jay Maynor, "Phony letters tell people they cannot vote," *WKYC-TV*, October 28, 2004.
- 7 David Karp, Michael Sandler and Tamara Luch, "Dirty tricks litter path to election," *St. Petersburg Times*, October 29, 2004.
- 8 "Run-Up to Election Exposes Widespread Barriers to Voting."
- 9 Suzanne Hoholik, "Voters Report Fake Calls," *Columbus Dispatch*, October 22, 2004.
- 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.

VOTER PROTECTION POLICY MODEL

(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 attorneys' fees.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

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Voting Rights Restoration

Summary:

- ▶ An estimated 4.7 million Americans—1 in 43 adults—are barred from voting because of a felony conviction.
- ▶ Approximately 1.7 million of those barred from voting have completed their sentences.
- ▶ African American and Latino communities are disproportionately affected by the disenfranchisement 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 disenfranchised 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 4.7 million Americans—1 in 43 adults—are barred from voting because of a felony conviction.

The number of disenfranchised citizens is greater than the entire population of Louisiana. Among these 4.7 million are more than two million white Americans (Hispanic and non-Hispanic), 677,000 women, and 585,000 military veterans.¹

Approximately 1.7 million of those barred from voting have completed their sentences.

Thirteen 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 disenfranchise 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 disenfranchisement of criminal offenders.

About 1.4 million African American men are barred from voting. Their 13 percent disenfranchisement rate is seven times the national average. In six states, more than one in four African American men are permanently disenfranchised. Given current rates of incarceration, three in ten of the next generation of black men are expected to be disenfranchised at some point in their lives. In states that permanently disenfranchise citizens with a felony record, as many as 40 percent of black men will be unable to vote in any election.²

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 disenfranchised 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 disenfranchised for life.

Many countries, including the Czech Republic, Denmark, France, Germany, Israel, Japan, Peru, Poland, Romania, Sweden and Zimbabwe allow 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.³

States are moving to restore voting rights to many citizens with felony convictions.

Across the country, there has been significant momentum for reform of disenfranchisement policies. Since 1997, 12 states have reformed their laws or policies to reduce barriers to voting by people with

VOTING RIGHTS RESTORATION POLICY SUMMARY

criminal records. Seven states have repealed laws permanently disfranchising some or all people with felony convictions (DE, MD, NE, NV, NM, TX, WY).⁴

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 will 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.

Endnotes

- 1 The Sentencing Project, “Felony Disenfranchisement Laws in the United States,” September 2005; The Sentencing Project, “Disenfranchised Veterans In the United States,” 2004.
- 2 “Felony Disenfranchisement Laws in the United States.”
- 3 Jeff Manza, Clem Brooks and Christopher Uggen, “Public Attitudes Toward Felon Disenfranchisement in the United States,” *Public Opinion Quarterly*, 2004.
- 4 “Felony Disenfranchisement Laws in the United States.”
- 5 Ibid.

State Disfranchisement Laws⁵

Prisoners permitted to vote:
ME, VT

Voting restored after release from prison:
HI, IL, IN, MA, MI, MT, NH, ND, OH, OR, PA, 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, RI, SC, TX, 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

Voting restored after completion of sentence, except those convicted of felonies before a certain date who are permanently disfranchised:
TN (pre-1986 disfranchised), WA (pre-1984 disfranchised)

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

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, 2006. Voting rights shall be restored to all residents who have completed their confinement [or sentence], whether the completion occurred before or after July 1, 2006.

ELECTIONS RESOURCES

Ballot Initiative Reform

- Ballot Initiative Strategy Center
- Brennan Center for Justice

Election Day Registration

- D mos
- Federal Election Commission

Voter Identification and Integrity

- Common Cause
- D mos
- League of Women Voters

Voter Protection

- Caltech-MIT Voting Technology Project
- Common Cause
- Election Protection Coalition
- People for the American Way

Voting Rights Restoration

- Advancement Project
- American Civil Liberties Union
- American Civil Liberties Union of Florida
- Brennan Center for Justice
- DemocracyWorks
- Demos
- 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 285.



2006 POLICY AGENDA

Environment

The current federal government is protecting neither our air and water from pollution, nor our wildlife and natural resources from exploitation. It is essential that states now fill that role.

Clean Cars

Summary:

- ▶ Air pollution from cars and trucks is dangerous to America's health.
- ▶ Air pollution caused by motor vehicle exhaust is especially harmful to children.
- ▶ Children in urban areas are disproportionately affected by air pollution.
- ▶ Pollutants from cars and trucks contribute to global warming.
- ▶ Most states can choose to adopt stricter vehicle emissions standards.
- ▶ States have adopted the California standards by both legislation and regulation.

Air pollution from cars and trucks is dangerous to America's health.

The exhaust from internal combustion engines contains many harmful byproducts, including hydrocarbons, carbon monoxide, nitrogen oxides, and fine airborne particulate matter.¹ Hydrocarbons create smog and cause cancer in humans. Carbon monoxide is a poisonous gas that limits the flow of oxygen to the brain and the body. Nitrogen oxides damage lung tissue and cause acid rain. Fine airborne particulate matter causes lung damage and cancer.² Hydrocarbons, nitrogen oxides, and fine airborne particulate matter all worsen respiratory diseases, such as asthma.

Air pollution caused by motor vehicle exhaust is especially harmful to children.

Infants and young children tend to breathe through their mouths, which allows polluted air to bypass filtering mechanisms in the nasal passages. They also breathe more rapidly than adults and spend more time outdoors—especially in the summer, when smog levels are highest. Children's airways are smaller, which makes airborne particles more damaging. Damage sustained during childhood can severely affect development of the nervous, immune and respiratory systems, and can increase the risk of developing cancer and other diseases later in life.³

Children in urban areas are disproportionately affected by air pollution.

A Harvard University study conducted with the American Public Health Association (APHA) showed that low-income and minority groups in the inner cities experience significantly higher rates of harm than other groups. The highest incidence of asthma in children is found among low-income and African American toddlers, who predominantly live in urban areas. Researchers in the Harvard/APHA study point out that global warming caused by increased emissions also causes pollen seasons to arrive earlier, which further contributes to poor respiratory health among vulnerable populations.⁴

Pollutants from cars and trucks contribute to global warming.

Carbon dioxide produced by vehicles accounts for 26 percent of greenhouse gas emissions in the United States. Our nation's transportation sector alone emits more carbon dioxide than any entire country except China, which has four times the U.S. population.⁵ Greenhouse gases absorb sunlight that reflects off the Earth's surface to create a blanket of heated gas in the atmosphere. A rapid increase in greenhouse gases has caused climate change around the world, including global warming, changed weather patterns, and more cases of severe weather.⁶ This phenomenon became apparent in the U.S. in 2005, when severe storms devastated the Gulf region.

Most states can choose to adopt stricter vehicle emissions standards.

All new vehicles for sale in the U.S. must meet federal emissions standards set by the Environmental Protection Agency (EPA). The EPA standards limit the amount of hydrocarbons, carbon monoxide, nitrogen oxides, and fine airborne particulate matter that can come from a vehicle's tailpipe and leak from its fuel system. Vehicles sold in California, New York and Massachusetts must meet the stringent emissions standards established by the California Air Resources Board. The California standards promote the sale of zero-emission vehicles—typically electric cars—as well as low-emission hybrids. The Board has voted to strengthen its emissions standards for the 2009 model year, although the auto industry is challenging the new regulations. Federal law prohibits states from setting their own independent emissions standards, but they can adopt the California standards if pollution levels in any county in the state exceed any of the EPA's National Ambient Air Quality Standards (NAAQS). Thirty-three states (AL, AZ, CO, CT, DE, GA, ID, IL, IN, KY, LA, ME, MD, MA, MN, MO, MT, NV, NH, NJ, NM, NY, OH, OR, PA, RI, TX, UT, VT, VA, WA, WI, WY) and the District of Columbia are eligible to adopt California's standards using the NAAQS measure.⁷

States have adopted the California standards by both legislation and regulation.

In 2005, Washington adopted California's emissions standards through legislation and Oregon adopted them by executive order. Altogether, nine states (CA, CT, MA, NJ, NY, OR, RI, VT, WA) have adopted the California standards. Standards in some states have not yet taken effect.

This policy brief relies in large part on information from the State Environmental Resource Center, a project of Defenders of Wildlife.

Endnotes:

- 1 California Environmental Protection Agency Office of Environmental Health Hazard Assessment and the American Lung Association of California, "Fuels and Your Health," 2003.
- 2 Clean Car Campaign, "Emissions," 2004.
- 3 California Environmental Protection Agency Office of Environmental Health Hazard Assessment and the American Lung Association of California, "Air Pollution and Children's Health," 2003.
- 4 Paul R. Epstein and Christine Rogers, "Inside the Greenhouse: The Impacts of CO₂ and Climate Change on Public Health in the Inner City," Center for Health and the Global Environment, Harvard Medical School, April 2004.
- 5 Pew Center on Global Climate Change, "Analysis of the Feasibility of Greenhouse Gas Reporting," September 2002.
- 6 American Council for an Energy Efficient Economy, "Automobiles and the Environment," 2003.
- 7 State Environmental Resource Center, "California's Motor Vehicle Emissions Program: Should Your State Adopt It?" 2003.

Clean Cars

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 2009 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, 2006.

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Environmental Justice

Summary:

- ▶ Low-income Americans are exposed to health hazards in their homes, at their jobs, and in their neighborhoods more frequently than their affluent counterparts.
- ▶ Environmental clean-up efforts disproportionately benefit white Americans over people of color.
- ▶ A focus on environmental justice arose out of the civil rights movement.
- ▶ The Clinton Administration took steps to address racial disparities in environmental protection.
- ▶ The EPA is not enforcing the Clinton-era directive.
- ▶ Hurricane Katrina revealed catastrophic inadequacies in the environmental precautions for minority communities.
- ▶ States can take several steps to address environmental justice.

Low-income Americans are exposed to health hazards in their homes, at their jobs, and in their neighborhoods more frequently than their affluent counterparts.

Many studies have found that businesses that generate toxic waste—automotive and equipment repair shops, salvage yards, dry cleaners, small manufacturing companies, and construction firms—are disproportionately located in low-income and minority communities.¹ Other studies have found a clear correlation with race and income in the concentration of air pollution, location of municipal landfills and incinerators, number of abandoned toxic waste dumps, and incidence of lead poisoning in children.²

Environmental clean-up efforts disproportionately benefit white Americans over people of color.

A landmark 1992 study uncovered glaring inequities in the way the U.S. Environmental Protection Agency (EPA) enforced environmental laws. The study found: “There is a racial divide in the way the U.S. government cleans up toxic waste sites and punishes polluters. White communities see faster action, better results, and stiffer penalties than communities where blacks, Hispanics and other minorities live. This unequal protection often occurs whether the community is wealthy or poor.”³ A recent study in Massachusetts found that communities where people of color compose 25 percent or more of the population face nearly nine times higher cumulative rates of exposure to hazardous materials than predominantly white communities.⁴

A focus on environmental justice arose out of the civil rights movement.

A series of community protests led by African Americans in the South—especially in Warren County, North Carolina—provided the impetus for a 1983 U.S. General Accounting Office study. The study found that three out of four of the off-site commercial hazardous waste landfills in eight southern states were located in predominantly African American communities, even though African Americans made up only 20 percent of the population. The Warren County protests also led to the first national study that correlated waste sites and minority demographics in 1987. By 1990, what began as a community-based struggle against toxic wastes had grown into a nationwide environmental justice movement.⁵

The Clinton Administration took steps to address racial disparities in environmental protection.

In 1994, President Clinton signed Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” Executive Order 12898 requires each federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States and its territories and possessions...” This Executive Order reinforces the mandate of the Civil Rights Act of 1964, which prohibits discriminatory practices in programs that receive federal funds.

The EPA is not enforcing the Clinton-era directive.

In March 2004, the Inspector General of the EPA reported that the agency is not doing an effective job enforcing environmental justice. The EPA lacks plans, goals and performance measures and has even proposed redefining “environmental justice” to exclude consideration of race and income level—despite the U.S. House of Representatives’ unanimous 2005 vote to force the EPA to adhere to its existing standards. And the EPA Superfund program, founded in 1980 to clean up toxic waste sites, ran out of industry fees in 2003 and has relied entirely on tax dollars since. The Bush Administration opposes the “polluter pays” principle, making it impossible to fund needed cleanups.⁶

Hurricane Katrina revealed catastrophic inadequacies in the environmental precautions for minority communities.

During the hurricane, more than 500 sewage plants in Louisiana—25 of which were major facilities—were damaged or destroyed. Hydrocarbons and natural gas leaked from over 170 sources, and more than 80 oil spill sites were identified—including major oil refineries owned by Chevron, Exxon Mobil and Shell.⁷ These egregious environmental hazards disproportionately affected communities of color, which had been excluded from the urban planning process and consequently had a lack of input into the development of an appropriate emergency preparedness strategy. The crisis dramatically demonstrated the concentration of hazardous facilities in or near low-income communities of color, including the infamous “Cancer Alley” near New Orleans.⁸

States can take several steps to address environmental justice.

Sixteen states (AR, CA, CT, FL, GA, IL, LA, MD, MA, NJ, NY, NC, OR, PA, RI, WA) have fairly strong laws or regulations to promote environmental justice. Eight other states (AL, DE, IN, KY, MS, MO, NH, WI) have laws or regulations that partially address environmental justice.⁹ Some states, such as Maryland, have created special advisory councils to call attention to racial and income disparities in order to avoid discriminatory

enforcement of environmental laws. Florida and several other states have created academic centers to study the issue—Florida’s Center for Environmental Equity and Justice is located at Florida A&M University. California law prevents the disproportionate siting of toxic chemical facilities in minority communities. California also funds an Environmental Justice Small Grants Program, which provides assistance to local nonprofit organizations’ projects that address environmental justice issues. Washington and Oregon approved plans to allocate one percent of their states’ Interstate 5 transportation spending toward a community enhancement fund to alleviate the impact of that road in affected neighborhoods.¹⁰

Endnotes

- 1 Environmental Justice Resource Center at Clark Atlanta University, “Region IV Environmental Justice Partnership Project: Lessons Learned,” June 1997.
- 2 Ibid.
- 3 Marianne Lavelle, Marcia Coyle and Claudia MacLachlan, “Unequal Protection: The Racial Divide in Environmental Law,” *The National Law Journal*, 1992.
- 4 Daniel R. Faber and Eric J. Krieg, “Unequal Exposure to Ecological Hazards 2005: Environmental Injustices in the Commonwealth of Massachusetts,” October 12, 2005.
- 5 Robert Bullard, “Environmental Justice in the 21st Century,” Environmental Justice Resource Center, 2002.
- 6 Center for Health, Environment and Justice, “25th Anniversary of Superfund—America’s Safety Net in Crisis,” September 29, 2005.
- 7 National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, “Katrina Pollution Surveillance and Investigation,” September 20, 2005.
- 8 Ibid.
- 9 Public Law Research Institute at Hastings College of Law, University of California, “Environmental Justice for All: A Fifty-State Survey of Legislation, Policies, and Initiatives,” January 2004.
- 10 Jessica Kitchin, “Environmental justice: an emerging state issue,” *Stateline.org*, August 2, 2004.

Environmental Justice

Environmental Justice Act

Summary: The Environmental Justice Act establishes a commission to investigate incidents of environmental racism and coordinate state efforts to ensure that minorities and low-income citizens are not disproportionately subjected to environmental hazards.

SECTION 1. SHORT TITLE

This Act shall be called the “[State] Environmental Justice Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Racial and ethnic minority populations and low-income communities bear a disproportionate share of the health risks caused by polluted air and contaminated water, and by solid waste landfills, hazardous waste facilities, waste water treatment plants, waste incinerators, and other similar projects.
2. This disproportionate impact of environmental hazards on minority and low-income communities is largely the result of past governmental decisions.
3. The federal government underscored the importance of environmental justice in Executive Order 12898 and created the National Environmental Justice Advisory Council to promote environmental justice in the Environmental Protection Agency’s policies, programs, initiatives and activities.
4. The state is committed to ensuring that communities are afforded fair treatment and meaningful involvement in decision-making regardless of race, color, ethnicity, religion, income or education level.

(B) PURPOSE—This law is enacted to establish governmental procedures in order to safeguard residents’ health and welfare, and to achieve environmental justice.

SECTION 3. ENVIRONMENTAL JUSTICE

(A) DEFINITIONS—In this section:

1. “Department” means the Department of [Environmental Protection].
2. “Environmental justice” means the fair treatment of people of all races, cultures and incomes in the development, adoption, implementation and enforcement of environmental laws and policies.

(B) IMPLEMENTATION OF ENVIRONMENTAL JUSTICE POLICIES

1. All state agencies, boards, commissions and other bodies involved in decisions that may affect environmental quality shall adopt and implement environmental justice policies that provide meaningful opportunities for involvement to all people, regardless of race, color, ethnicity, religion, income or education level.
2. All state programs and policies designed to protect the environment shall be reviewed periodically to ensure that program implementation and dissemination of information meet the needs of low-income and minority communities, and seek to address disproportionate exposure to environmental hazards.
3. The Department will use available environmental and public health data to identify existing and proposed industrial and commercial facilities and areas in communities of color and low-income communities for which compliance, enforcement, remediation, siting and permitting strategies will be targeted to address impacts from these facilities.

4. The Department shall create an Environmental Justice Advisory Council to advise the Department and the Environmental Justice Task Force on environmental justice issues. The Council shall consist of 15 individuals and will meet at least quarterly. The Council shall annually select a chairperson from its membership and shall have a composition of one-third membership from grassroots or faith-based community organizations, with additional membership to include representatives from the following communities: academic public health, statewide environmental, civil rights and public health organizations, large and small business and industry, municipal and county officials, and organized labor.

(C) ENVIRONMENTAL JUSTICE TASK FORCE

1. The Secretary of the Department of [Environmental Protection] and the Secretary of the Department of [Health], or their appointed designees, shall convene a multi-agency task force, to be named the Environmental Justice Task Force. This Task Force will include senior management designees from the Offices of [Counsel to the Governor, the Attorney General's office, the Departments of Human Services, Community Affairs, Health and Senior Services, Agriculture, Transportation, and Education]. The Task Force shall be an advisory body, the purpose of which is to make recommendations to State Agency heads regarding actions to be taken to address environmental justice issues consistent with each agency's existing statutory and regulatory authority. The Task Force is authorized to consult with, and expand its membership to, other State agencies as needed to address concerns raised in affected communities.
2. Any community may file a petition with the Task Force that asserts that residents and workers in the community are subject to disproportionate adverse exposure to environmental health risks, or disproportionate adverse effects resulting from the implementation of laws affecting public health or the environment.
3. The Task Force shall identify a set of communities from the petitions filed, based on selection criteria developed by the Task Force, including consideration of state agency resource constraints. The Task Force shall meet directly with the selected communities to understand their concerns.
4. The Task Force shall develop an Action Plan for each of the selected communities after consultation with the citizens, as well as local and county government as relevant, that will address environmental factors that affect community health. The Action Plan shall clearly delineate the steps that will be taken in each of the selected communities to reduce existing environmental burdens and avoid or reduce the imposition of additional environmental burdens through allocation of resources, exercise of regulatory discretion, and development of new standards and protections. The Action Plan, which shall be developed in consultation with the Environmental Justice Advisory Council, will specify community deliverables, a timeframe for implementation, and the justification and availability of financial and other resources to implement the Plan. The Task Force shall present the Action Plan to the relevant Departments, recommending its implementation.
5. The Task Force shall monitor the implementation of each Action Plan in the selected communities, and shall make recommendations to state agencies as necessary to facilitate implementation of the Action Plans. Agencies shall implement the strategy to the fullest extent practicable in light of statutory and resource constraints.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2006. The Environmental Justice Task Force and the Environmental Justice Advisory Council shall be set up and operating by October 1, 2006.

Green Buildings

Summary:

- ▶ 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.
- ▶ In 2005, Washington enacted the nation's first high-performance green buildings law.

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 are expected to jump 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 2005, the United States is expected to consume 100 quadrillion BTUs of energy—more than 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—26 to 32 for basic, 33 to 38 for silver, and so on. 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

In 2005, Washington enacted the nation's first high-performance green buildings law.

Washington's law requires that new buildings and renovations that exceed 5,000 square feet must meet LEED standards. The law will apply to state buildings, public schools, and other projects funded by the state.

Endnotes

- 1 Energy Information Administration, "Short-Term Energy Outlook," U.S. Department of Energy, November 8, 2005.
- 2 Ibid.
- 3 Energy Information Administration, "Annual Energy Outlook 2005," U.S. Department of Energy, January 2005.
- 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 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, 2006.
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, 2007.

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, 2007.
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, 2006.

Renewable Energy

Summary:

- ▶ 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-two 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 Air pollution from the burning of fossil fuels is the primary cause of smog, acid rain, and mercury contamination.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 the 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.

Twenty-two 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-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 enacted RPS laws. Due to the popularity of these laws, nine percent of the energy consumed nationwide comes from renewable sources.⁸

This policy summary relies in large part on information from the State Environmental Resource Center, a project of Defenders of Wildlife.

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 Alliance to Save Energy, "What's Energy?" October 9, 2003.
- 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 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 2008 and 2009, 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 2010 and 2011, 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 2012 and 2013, 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 2014 and 2015, 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 2016 and 2017, 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 2018 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.

RENEWABLE ENERGY POLICY MODEL

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, 2006.

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ENVIRONMENT RESOURCES

Clean Cars

California Air Resources Board

Natural Resources Defense Council

State Environmental Resource Center

Environmental Justice

Center for Community Action and Environmental Justice

Community Coalition for Environmental Justice

Environmental Justice Resource Center at Clark Atlanta University

State Environmental Resource Center

Green Buildings

Natural Resources Defense Council

U.S. Green Building Council

Renewable Energy

Database of State Incentives for Renewable Energy

Renewable Energy Policy Project

State Environmental Resource Center

Union of Concerned Scientists

A full index of resources with contact information can be found on page 285.



2006 POLICY AGENDA

Health

More than 45 million Americans are without health insurance, and 28 million more are underinsured. States are implementing a wide variety of programs ultimately designed to provide health care for all.

Contraceptive Equity

Summary

- ▶ Health insurance and managed care organizations deny contraceptive coverage to millions of women.
- ▶ The denial of contraceptive coverage constitutes sex discrimination.
- ▶ The same health plans that refuse payment for contraception routinely cover Viagra.
- ▶ Increased access to contraception decreases the need for abortions.
- ▶ Increased access to contraception improves women's and children's health.
- ▶ Americans support equitable coverage for contraception.
- ▶ Twenty-three states have enacted contraceptive equity.
- ▶ Insurance industry claims that equitable coverage for contraception will drive up the cost of health care are false.
- ▶ Denial clauses hinder contraceptive equity.

Health insurance and managed care organizations deny contraceptive coverage to millions of women.

Although contraceptive coverage has increased significantly in the past few years, more than ten percent of health plans do not cover oral contraceptives.¹ This absence of insurance coverage for contraception causes economic harm to women. In addition, women without coverage may choose cheaper, less effective methods of contraception that lead to unintended pregnancies.

The denial of contraceptive coverage constitutes sex discrimination.

More than 99 percent of health insurance plans provide coverage for prescription drugs.² Both the Equal Employment Opportunity Commission and a federal court have ruled that an employer who fails to cover prescription contraceptives but covers other preventive medicines and devices commits sex discrimination in violation of federal law.

The same health plans that refuse payment for contraception routinely cover Viagra.

This insurance company practice that favors men and discriminates against women has been called "redlining in the bedroom."

Increased access to contraception decreases the need for abortions.

Each year, there are more than three million unintended pregnancies in the United States, approximately half of which end in abortion.³

Increased access to contraception improves women's and children's health.

Women who become pregnant unintentionally are less likely to obtain timely, adequate prenatal care, which increases the likelihood of low birth-weight and infant mortality. Effective family planning could reduce the incidence of low birth-weight by 12 percent and infant mortality by ten percent.⁴

Americans support equitable coverage for contraception.

A nationwide poll sponsored by the NARAL Foundation found that 77 percent of Americans support legislation that requires health insurance companies to cover the cost of contraception. A 1998 survey by the Kaiser Family Foundation found that 73 percent of Americans support insurance coverage of contraception even if it would increase premium costs by one to five dollars per month.⁵

Twenty-three states have enacted contraceptive equity.

Since 1998, 23 states have enacted comprehensive laws or regulations to address imbalances in private insurance coverage for contraception (AZ, AR, CA, CT, DE, GA, HI, IL, IA, ME, MD, MA, MO, NV, NH, NM, NY, NC, RI, VT, WA, WI, WV).

CONTRACEPTIVE EQUITY POLICY SUMMARY

Insurance industry claims that equitable coverage for contraception will drive up the cost of health care are false.

The added cost for employers to provide coverage for the full range of reversible contraceptives is approximately \$1.43 per employee per month, according to a comprehensive analysis. The cost is significantly lower for health plans that currently cover some form of contraception.⁶ Insurers generally pay the medical costs of unintended pregnancy, including ectopic pregnancy (average cost \$4,994), spontaneous abortion (\$1,038), and term pregnancy (\$8,619). Therefore, contraceptive coverage could save insurers a considerable sum.

Denial clauses hinder contraceptive equity.

Opponents of contraceptive equity sometimes propose denial clauses—also called “conscience” clauses—which permit employers and insurers who object to contraception to refuse to provide for its coverage. These refusals leave patients unable to obtain necessary care.

This policy brief relies in large part on information from NARAL Pro-Choice America.

Endnotes

- 1 Kaiser Family Foundation, “Employer Health Benefits 2004 Annual Survey,” September 2004.
- 2 Ibid.
- 3 Kaiser Family Foundation, “Women’s Access to Care: A State-Level Analysis of Key Health Policies,” Spring 2003.
- 4 Rachel Benson Gold, “The Need for Mandating Private Insurance Coverage of Contraception,” The Alan Guttmacher Report on Public Policy, 1998.
- 5 Kaiser Family Foundation, “Kaiser Family Foundation National Survey on Insurance Coverage of Contraceptives,” 1998.
- 6 Jacqueline Darroch, “Cost to Employer Health Plans of Covering Contraceptives: Summary, Methodology and Background,” Alan Guttmacher Institute, 1998.

Contraceptive Equity

Contraceptive Equity Act

Summary: The Equity in Prescription Insurance and Contraceptive Coverage Act prohibits health insurance plans that cover prescription drugs and devices from refusing coverage for contraceptives.

SECTION 1. SHORT TITLE

This Act may be cited as the “Equity in Prescription Insurance and Contraceptive Coverage Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Insurance coverage of contraceptives is insufficient. Three-quarters of women of childbearing age rely on some form of private employment-related insurance to defray their medical expenses, yet nearly half of all typical large group insurance plans do not routinely cover any contraceptive method.
2. Nationally, 97 percent of large group insurance plans routinely cover prescription drugs, but only 15 percent routinely cover all five primary reversible contraceptive methods: oral contraception, IUD insertion, diaphragm, Norplant insertion, and Depo-Provera injection.
3. In [State], [number or percentage] of insurance plans do not provide coverage for [the full range of/any] contraceptives.

(B) PURPOSE—This law is enacted to protect the health and safety of women of childbearing age and to remedy inequity in health insurance coverage.

SECTION 3. CONTRACEPTIVE EQUITY

(A) DEFINITIONS—In this section:

1. “Covered person” means a policy holder, subscriber, certificate holder, enrollee, or other individual who participates in or receives coverage under a health insurance plan.
2. “Health insurance plan” means any individual or group plan, policy, certificate, subscriber contract, or contract of insurance that is delivered, issued, renewed, modified, amended or extended by a health insurer.
3. “Health insurer” means a disability insurer, health care insurer, health maintenance organization, accident and sickness insurer, fraternal benefit society, nonprofit hospital service corporation, health service corporation, health care service plan, preferred provider organization or arrangement, self-insured employer, or multiple employer welfare arrangement.
4. “Outpatient contraceptive services” means consultations, examinations, procedures and medical services provided on an outpatient basis and related to the use of contraceptive drugs and devices to prevent pregnancy.

(B) PARITY FOR CONTRACEPTIVES

1. Health insurance plans that provide benefits for prescription drugs or devices shall not exclude or restrict benefits for any prescription contraceptive drug or device approved by the Food and Drug Administration. [Optional: Health care plans must allow enrollees to obtain at least a 90-day supply of oral contraceptives per refill.]

2. Health insurance plans that provide benefits for outpatient services provided by a health care professional shall not exclude or restrict outpatient contraceptive services for covered persons.

(C) EXTRAORDINARY SURCHARGES PROHIBITED

A health insurance plan is prohibited from:

1. Imposing deductibles, copayments, other cost-sharing mechanisms, or waiting periods for prescription contraceptive drugs or devices that are greater than deductibles, copayments, other cost-sharing mechanisms, or waiting periods for other covered prescription drugs or devices.
2. Imposing deductibles, copayments, other cost-sharing mechanisms, or waiting periods for outpatient contraceptive services that are greater than deductibles, copayments, other cost-sharing mechanisms, or waiting periods for other covered outpatient services.

(D) OTHER PROHIBITIONS

A health insurance plan is prohibited from:

1. Denying eligibility, continued eligibility, enrollment, or renewal of coverage to any individual because of their use or potential use of contraceptives.
2. Providing monetary payments or rebates to covered persons to encourage them to accept less than the minimum protections available under this section.
3. Penalizing, or otherwise reducing or limiting the reimbursement of a health care professional because such professional prescribed contraceptive drugs or devices, or provided contraceptive services.
4. Providing incentives, monetary or otherwise, to a health care professional to induce such professional to withhold contraceptive drugs, devices or services from covered persons.

(E) ENFORCEMENT

In addition to any remedies at common law, the [insurance commissioner] shall receive and review written complaints regarding compliance with this section. The [insurance commissioner] may use all investigatory tools available to verify compliance with this section. If the [insurance commissioner] determines that a health insurance plan is not in compliance with any section in this section, the [commissioner] shall:

1. Impose a fine of up to \$10,000 per violation of this section. An additional \$10,000 may be imposed for every 30 days that a health insurance plan is not in compliance; and
2. Suspend or revoke the certificate of authority or deny the health insurer's application for a certificate of authority.

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, 2006. This Act shall apply to any health insurance plan delivered, issued, renewed, modified, amended or extended on or after the effective date.

Emergency Contraception—Collaborative Practice

Summary:

- ▶ Emergency contraception has been prescribed in the United States for more than 25 years.
- ▶ Emergency contraception is so safe that FDA experts formally recommend that it be sold over-the-counter.
- ▶ Despite its effectiveness, a large percentage of women do not know that emergency contraception is available.
- ▶ Even when women are aware of emergency contraception, it can be difficult to obtain in a timely manner because the pills require a prescription.
- ▶ Increased use of emergency contraception would reduce the number of unintended pregnancies and abortions.
- ▶ Collaborative drug therapy is a viable approach to improve access to emergency contraception.
- ▶ Eight states allow pharmacists to dispense emergency contraceptives without a prescription.

Emergency contraception has been prescribed in the United States for more than 25 years.

There are two types of emergency contraception: birth control pills commonly known as “morning after pills” or “Plan B,” and a copper-T intrauterine device (IUD). If taken within 120 hours after intercourse, the commonly used emergency contraceptive pills substantially reduce the risk of pregnancy. Copper-bearing IUDs have an even higher success rate.

Emergency contraception is so safe that FDA experts formally recommend that it be sold over-the-counter.

Emergency contraception is available without a prescription in dozens of countries, including Belgium, Britain and France.¹ In 2003, the Nonprescription Drugs and Reproductive Health Drugs Advisory Committees of the federal Food and Drug Administration recommended that emergency contraception pills be made available over-the-counter. However, the Bush Administration blocked implementation of the rule because it offends anti-abortion forces. This is illogical because 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 lifetimes.² Emergency contraceptive pills “do not interfere with an established pregnancy.”³ An entirely different medicine known as RU-486 or Mifeprex does cause abortion.⁴ The anti-abortion movement has built opposition to emergency contraception by confusing it with Mifeprex.

Despite its effectiveness, a large percentage of women do not know that emergency contraception is available.

In a nationwide survey, fully one-third of women aged 18 to 44 said they were unaware that they could prevent pregnancy after unprotected sex.⁵ It is likely that substantially more than one-third do not know enough about emergency contraception to request it.⁶ Women who may need emergency contraception the most know the least. A survey in New York City found that 95 percent of inner-city youth aged 14 to 18 had never heard of emergency contraception.⁷ Confusion between emergency contraception and Mifeprex may contribute to this lack of knowledge.

Most medical professionals and facilities underutilize emergency contraception.

While nearly all OB/GYN doctors believe emergency contraception is safe and effective, only 31 percent prescribe emergency contraception more than five times per year.⁸ Even fewer—25 percent—discuss emergency contraception with their patients most or all of the time as part of routine contraceptive counseling.⁹

Even when women are aware of emergency contraception, it can be difficult to obtain in a timely manner because the pills require a prescription.

The earlier women take emergency contraceptive pills, the better—although they prevent pregnancy up to 120 hours after unprotected sex, they are most effective within the first 12 hours. Many women find

it difficult to obtain emergency contraceptives in a timely manner because they must first make an appointment with a physician to get a prescription.

Increased use of emergency contraception would reduce the number of unintended pregnancies and abortions.

The Alan Guttmacher Institute estimates that emergency contraception prevented at least 51,000 abortions in 2000, and was responsible for nearly half of the ten percent decline in the abortion rate in the late 1990s.¹⁰ Increased availability and use of emergency contraception could reduce the number of unintended pregnancies by half, thereby reducing abortion.¹¹ In a California study, teenage mothers who had an advance supply of emergency contraceptives were one-third as likely to become pregnant during the following six months as mothers who did not have an advance supply.¹²

Collaborative drug therapy is a viable approach to improve access to emergency contraception.

Collaborative drug therapy authorizes pharmacists to dispense specified prescription drugs without requiring patients to consult a doctor. The state of Washington completed a successful two-year pilot project that tested collaborative practice for emergency contraceptives. By 2001, pharmacists in Washington provided pills to nearly 12,000 women per month, preventing thousands of unwanted pregnancies.¹³

The public and pharmacists both support increased access to emergency contraception through collaborative practice.

A January 2000 Peter Hart Research poll found strong support in New Jersey (62 percent) and Oregon (64 percent) for improved access to emergency contraception. Pharmacists in those states also strongly supported the addition of emergency contraceptives to the list of drugs prescribed under collaborative drug therapy programs.¹⁴

Eight states allow pharmacists to dispense emergency contraceptives without a prescription.

Massachusetts and New Hampshire enacted collaborative practice laws in 2005. Six other states (AK, CA, HI, ME, NM, WA) authorize pharmacists to dispense emergency contraception. The New York legislature passed collaborative practice legislation in 2005, but the bill was vetoed.

Endnotes

- 1 Alan Guttmacher Institute, "Issues in Brief—Emergency Contraception: Improving Access," 2003.
- 2 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.
- 3 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.
- 4 Association of Reproductive Health Professionals, "What you need to know: Mifepristone Safety Overview," 2005.
- 5 Kaiser Family Foundation and SELF Magazine, "A National Survey of Women about Their Sexual Health," 2003.
- 6 Kaiser Family Foundation and Lifetime Television, "Vital Signs Index No. 2: Emergency Contraception," 2000.
- 7 Kaiser Daily Reproductive Health Report, "Adolescents Unaware of Emergency Contraception, According to Survey," November 19, 2003.
- 8 Kaiser Family Foundation, "Women's Health Care Providers' Experiences with Emergency Contraception," Survey Snapshot, June 2003.
- 9 Kaiser Family Foundation, "2001 National Survey of Women's Health Care Providers on Reproductive Health."
- 10 Rachel K. Jones et. al, "Contraceptive Use Among Women Having Abortions in 2000-2001," Alan Guttmacher Institute, 2002.
- 11 Cynthia Dailard, "Increased Awareness Needed to Reach Full Potential of Emergency Contraception," *The Guttmacher Report on Public Policy*, Vol. 4, No. 3, June 2001.
- 12 Kaiser Daily Reproductive Health Report, "Contraceptive Use Does Not Decline Among Teenage Mothers Supplied with Emergency Contraception, Study Says," March 21, 2003.
- 13 "Issues in Brief—Emergency Contraception: Improving Access."
- 14 Peter Hart Research Associates, "A Survey Among the General Public and Licensed Pharmacists in New Jersey and Oregon," Reproductive Health Technologies Project, 2000.

Emergency Contraception—Collaborative Practice

Collaborative Practice for Emergency Contraception Act

Summary: The Collaborative Practice for Emergency Contraception Act authorizes pharmacists to initiate emergency contraception drug therapy in accordance with standardized protocols developed by the pharmacist and an authorized prescriber.

SECTION 1. SHORT TITLE

This Act shall be called the “Collaborative Practice for Emergency Contraception Act.”

SECTION 2. COLLABORATIVE PRACTICE

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

COLLABORATIVE PRACTICE FOR EMERGENCY CONTRACEPTION

1. Notwithstanding any other provision of law, a pharmacist may initiate emergency contraception drug therapy in accordance with standardized procedures or protocols developed by the pharmacist and an authorized prescriber who is acting within his or her scope of practice.
2. Prior to performing any procedure authorized under this section, a pharmacist shall successfully complete emergency contraception drug therapy education and training in accordance with continuing education requirements established by the [State Board of Pharmacy]. A pharmacist who has had sufficiently recent education and training in emergency contraception may be exempted from this requirement.
3. For each emergency contraception drug therapy initiated pursuant to this section, the pharmacist shall provide each recipient of the emergency contraceptive drugs with a standardized fact sheet that includes: the indications for the use of the drug, the appropriate method for use of the drug, information on the importance of follow-up health care, and healthcare referral information. The [Secretary of Health] shall develop this fact sheet in consultation with the American College of Obstetricians and Gynecologists and other relevant healthcare organizations. The provisions of this section do not preclude the use of existing publications developed by nationally recognized medical organizations.
4. Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

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Fair Share Health Care

Summary:

- ▶ 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.
- ▶ Citizens and businesses strongly support the Fair Share Health Care Act.

Millions of Americans have lost employer-based health coverage.

Between 2000 and 2003, the number of uninsured Americans grew by five 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 who 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 workers⁹ 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, co-pays, 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 government 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—approved by the Maryland legislature in 2005—requires companies with 10,000 or more employees that pay less than eight percent of payroll expenses for health care to pay the state the difference. That money is put into a special fund that expands Medicaid eligibility. The Act recaptures some of the healthcare costs shifted to the state, and it begins to level the playing field between businesses with and without employee health coverage.

Citizens and businesses strongly support the Fair Share Health Care Act.

In Maryland, the Fair Share Health Care bill is supported by 78 percent of voters.¹⁴ The measure is also supported by many companies that pay for employee health insurance, including the state's major grocery chains—Giant Food and Safeway.

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

Endnotes

- 1 Sara Collins, Karen Davis, and Alice Ho, "A Shared Responsibility: U.S. Employers and the Provision of Health Insurance to Employees," *Inquiry*, Vol. 41, No. 1, Spring 2005.
- 2 Kaiser Family Foundation/HRET, "Employer Health Benefits: 2005 Summary of Findings," September 14, 2005.
- 3 "A Shared Responsibility: U.S. Employers and the Provision of Health Insurance to Employees."
- 4 Bradley Shrunk and James Reschovsky, "Trends in U.S. Health Insurance Coverage, 2001-2003: The Center for Health Systems Change Tracking Report No. 9," 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 Gonzales Research and Marketing Strategies Poll, 2005.

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. “Health care 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. “Health care 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 health care costs for employees in the state during the previous calendar year; and
 - c. The percentage of wages that was spent by the employer on health care 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 health care 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 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 [eight percent] of total wages paid to employees in the state.

FAIR SHARE HEALTH CARE POLICY MODEL

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, 2006.

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 health care 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 health care benefits, including but not limited to Medicaid and SCHIP, and any person who requests uncompensated care in a hospital or other health care facility, shall identify the employer or employers of the proposed beneficiary of the health care 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 health care benefits or uncompensated care during the previous year. In determining whether an employer has 25 employees who sought government-funded health care 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, 2006.

Freedom of Choice

Summary:

- ▶ With two new justices on the U.S. Supreme Court, *Roe v. Wade* is in serious jeopardy.
- ▶ If *Roe* is overturned, abortion may be criminalized without any legislative action in as many as 18 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 risks 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 serious 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 likely that *Roe* will be reversed or drastically limited as soon as June 2006. If that happens, individual states will decide whether or not abortion is legal.

If *Roe* is overturned, abortion may be criminalized without any legislative action in as many as 18 states.

Fourteen states (AL, AZ, AR, CO, DE, LA, MI, MS, NC, OK, RI, UT, VT, WI) have abortion bans on the books that could quickly take effect. Four other states (IL, KY, MO, SD) have "trigger statutes" that say an abortion ban will take immediate effect if *Roe* is overturned.² It is unclear whether state courts will enforce trigger statutes. In any of these 18 states, women who seek safe abortions, and the doctors who provide them, may soon be treated as criminals—perhaps as murderers.

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 risks 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 abortion—and all of her doctors could be investigated for the possibility that they participated in 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 14 percent of Americans believe abortion should be illegal in all cases.⁷ Sixty-five 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 five other states (CT, ME, MD, NV, WA) affirmatively guarantee the right to an abortion. The remaining 35 states should enact a Freedom of Choice Act before *Roe* is overturned to ensure that abortion remains safe and legal.

Endnotes

- 1 *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S.Ct. 2791, (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* Vol. 331 No. 5, August 4, 1994.
- 5 "What if Roe Fell? The State-by-State Consequences of Overturning *Roe v. Wade*."
- 6 Felicia Stewart and James Trussell, "Prevention of Pregnancy Resulting from Rape: A Neglected Preventive Health Measure," *American Journal of Preventive Medicine*, Vol. 19, No. 4, November 2000.
- 7 *ABC News/Washington Post Poll*, April 21-24, 2005.
- 8 Pew Research Center/Pew Forum on Religion & Public Life survey conducted by Princeton Survey Research Associates International, November 3-6, 2005.
- 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, 2006.

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Pharmacist Refusals

Summary:

- ▶ 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.” 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 told that she could wait for the next pharmacist to come on duty, she 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.” 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 Walgreens 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, pharmacists’ 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 the 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 enacted 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 limited version of the same legislation, and Illinois issued an administrative order requiring all pharmacies to accept and fill prescriptions for contraceptives “without delay.” Pharmacy boards in Massachusetts, North Carolina and Wisconsin have also 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 Grzybowski, “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, 2006.

Prescription Drug Marketing

Summary:

- ▶ 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 often 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 and Maine have enacted laws that control prescription drug marketing practices.

Prescription drug prices are skyrocketing.

Prescription drugs are the fastest growing component of health care spending in the United States.¹ From 2000 through 2004, prices for the most frequently prescribed drugs increased by nearly 25 percent.² 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 2003.³ That amounts to about \$25,000 per physician per year.⁴ This money is largely spent on visits to doctors by drug manufacturer 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.⁵

Detailing by drug manufacturers has rapidly escalated.

Spending on marketing to doctors increased by 275 percent between 1996 and 2004, according to the Kaiser Family Foundation.⁶ The drug industry employed 87,892 detailers in 2001—a 110 percent increase from the 41,855 employed in 1996.⁷ 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.⁸ 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 carefully trained its detailers to mislead doctors about the dangers of Vioxx.⁹

Because of detailers, government programs, private employers, and individual patients often 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.¹⁰ Those gifts, worth billions of dollars, run the gamut from free pens, pads 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.¹¹ As a result, the average doctor meets with detailers several times every month.¹² Many doctors see drug detailers in their offices every day.

PRESCRIPTION DRUG MARKETING POLICY SUMMARY

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.¹³ 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.¹⁴ This data is sold to pharmaceutical manufacturers, who distribute doctor-by-doctor prescriber reports to their detailers. Prescriber reports allow detailers to target individual doctors and adjust sales pitches until they find the one that works best.¹⁵ This invasion of privacy provides absolutely 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 and Maine have enacted laws that control drug marketing practices.

In 2002, Vermont enacted legislation that requires drug companies to file annual reports with the state 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 enacted a similar law in 2003.

Endnotes

- 1 U.S. Government Accountability Office, "Prescription Drugs: Price Trends for Frequently Used Brand and Generic Drugs from 2000 through 2004," August 2005.
- 2 Ibid.
- 3 Kaiser Family Foundation, "Trends and Indicators in the Changing Health Care Marketplace," 2005.
- 4 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.
- 5 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.
- 6 "Trends and Indicators in the Changing Health Care Marketplace."
- 7 Tyler Chin, "Drug firms score by paying doctors for time," *American Medical News*, May 6, 2002.
- 8 "All Gifts Large and Small" and "Physicians and the Pharmaceutical Industry."
- 9 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.
- 10 "All Gifts Large and Small" and "Physicians and the Pharmaceutical Industry."
- 11 Ibid.
- 12 Ibid.
- 13 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.
- 14 Dendrite International, Inc., "Solutions: First Source Customer Insight—Longitudinal Prescription Data," 2005.
- 15 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

PRESCRIPTION DRUG MARKETING POLICY MODEL

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, 2006. Initial disclosure shall be made on or before February 1, 2007 for the six-month period July 1, 2006 to December 31, 2006.

PRESCRIPTION DRUG MARKETING POLICY MODEL

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, 2006.

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Prescription Drug Pricing

Summary:

- ▶ The health of Americans is threatened by skyrocketing prescription drug prices.
- ▶ The new Medicare drug benefit does not solve the prescription drug problem.
- ▶ The federal government pays a fair market price for its pharmaceuticals; individuals and states do not.
- ▶ The “Maine Rx Plus” program provides uninsured residents with the best discounts in the nation.
- ▶ The “Healthy Maine” program offered discounts even higher than Maine Rx Plus.
- ▶ States can lower drug prices by adopting a version of Maine Rx Plus or Healthy Maine.

The health of Americans is threatened by skyrocketing prescription drug prices.

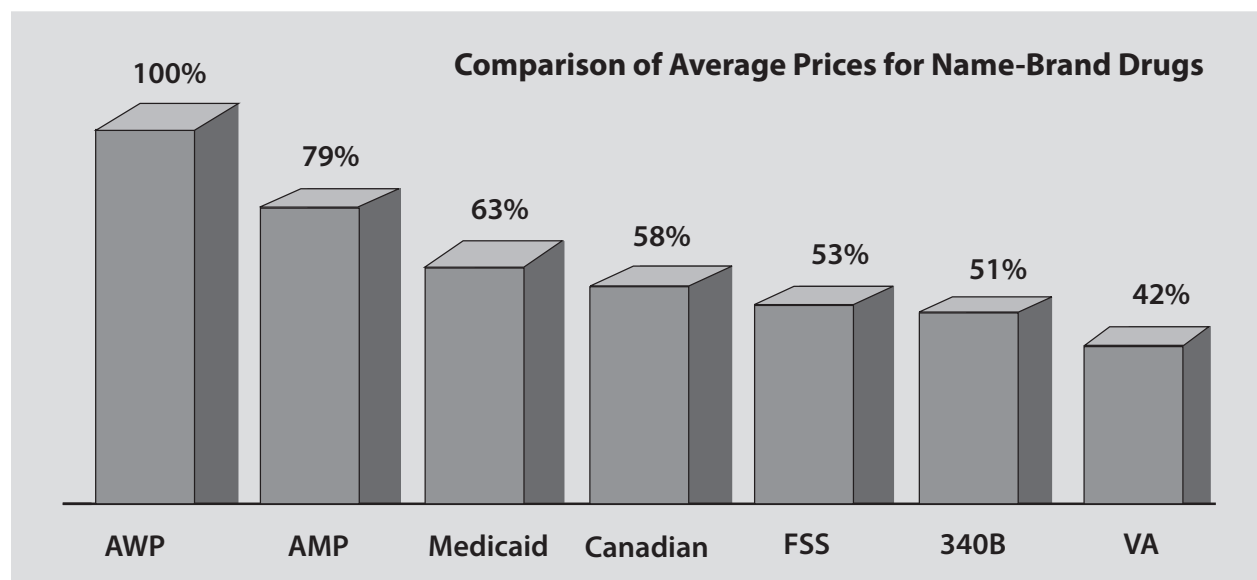
Between January 2000 and the end of 2005, prices for brand-name prescription drugs increased by almost 40 percent.¹ The problem is literally an epidemic—nearly one quarter of Americans report that someone in their household did not fill a prescription, cut pills, or skipped doses in the past year because of cost.² At the same time, rising drug prices have forced states to make drastic cuts in medical assistance programs.

The new Medicare drug benefit does not solve the prescription drug problem.

One in four Americans—70 million—do not have insurance that covers prescription drugs. Of these, about 75 percent—52 million—are not eligible for Medicare, so the new Part D drug benefit won't help them at all.³ And because of exclusions, deductibles and co-pays, most Medicare beneficiaries will receive grossly inadequate drug benefits.

The federal government pays a fair market price for its pharmaceuticals; individuals and states do not.

Throughout the United States, federal agencies are the only buyers of prescription drugs that pay fair market prices—prices that are similar to those in the rest of the world and, in fact, actually cheaper than drug prices in Canada. No price-fixing is involved—the prices are the result of voluntary fair market negotiations. Uninsured Americans pay twice the fair market price for brand-name drugs, and states that don't negotiate supplemental Medicaid rebates with drug manufacturers pay 20 percent more than the federal government. The chart below illustrates America's unfair pricing structure for brand-name prescription drugs. AWP means Average Wholesale Price, the list price at pharmacies; AMP means Average Manufacturer Price, the price wholesalers pay to manufacturers; Medicaid means price paid by states that don't negotiate supplemental Medicaid rebates; Canadian means the price in Canada; FSS means the Federal Supply Schedule, the price paid by federal



PRESCRIPTION DRUG PRICING POLICY SUMMARY

agencies; 340B means the price paid by federally-qualified health centers; and VA means the Veterans Administration price.⁴

The “Maine Rx Plus” program provides uninsured residents with the best discounts in the nation.

In 2000, Maine enacted legislation that directs the state to use its bulk purchasing power to negotiate drug discounts for the uninsured. This law, called Maine Rx, was challenged in the courts but was upheld in 2003 by the U.S. Supreme Court.⁵ Revised and renamed Maine Rx Plus, the program has been in operation since January 2004 and serves nearly 100,000 residents with household incomes under 350 percent of the federal poverty level. Maine Rx Plus provides the largest drug discounts of any state program in America, saving participants an average of 26 percent on brand-name drugs and 51 percent on generics.⁶ The program is successful because it is based on fair market negotiations—drug manufacturers participate in negotiations because it enables them to be included on the state’s Medicaid preferred drug list. If a manufacturer does not negotiate, the state retains the authority to impose prior authorization in a manner consistent with the Medicaid program.

The “Healthy Maine” program offered discounts even higher than Maine Rx Plus.

Maine Rx has a much less familiar cousin called the “Healthy Maine” program. Based on a section 1115 Medicaid waiver granted by the Clinton Administration, Healthy Maine covered families who earned less than 300 percent of the federal poverty level. The program extended state Medicaid rebates to help lower-income families who were not insured under Medicaid. Healthy Maine went into effect on June 1, 2001 and provided discounts of about 30 percent off brand-name prices for 110,000 Maine residents—approximately two-thirds of all residents who lacked prescription drug coverage, both seniors and non-seniors. In December 2002, the U.S. Court of Appeals for the District of Columbia ruled that the Healthy Maine program was not legal because one detail—a two percent financial contribution by the state—was not mentioned in the Clinton Administration’s Medicaid waiver.⁷ The court’s ruling meant that, in order to keep Healthy Maine running, the Bush Administration would have to sign a separate Medicaid waiver. Administration officials refused,

arguing that they would not approve a program for residents over 200 percent of the federal poverty level.

States can lower drug prices by adopting a version of Maine Rx Plus or Healthy Maine.

The primary reason that states have not duplicated Maine Rx Plus is the threat of litigation by pharmaceutical manufacturers. But Maine Rx Plus is operating despite all the drug companies’ efforts to disrupt it. Opponents claim that the Bush Administration’s Center for Medicare and Medicaid Services (CMS) will block state programs—but CMS is not blocking Maine Rx Plus. Similarly, states can seek Healthy Maine waivers, as long as the proposed programs are limited to 200 percent of the federal poverty level. In 2005, Maryland enacted a law to duplicate Healthy Maine; its waiver request is pending. It should be noted that when Healthy Maine was in operation, that state did not negotiate supplemental Medicaid rebates from drug manufacturers, as most states do today. With supplemental rebates, Healthy Maine discounts will likely total 40 percent, almost the same as Canadian prices.

Endnotes

- 1 Derived from statistics in AARP, “Trends in Manufacturer Prices of Brand Name Prescription Drugs Used By Older Americans: Second Quarter 2005 Update,” November 2005.
- 2 *USA Today*/Kaiser Family Foundation/Harvard School of Public Health, “Health Care Costs Survey,” August 2005.
- 3 U.S. Department of Health and Human Services, “Prescription Drug Coverage, Spending, Utilization and Prices,” April 2000.
- 4 Congressional Budget Office, “Prices for Brand-Name Drugs Under Selected Federal Programs,” June 2005; Congressional Budget Office, “How the Medicaid Rebate on Prescription Drugs Affects Pricing in the Pharmaceutical Market,” January 1996.
- 5 *PhRMA v. Walsh*, 538 US 644, 123 S.Ct. 1855 (2003).
- 6 Prescription Policy Choices, “Cutting Drug Costs: Different Approaches, Different Results,” September 2005.
- 7 *PhRMA v. Thompson*, 313 F.3d 600 (D.C. Cir. 2002).

Prescription Drug Pricing

Fair Market Drug Pricing Act

Summary: The Fair Market Drug Pricing Act is similar to the Maine Rx Plus program. It lowers prices for the state Medicaid program and for uninsured state residents by directing the state Secretary of [Health] to negotiate rebates from drug manufacturers.

SECTION 1. SHORT TITLE

This Act shall be called the “Fair Market Drug Pricing Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Approximately one in five [State] residents lack sufficient prescription drug coverage, and do not qualify for Medicare or Medicaid. These uninsured or underinsured residents overpay for prescription drugs. In many cases, excessive drug prices deny residents access to medically necessary care, thereby threatening their health and safety.
2. Many uninsured and underinsured residents require extra doctor or medical clinic appointments because they have not taken the drugs prescribed for them due to their cost. Many are admitted to or treated at hospitals each year because they cannot afford the drugs prescribed for them—which could have prevented the need for hospitalization. Others enter expensive institutional care settings because they cannot afford the prescription drugs that could have supported them outside of an institution. In each of these circumstances, uninsured and underinsured residents become eligible for Medicaid because of their inability to afford prescription drugs. Lower drug prices for the uninsured and underinsured directly benefits Medicaid by reducing enrollment.
4. The state government is the only agent that, as a practical matter, can play an effective role as a market participant on behalf of all residents who are uninsured, underinsured or are Medicaid recipients. The state already provides drugs and acts as a prescription benefits manager for a variety of programs. It should expand that role to negotiate voluntary drug rebates and use these funds to maintain and expand Medicaid services and offer lower drug prices to the uninsured who do not qualify for Medicaid.

(B) PURPOSE—This law is enacted to expand the state’s role as a participant in the prescription drug marketplace to negotiate voluntary rebates from drug companies, and use the funds to make prescription drugs more affordable to the state Medicaid program and to state residents. Such a policy will improve public health and welfare, promote the economic strength of our communities, and both directly and indirectly benefit the state Medicaid program.

SECTION 3. FAIR MARKET DRUG PRICING

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 [Health], or the Secretary’s designee(s).
2. “Department” means the Department of [Health].
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 and repackages those drugs for later retail sale, and that has a labeler code from the Food and Drug Administration under 21 Code of Federal Regulations, 207.20 (1999).

5. “Participating retail pharmacy” means a retail pharmacy or other business licensed to dispense prescription drugs in this state that (a) participates in the state Medicaid program, or (b) voluntarily agrees to participate in the Rx Card program.

(B) NEGOTIATED DRUG DISCOUNTS AND REBATES

1. **Drug discount and rebate agreements.** The Secretary shall negotiate discount prices or rebates for prescription drugs from drug manufacturers and labelers. A drug manufacturer or labeler that sells prescription drugs in this state may voluntarily elect to negotiate: (a) supplemental rebates for the Medicaid program over and above those required under 42 U.S.C. Section 1396r-8, (b) discount prices or rebates for the Rx Card program, and (c) discount prices or rebates for any other state program that pays for or acquires prescription drugs.
2. **Rebate amounts.** In negotiating rebate terms, the Secretary shall take into consideration: the rebate calculated under the Medicaid rebate program pursuant to 42 U.S.C. Section 1396r-8, the price provided to eligible entities under 42 U.S.C. Section 256b, and any other available information on prescription drug prices, discounts and rebates.
3. **Failure to agree.**
 - a. The Secretary shall prompt a review of whether to place a manufacturer’s or labeler’s products on the prior authorization list for the state Medicaid program and review prior authorization or formularies for any other state-funded or operated prescription drug program, if:
 - (1) The Secretary and a drug manufacturer or labeler fail to reach agreement on the terms of a supplemental Medicaid rebate or a discount or rebate for the Rx Card program, and
 - (2) The discounts or rebates offered by the manufacturer or labeler are not as favorable to the state as the prices provided to eligible entities under 42 U.S.C. Section 256b.
 - b. Any prior authorization must meet the requirements of 42 U.S.C Section 1396r-8(d)(5) and be done in accordance with [cite existing state law section]. The Secretary shall promulgate rules that create clear procedures for the implementation of this section.
 - c. The names of manufacturers and labelers that do not enter into rebate agreements are public information and the Department shall release this information to the public and actively distribute it to doctors, pharmacists and other health professionals.

(C) RX CARD

1. **Rx Card program established.** The Department shall establish the Rx Card program as a state pharmaceutical assistance program under 42 U.S.C. Section 1396r-8(c)(1)(C)(i)(III), to provide discounts to participants for drugs covered by a rebate agreement. Using funds from negotiated rebates, the Department shall contract with wholesalers and participating retail pharmacies to deliver discounted prices to Rx Card participants.
2. **Amount of discount.** The drug discounts received by Rx Card participants shall be calculated by the Secretary on a quarterly basis. That calculation shall provide discounts approximately equal to the average amount of the negotiated drug rebate minus an amount to recover some administrative costs of the Rx Card program.
3. **Eligibility for participation.**
 - a. An individual is eligible to participate in the Rx Card program if he or she is a resident of the state and has a family income below 350 percent of the federal poverty level.
 - b. An individual is ineligible to participate in the Rx Card program if he or she is eligible for assistance under the state’s Medicaid program or is covered by an insurance policy that provides benefits for prescription drugs equal to or greater than the benefits provided under the Rx Card program, as delineated by rules promulgated by the Secretary.

PRESCRIPTION DRUG PRICING POLICY MODEL

- c. The Department shall establish simple procedures to enroll Rx Card participants and shall undertake outreach efforts to build public awareness of the program and maximize enrollment by eligible residents.

4. **Operation.**

- a. The Secretary shall adopt rules that require disclosure by participating retail pharmacies to Rx Card program participants of the amount of savings provided as a result of the Rx Card program. The rules must protect information that is proprietary in nature.
- b. A participating retail pharmacy shall verify to the Department the amounts charged to Rx Card participants and non-participants, and shall provide the Department with utilization data necessary to calculate rebates from manufacturers and labelers. The Department shall protect the confidentiality of all information subject to confidentiality protection under state or federal law, rule or regulation. The Department may not impose transaction charges on wholesalers or participating retail pharmacies that submit claims or receive payments under the program.
- c. Participating retail pharmacies shall be paid in advance for Rx Card discounts or shall be reimbursed by the Department on a weekly basis.

(D) **ADMINISTRATION**

1. **Annual summary report.** The Department shall report the enrollment and financial status of the Rx Card program and report savings from supplemental Medicaid rebates to the legislature by February 1 each year.
2. **Coordination with other programs.** Where the Secretary finds that it is beneficial to both the Rx Card program and another state program to combine drug pricing negotiations to maximize drug rebates, the Secretary shall do so.
3. **Rulemaking.** The Department shall adopt rules to implement the provisions of this section.
4. **Waivers.** The Department may seek any waivers of federal law, rule or regulation necessary to implement the provisions of this section.

SECTION 4. ADMINISTRATIVE DISCRETION

The Secretary shall administer the provisions of this Act in a manner that benefits the largest number of residents and prevents preemption by federal law or regulation. This includes, if necessary, separating Medicaid from non-Medicaid negotiations and preferred drug list decisions, or limiting participation in the Rx Card program to a smaller segment of residents.

SECTION 5. 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 7. EFFECTIVE DATE

This Act shall take effect on July 1, 2006 and discounts to participants in the Rx Card program shall begin by January 1, 2007.

Healthy [State] Pharmacy Discount Act

Summary: The Healthy [State] Pharmacy Discount Act is similar to the Healthy Maine program. It directs the Secretary [of Health] to seek a Section 1115 Medicaid waiver in order to operate a discount program that serves residents with household incomes under 200 percent of the federal poverty level.

SECTION 1. SHORT TITLE

This Act shall be called the “Healthy [State] Pharmacy Discount Act.”

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. Prices for prescription drugs are increasing at a faster rate than inflation. The problem is literally an epidemic—nearly one quarter of Americans report that someone in their household did not fill a prescription, cut pills, or skipped doses in the past year because of cost.
2. Most residents who lack insurance coverage for prescription drugs are not Medicare beneficiaries, so they will not be helped by the new federal drug program.
3. While it operated between June 2001 and December 2003, the “Healthy Maine” program provided substantial discounts for lower-income families.

(B) PURPOSE—This law is enacted to protect the health of state residents.

SECTION 3. HEALTHY [STATE] PHARMACY DISCOUNT PROGRAM

(A) DEFINITIONS—In this section:

1. “Department” means the Department of [Health].
2. “Enrollee” means an individual who is enrolled in the Healthy [State] Pharmacy Discount Program.
3. “Program” means the Healthy [State] Pharmacy Discount Program established under this section.

(B) HEALTHY [STATE] PHARMACY DISCOUNT PROGRAM

1. There is established a [State] Pharmacy Discount Program within the state Medicaid program. The Program shall be administered and operated by the Department as permitted by federal law or waiver.
2. The Program shall be open to individuals who are not Medicare beneficiaries, who lack public or private prescription drug coverage, and who have an annual household income below 200 percent of the federal poverty level guidelines.
3. An enrollee may purchase prescription drugs that are covered under the state Medicaid program from any pharmacy that participates in the state Medicaid program at a price that is based on the price paid by the state Medicaid program, minus the aggregate value of any federally mandated manufacturers’ rebates and any state contribution amount.
4. The Department shall establish mechanisms to:
 - a. Recover the administrative costs of the Program;
 - b. Reimburse participating pharmacies in an amount equal to the state Medicaid program price, minus the copayment paid by the enrollee for each prescription filled under the Program;

PRESCRIPTION DRUG PRICING POLICY MODEL

- c. Allow participating pharmacies to collect a one dollar processing fee, in addition to any authorized dispensing fee, for each prescription filled for an enrollee under the Program; and
- d. Make a state financial contribution to the Program sufficient to satisfy the requirements of federal law.

5. The Department shall adopt regulations to implement the Program.

SECTION 4. APPLICATION FOR WAIVER

On or before September 1, 2006, the Department shall submit to the Centers for Medicare & Medicaid Services an application for a Section 1115 demonstration waiver necessary to implement the Healthy [State] Pharmacy Discount Program. The Department shall apply for federal matching funds subject to budget neutrality requirements under Section 1115 of the Social Security Act and the availability of State funds.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on the date that the Centers for Medicare & Medicaid Services approves a waiver applied for in accordance with this Act. If the waiver applied for in accordance with this Act is denied, this Act shall be null and void without the necessity of any further action by the legislature.

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Smoke-Free Workplaces

Summary:

- ▶ 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.
- ▶ Nine 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. Moreover, the levels of secondhand smoke are approximately 160 to 200 percent higher in restaurants than in office workplaces. And levels in bars are 100 to 400 percent higher than in restaurants.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 \$3,022 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

SMOKE-FREE WORKPLACES POLICY SUMMARY

Ventilation is not a solution to secondhand smoke.

Even the newest ventilation technologies under ideal conditions cannot remove secondhand smoke and its toxic constituents from the air. Studies show that the only way to eliminate the health risks associated with indoor smoking exposure is to ban smoking.¹²

Nine states have banned smoking in nearly all workplaces.

In 2005, the Rhode Island and Vermont legislatures enacted comprehensive smoke-free workplace laws and voters in Washington overwhelmingly approved a similar measure by referendum. Eight states (CA, CT, DE, ME, MA, NY, RI, VT, WA) now ban smoking in nearly all indoor workplaces, including restaurants and bars. Also in 2005, Georgia, Montana and North Dakota enacted bans on workplace smoking but exempted bars. Six states (FL, GA, ID, MT, ND, UT) now ban workplace smoking in restaurants, but not in bars. Montana's law will cover bars in 2009. Hundreds of cities and counties have their own smoke-free workplace laws. In all, more than 90 million Americans live in jurisdictions that require smoke-free workplaces.

This policy brief relies in large part on information from Americans for Nonsmokers' Rights.

Endnotes

- 1 Michael Siegel, "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects," *Journal of the American Medical Association*, 1993.
- 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 U.S. Department of Health and Human Services, "Reducing Tobacco Use: A Report of the Surgeon General," 2000.
- 7 Matthew Farrelly et al., "The impact of workplace smoking bans: results from a national survey," *Tobacco Control*, 1999.
- 8 (The figure of \$3,022 is expressed in 2002 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.

SMOKE-FREE WORKPLACES POLICY MODEL

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, 2006.

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HEALTH RESOURCES

Contraceptive Equity

Alan Guttmacher Institute
 Center for Reproductive Rights
 NARAL Pro-Choice America
 Planned Parenthood Federation of America
 Reproductive Freedom Project

Emergency Contraception—Collaborative Practice

Alan Guttmacher Institute
 Henry J. Kaiser Family Foundation
 NARAL Pro-Choice America
 Planned Parenthood Federation of America
 Reproductive Health Technologies Project

Fair Share Health Care

AFL-CIO
 AFSCME
 Maryland Citizen's Health Initiative
 Wal-Mart Watch

Freedom of Choice

Center for Reproductive Rights
 NARAL Pro-Choice America
 Planned Parenthood Federation of America

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

Prescription Drug Pricing

AARP
 Alliance for Retired Americans
 National Conference of State Legislatures
 National Legislative Association on Prescription Drug Prices
 Public Citizen
 USAction

Smoke-Free Workplaces

American Heart Association
 American Lung Association
 Americans for Nonsmokers' Rights
 Campaign for Tobacco-Free Kids

A full index of resources with contact information can be found on page 285.



2006 POLICY AGENDA

Housing

Americans are being priced out of the housing market. Median home prices across America have increased by 50 percent since 2000.

Building Rehabilitation Codes

Summary:

- ▶ The housing stock in the United States is rapidly deteriorating.
- ▶ The rehabilitation and reuse of old structures can increase the supply of affordable housing, especially in inner cities.
- ▶ One way to promote the rehabilitation of housing is to reform out-of-date building codes.
- ▶ New Jersey has led the nation in promoting building rehabilitation codes.
- ▶ New Jersey's building rehabilitation code has successfully encouraged redevelopment in cities and has kept land development profitable.
- ▶ Revitalization of existing communities benefits developers, residents, taxpayers and the environment.
- ▶ Three states have followed New Jersey's success with building rehabilitation codes.

The housing stock in the United States is rapidly deteriorating.

Approximately 30 percent of housing units in the U.S. are more than 50 years old and about 75 percent are more than 25 years old.¹ About 200,000 housing units are abandoned or destroyed every year.

The rehabilitation and reuse of old structures can increase the supply of affordable housing, especially in inner cities.

Older housing units are generally left to deteriorate while new structures are built on the urban fringe, which leaves mature downtown neighborhoods with underutilized land and aging buildings. The nation's older housing stock could be a major resource for meeting affordable housing needs, but that resource is too often wasted.

One way to promote the rehabilitation of housing is to reform out-of-date building codes.

Building codes were generally written with an eye toward new construction. As a result, it is often much harder for developers to comply with building codes when rehabilitating buildings than when undertaking new construction. Inflexible building codes tend to favor sprawl projects on undeveloped land over revitalization projects in cities and towns. States can reverse this trend by adopting rehabilitation building codes that provide greater flexibility to safely renovate existing structures.

New Jersey has led the nation in promoting building rehabilitation codes.

In 1997, New Jersey implemented new rehabilitation guidelines that have since been endorsed by the federal government and the National Association of Home Builders. These provisions encourage the redevelopment of existing buildings by ensuring that a newly renovated property meets an acceptable threshold of safety without requiring unnecessary additional measures.² In the first year after the code's implementation, there was a 60 percent increase in rehabilitation-related spending in New Jersey's five biggest cities, compared to a two percent rise the year before.³

New Jersey's building rehabilitation code has successfully encouraged redevelopment in cities and has kept land development profitable.

Over the years, the New Jersey law has seen numerous success stories. For example, after standing vacant for eight years, a Jersey City building was renovated to provide 24 apartments for low- and moderate-income senior citizens and a day care center. The project directors estimated that building code changes saved them nearly \$400,000—about one quarter of total project costs. On average, the code saves ten percent of rehabilitation costs.⁴ Local governments have also enjoyed savings on publicly funded renovations, which allows them to provide more community centers, government offices, and affordable housing units.⁵

BUILDING REHABILITATION CODES POLICY SUMMARY

Revitalization of existing communities benefits developers, residents, taxpayers and the environment.

A growing number of American families are seeking the community, amenities and diversity that life in urban centers offers. Facilitation of the redevelopment of existing buildings by builders does more than simply open up new markets for developers. It benefits whole regions by encouraging mixed-income neighborhoods that raise living standards for all—expanding tax bases to bring increased funding for local schools, and preventing sprawl and pollution to help preserve the environment.

Three states have followed New Jersey's success with building rehabilitation codes.

In 2000, Maryland adopted legislation modeled after the New Jersey building code. Rhode Island, whose rehabilitation code went into effect in May 2002, exempts existing commercial buildings from certain construction requirements. California's new building code promotes the preservation, rehabilitation and restoration of historic properties.

Endnotes

- 1 Matt Syal, Chris Shay and Faron Supanich-Goldner, "Streamlining Building Rehabilitation Codes to Encourage Revitalization," *Housing Facts & Findings*, Vol. 3, Issue 2, 2001.
- 2 National Association of Home Builders Research Center, "Nationally Applicable Recommended Rehabilitation Provisions," 1997.
- 3 "Streamlining Building Rehabilitation Codes to Encourage Revitalization."
- 4 Ibid.
- 5 William Connolly, "Rules That Make Sense—New Jersey's Rehabilitation Subcode," New Jersey Division of Codes & Standards, 2003.

Building Rehabilitation Codes

Building Rehabilitation Code Act

Summary: The Building Rehabilitation Code Act creates building standards that encourage the renovation and repair of existing structures.

SECTION 1. SHORT TITLE

This Act shall be called the "Building Rehabilitation Code Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS—The legislature finds that:

1. While new residential and commercial development consumes agricultural land, forests and other undeveloped land, thousands of existing buildings in our communities are not being fully utilized or are abandoned.
2. The rehabilitation of existing buildings is often hampered by inflexible building codes.
3. The state should model its rehabilitation code after the Nationally Applicable Recommended Rehabilitation provisions developed by the United States Department of Housing and Urban Development and the National Association of Home Builders Research Center.

(B) PURPOSE—This law is enacted to revitalize urban areas, preserve the environment, enhance the economic vitality of the state, and protect public health, safety and welfare.

SECTION 3. BUILDING REHABILITATION CODE

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

(A) DEFINITIONS—In this section:

1. "Addition" means an increase in building area, aggregate floor area, height, or number of stories of a building or structure.
2. "BRC" means the [State] Building Rehabilitation Code.
3. "Change of occupancy" means a change in the purpose or level of activity within a structure that involves a change in application of the requirements of the local building code.
4. "Construction permit application" means any application made to a local jurisdiction for a permit or other government approval for a rehabilitation project.
5. "Department" means the Department of [Housing and Community Development].
6. "Existing building" means any building or structure that was erected and occupied or issued a certificate of occupancy at least one year before a construction permit application for that building or structure was made to a local jurisdiction.
7. "Local jurisdiction" means any county, city or municipality in [State].
8. "Modification" means the:
 - a. Reconfiguration of any space;
 - b. Addition or elimination of any door or window;
 - c. Reconfiguration or extension of any system; or
 - d. Installation of any additional equipment.

9. "Reconstruction" means:
 - a. The reconfiguration of a space which affects an exit or element of the egress access shared by more than a single occupant;
 - b. The reconfiguration of space such that the work area is not permitted to be occupied because existing means of egress and fire protection systems, or their equivalent, are not in place or continuously maintained; or
 - c. Extensive modifications.
10. "Rehabilitation project" means any construction work undertaken in an existing building that includes repair, renovation, modification, reconstruction, change of occupancy, or addition.
11. "Renovation" means the change, strengthening or addition of load bearing elements; or refinishing, replacement, bracing, strengthening, upgrading or extensive repair of existing materials, elements, components, equipment or fixtures. "Renovation" does not include reconfiguration of space or interior and exterior painting.
12. "Repair" means the patching, restoration or minor replacement of materials, elements, components, equipment or fixtures for the purposes of maintaining these materials, elements, components, equipment or fixtures in good or sound condition.

(B) ADOPTION OF THE BUILDING REHABILITATION CODE

1. The Department, in cooperation with the Building Rehabilitation Code Advisory Council, the Department of [Licensing and Regulation], and the State Fire Marshal, shall adopt by regulation the [State] Building Rehabilitation Code. The BRC shall be modeled on the nationally applicable recommended rehabilitation provisions developed by the United States Department of Housing and Urban Development and the National Association of Home Builders Research Center.
2. The purpose of the Building Rehabilitation Code is to encourage and facilitate the rehabilitation of existing buildings by reducing the costs and constraints on rehabilitation resulting from existing procedures and standards.
3. As provided under the [Administrative Procedure Act], the Department shall:
 - a. Submit to the Joint Committee on [Administrative, Executive, and Legislative Review] the proposed regulations to adopt the BRC by January 1, 2007; and
 - b. Adopt the BRC as soon as possible thereafter.
4. The Department, in cooperation with the Building Rehabilitation Code Advisory Council, shall review the BRC and adopt any necessary or desirable revisions at least every three years.
5. Except as otherwise permitted in this title, and notwithstanding any relevant provisions of existing state building codes, mechanical codes, plumbing codes, fire prevention codes, and electrical codes adopted thereunder, the BRC shall apply to all rehabilitation projects for which a construction permit application is received by a local jurisdiction or Planning Commission after adoption of the BRC.
6. By February 1, 2007:
 - a. The Department of [Licensing and Regulation], the State Board of [Heating, Ventilation, Air-Conditioning, and Refrigeration Contractors], the State Board of [Plumbing], and the Board of [Boiler Rules] shall submit proposed changes to their regulations to make the [Mechanical Code, the Plumbing Code, the Boiler Safety Code, and the Elevator Code] consistent with the BRC;
 - b. The [State Police] and State [Fire Prevention Commission] shall submit proposed changes to their regulations to make the [State Fire Prevention Code] consistent with the BRC; and

BUILDING REHABILITATION CODES POLICY MODEL

- c. The Department shall submit proposed changes to its regulations to make the [Building Performance Standards, the Safety Glazing Code, the Energy Code, and the Accessibility Code] consistent with the BRC.
7. A local jurisdiction may adopt local amendments to the BRC that apply only to the local jurisdiction.
8. Only a local jurisdiction that does not amend the BRC shall be eligible for any funding appropriated in conjunction with this chapter.

(C) MINIMUM PROVISIONS OF THE BUILDING REHABILITATION CODE

1. The BRC shall, at a minimum:
 - a. Maintain a level of safety consistent with existing codes, and provide for multiple categories of work with multiple compliance standards;
 - b. Be enforceable by local officials using existing enforcement procedures;
 - c. Apply to repair, renovation, modification, reconstruction, change of occupancy, or addition to an existing building;
 - d. Provide an expedited review process for proposed amendments to the BRC submitted by a local government or an organization that represents local governments; and
 - e. Contain provisions that provide an opportunity for a person proposing a complex rehabilitation project involving multiple codes, prior to the submission of a construction permit application, to meet with local officials or their designees responsible for permit approval and enforcement in construction related laws and regulations that may be applicable to the rehabilitation project.
2. The meeting provided under subsection 1(e) of this subsection shall, to the extent possible, include the officials responsible for permit approval and enforcement in the following areas, as may be applicable to the rehabilitation project: [building code; mechanical code; plumbing code; electrical code; fire prevention code; boiler safety code; energy code; elevator code; and local historic preservation ordinances].
3. The purpose of the meeting provided for under subsection 1(e) of this section shall be to anticipate and expedite the resolution of problems a complex rehabilitation project may have in complying with the applicable laws and regulations and the BRC.

(D) ADVISORY COUNCIL

1. There shall be a [State] Building Rehabilitation Code Advisory Council comprised of 28 members as follows:
 - a. The Secretary of [Housing and Community Development] or designee;
 - b. The Secretary of [Licensing and Regulation] or designee;
 - c. The State Fire Marshal or designee;
 - d. The State [Historic Preservation Officer] or designee;
 - e. The Director of the [Governor's Office for Individuals with Disabilities] or designee;
 - f. The Director of the [Department of the Environment] or designee; and
 - g. Twenty-two members appointed by the Governor, including a representative of the [State Fire Prevention Commission]; four representatives of the building trades who are directly involved in or have experience in code setting or enforcement, including plumbers, electricians, heating, ventilation, air conditioning and refrigeration contractors, and boiler operators; two architects whose practice involves a significant portion of rehabilitation projects; a professional construction engineer; two contractors specializing in rehabilitation construction; two representatives of county government; two representatives of municipal government; two building code officials serving local government; a commercial or industrial building owner or developer; a multifamily building owner or developer; two local fire officials; and two members of the general public.

BUILDING REHABILITATION CODES POLICY MODEL

2. From among the members of the Council, the Governor shall designate a chairman. The composition of the Council should reflect the race, gender and geographic diversity of the population of the State.
3. The term of an appointed member is four years. The terms of appointed members shall be staggered. The Governor shall specify five appointed members to serve a first term of one year; five appointed members to serve a first term of two years; six appointed members to serve a first term of three years; and six appointed members to serve a first term of four years.
4. At the end of a term, a member continues to serve until a qualified successor is appointed. A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies. An appointed member may serve no more than two terms.
5. A member shall serve without compensation and shall be reimbursed for expenses in accordance with the [Standard State Travel Regulations].
6. The Council shall:
 - a. Advise the Department on the development, adoption and revisions to the BRC;
 - b. Provide technical advice on the interpretation of the BRC to property owners, design professionals, contractors, local jurisdiction code officials, and local jurisdiction code appeal boards;
 - c. To the extent possible, develop the BRC to avoid increased costs to local jurisdictions arising from implementation of the BRC;
 - d. To the extent provided in the State budget, provide training on the BRC for code officials and other public and private construction-related professionals.
7. The Council shall have an Executive Director, appointed by the Secretary of [Housing and Community Development]. The Executive Director shall be a special appointee in the [State Personnel Management System].

SECTION 4. PLANNING AND ZONING AUTHORITY NOT AFFECTED

This Act does not supersede the planning, zoning or subdivision authority of local jurisdictions.

SECTION 5. 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 6. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

Expanding Low-Income Access to Housing

Summary:

- ▶ Low-income Americans cannot afford decent housing for their families.
- ▶ As real estate prices have skyrocketed, lower-income workers have been priced out of the housing market.
- ▶ The number of affordable housing units available to low-income Americans is rapidly declining.
- ▶ The demand for federal Section 8 Housing Choice Vouchers far outpaces supply.
- ▶ Most landlords discriminate against tenants with Section 8 Housing Choice Vouchers.
- ▶ Families in need gain greater access to decent, affordable housing when source of income discrimination is prohibited.
- ▶ Acceptance of Housing Choice Vouchers at any available rental unit is an inexpensive way to create mixed-income neighborhoods.
- ▶ Twelve states prohibit discrimination against prospective renters based upon their source of income.

Low-income Americans cannot afford decent housing for their families.

A full-time worker who earns the minimum wage cannot afford adequate family housing anywhere in the country. In 42 states, two workers who earn the federal minimum wage do not make enough to afford adequate family housing. Three times the federal minimum wage is still insufficient in 13 states and the District of Columbia.¹

As real estate prices have skyrocketed, lower-income workers have been priced out of the housing market.

Between 2000 and 2003, the number of low-wage households that spend more than 50 percent of their incomes on housing grew by 2.5 million. Today, more than one in eight American households spend more than half their incomes on housing.² One in three Americans spend more than 30 percent of income on housing. Of course, housing costs affect the ability to pay for other necessities. Low-income households that devote more than half of income to housing spend an average of only \$175 for food and \$35 for health care each month. Households that spend less than 30 percent of income on housing average \$248 on food and \$109 on health care.³

The number of affordable housing units available to low-income Americans is rapidly declining.

Since 1993, the number of affordable rental units has decreased by 1.2 million.⁴ Low-income households rely on three types of subsidized housing: publicly-owned properties, project-based Section 8 programs (that is, projects administered by private property owners), and Section 8 Housing Choice Vouchers.

Each of these types of low-income housing is becoming more scarce. Under the HOPE VI program, the federal Department of Housing and Urban Development has encouraged local public housing agencies to renovate or eliminate dilapidated public housing units. More than 60,000 have been demolished.⁵ Project-based Section 8 programs have folded as private owners scramble to take advantage of escalating real estate prices by converting their properties to market-rate housing.

The demand for federal Section 8 Housing Choice Vouchers far outpaces supply.

Currently, only one in four families eligible for Section 8 vouchers are served by the program. In the past, families lucky enough to receive a voucher have often spent years on waiting lists—but the situation for low-income families is getting even worse. Under the Bush Administration, the number of new Housing Choice Vouchers has fallen sharply from a peak of over 130,000 in 2001 to about 30,000 (all of which will go to families losing other housing assistance).⁶

Most landlords discriminate against tenants with Section 8 Housing Choice Vouchers.

Federal fair housing law prohibits discrimination based on race, color, national origin, religion, sex, family status (including children under the age of 18 living with parents or legal custodians, or pregnant women), and disability. But in most states, landlords are permitted to discriminate against prospective tenants because they would pay with Housing Choice Vouchers. An Illinois study by the Lawyers' Committee for Better Housing found that in the Chicago region, up to 70 percent of landlords refuse to rent to tenants who use Section 8 Housing Choice Vouchers.⁷

EXPANDING LOW-INCOME ACCESS TO HOUSING POLICY SUMMARY

Families in need gain greater access to decent, affordable housing when source of income discrimination is prohibited.

A 2001 U.S. Department of Housing and Urban Development study found that voucher holders had a 12 percent higher placement rate in areas that have laws protecting against source of income discrimination.⁸

Acceptance of Housing Choice Vouchers at any available rental unit is an inexpensive way to create mixed-income neighborhoods.

Research consistently shows that communities with a range of family incomes have the resources to provide better schools, social services, and job opportunities, and are better able to help low-income families break the cycle of poverty. At the same time, families that spend less of their incomes on housing are able to spend more of their money in the community to boost local economies. They can also build individual assets and reduce personal debt.

Twelve states prohibit discrimination against prospective renters based upon their source of income.

Twelve states with diverse housing needs (CA, CT, ME, MA, MN, NJ, ND, OK, OR, UT, VT, WI) have amended their housing anti-discrimination laws to include source of income as a protected category. Several cities, including Chicago, Los Angeles, San Francisco and Washington, D.C., also prohibit housing discrimination based on source of income.

Endnotes

- 1 National Low-Income Housing Coalition, "Out of Reach: 2004," December 2004.
- 2 Joint Center for Housing Studies and Harvard University, "The State of the Nation's Housing," 2005.
- 3 Ibid.
- 4 Ibid.
- 5 Susan Popkin et al., "A Decade of HOPE VI: Research Findings and Policy Challenges," Urban Institute, May 2004.
- 6 Center on Budget and Policy Priorities, "Growth in Housing Voucher Costs Has Slowed Sharply," August 23, 2005.
- 7 Lawyers' Committee for Better Housing, "Locked Out: Barriers to Choice for Housing Voucher Holders," 2003.
- 8 Sargent Shriver National Center on Poverty Law, "Source of Income Bill Moves to Full House," *Illinois Welfare News*, March 2005.

Expanding Low-Income Access to Housing

Source of Income Anti-Discrimination Act

Summary: The Source of Income Anti-Discrimination Act prohibits landlords from refusing tenants because they would pay rent with Section 8 vouchers.

SECTION 1. SHORT TITLE

This Act shall be called the "Source of Income Anti-Discrimination Act."

SECTION 2. DEFINITION

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

"Source of income" means any lawful source of money paid directly or indirectly to a renter or buyer of housing, including:

1. Any lawful profession or occupation.
2. Any government or private assistance, grant or loan program.
3. Any gift, inheritance, pension, annuity, alimony, child support, or other consideration or benefit.
4. Any sale or pledge of property or interest in property.

SECTION 3. NO DISCRIMINATION IN HOUSING BASED ON SOURCE OF INCOME

In section XXX, after the word [religion], the following shall be inserted:

"source of income,"

[This is to be placed within the current statute against housing discrimination, e.g., "It is unlawful to discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of race, color, religion, source of income, sex...]

SECTION 4. EXCEPTIONS CONCERNING SOURCE OF INCOME

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

The prohibitions in this subtitle against discrimination based on source of income do not prohibit a person from:

1. Refusing to consider income derived from any criminal activity; or
2. Determining the ability of a potential buyer or renter to pay a purchase price or pay rent by:
 - a. Verifying, in a commercially reasonable manner, the source and amount of income of the potential buyer or renter; or
 - b. Evaluating, in a commercially reasonable manner, the stability, security and credit worthiness of the potential buyer or renter or any source of income of the potential buyer or renter.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

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Mortgage Assistance for Public Employees

Summary:

- ▶ There is a shortage of highly-qualified teachers, firefighters and police officers in many low-income areas.
- ▶ Because of the unique challenges of these communities, the best professionals are needed there.
- ▶ Housing assistance would be a strong recruiting incentive, because Americans who earn moderate incomes are being priced out of the housing market.
- ▶ Attracting moderate income earners to areas of concentrated poverty can help to stabilize those areas and promote economic growth.
- ▶ A federal program encourages teachers to live in low-income areas, but it is very limited.
- ▶ Several states and cities offer mortgage assistance to public employees.
- ▶ Americans favor programs that help teachers, firefighters and police live in the areas they serve.

There is a shortage of highly-qualified teachers, firefighters and police officers in many low-income areas.

By any measure, schools in high-poverty areas have fewer well-qualified teachers than schools in more affluent areas.¹ For example, only 19 percent of National Board Certified Teachers (NBCT) are at schools in the bottom third of performance for their state and only 12 percent of NBCTs are in schools that provide more than 75 percent of students with free or reduced-price lunch.² At least two-thirds of the nation's fire departments are understaffed, and the Bush Administration is phasing out the Clinton-era COPS community policing program—even though many cities that are likely to be targeted by terrorists have steadily shrinking police forces.³

Because of the unique challenges of these communities, the best professionals are needed there.

Low-income areas have a greater need for government services. Schoolchildren need more special education staff and school social workers, and teaching in high-risk schools is especially demanding. In low-income neighborhoods, there are more police emergency calls and a greater need for community policing. There are more—and more serious—fires in the same neighborhoods. Despite the pressing need for high-quality government services, they are also the toughest areas to staff.

Housing assistance would be a strong recruiting incentive, because Americans who earn moderate incomes are being priced out of the housing market.

Median home prices across America increased by 50 percent from 2000 to 2005.⁴ In many areas of the country, the American Dream of becoming a homeowner is simply out of reach. One effective way to recruit the most experienced and effective teachers, police officers, and firefighters to low-income areas is to offer them mortgage assistance.

Attracting moderate income earners to areas of concentrated poverty can help to stabilize those areas and promote economic growth.

Sociologists have found that bringing middle-income homeowners into low-income neighborhoods has a number of advantages. It tends to reduce crime and other anti-social conduct, whether or not there is social interaction between middle- and low-income families.⁵ Middle-income neighbors act as role models for children and give job-hunting adults access to informal networks for finding employment. And middle-income residents greatly improve a community's quality of life when they use the political process to demand improved municipal services.⁶ This stabilizing effect is even more profound when middle-income residents also work in the community. It means they have a strong investment—both financial and social—in remaking the neighborhood into a safe, healthy and vibrant community for the long-term.

A federal program encourages teachers to live in low-income areas, but it is very limited.

The federal Department of Housing and Urban Development (HUD) recognizes the importance of attracting professionals to areas targeted for revitalization. HUD has a program called "Teacher Next Door" that allows full-time certified schoolteachers to buy single-family homes at a 50 percent discount. Unfortunately, the program is limited to homes with foreclosed HUD mortgages that are being sold over the Internet. Only about 4,000 teachers have taken advantage of the Teacher Next Door program since 1999.⁷ To make a significant difference, public employees need more housing choices.

Several states and cities offer mortgage assistance to public employees.

In 2003, Texas enacted legislation that secured \$25 million in mortgage assistance for police officers and firefighters and \$25 million for teachers. A Wisconsin program called Homes for Our Heroes also offered home loans to police officers, firefighters and teachers at reduced interest rates. Arkansas, California, Connecticut, Hawaii and Mississippi operate programs that provide mortgage assistance to teachers, as do Baltimore, San Francisco, San Jose, Portland (Oregon) and the District of Columbia.

Americans favor programs that help teachers, firefighters and police to live in the areas they serve.

Affordable housing ranks as voters' third greatest concern, behind health care and the economy. Eighty-one percent of American voters would like to see government place a higher priority on making housing more affordable. Three out of four Americans are specifically concerned about the impact the rising cost of housing has on teachers, firefighters and police.⁸ A recent Massachusetts study found that 63 percent of residents are concerned that housing costs keep teachers, firefighters and police from living in the towns they serve.⁹

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 Mimi Hall, "Police, fire departments see shortages across USA," *USA Today*, November 28, 2004.
- 4 National Association of Realtors, "Median Sales Price of Existing Single-Family Homes for Metropolitan Areas," 2005.
- 5 Charles Wilkins, Jr., "Concept Paper: Mixed-Income Housing," Millennial Housing Commission, 2001.
- 6 Ibid.
- 7 "Housing Options for Teachers," *Education Week*, March 16, 2005.
- 8 Public Opinion Strategies poll conducted for the National Association of Realtors, May 24, 2004.
- 9 Citizens' Housing and Planning Association, "UMass Donahue Institute Housing Poll," March 2005.

Mortgage Assistance for Public Employees

Teacher-Firefighter-Police Housing Development Act

Summary: The Teacher-Firefighter-Police Housing Development Act provides mortgage assistance to public employees who agree to live and work for at least five years in high priority areas..

SECTION 1. SHORT TITLE

This Act shall be called the "Teacher-Firefighter-Police Housing Development Act."

SECTION 2. HOUSING DEVELOPMENT

(A) HOUSING DEVELOPMENT FOUNDATION

1. There is established a foundation known as the "Teacher-Firefighter-Police Housing Development Foundation." The Foundation shall be a part of the Department of [Housing and Economic Development].
2. The Foundation shall be operated and controlled by a Board of Trustees that consists of 15 members, of whom three shall represent teachers, three shall represent firefighters, three shall represent law enforcement officers, three shall represent realtors, mortgage officers, and real estate developers, and three shall represent state and local governments.
3. Board members shall be appointed by the Governor in consultation with the President of the Senate and the Speaker of the House.
4. The initial Board members shall be appointed not later than 30 days after the date of enactment of this Act, and the Governor shall designate one Board member to serve as Chair, who shall call the first Board meeting within 30 days after all initial members have been appointed.
5. Board members shall serve for a term of two years and may be reappointed. Any vacancy on the Board shall be filled in the same manner as the original appointment.
6. A majority of the members of the Board shall constitute a quorum for conducting business, but a lesser number of members may hold hearings.
7. The Board shall adopt rules and procedures to govern its proceedings.

(B) MISSION OF THE FOUNDATION

1. The purpose of the Foundation is to provide housing incentives to encourage well-qualified teachers, firefighters and law enforcement officers to transfer to jobs in high priority areas that need them most.
2. The Foundation shall identify "high priority" areas:
 - a. For teachers, based on areas within the attendance boundaries of a school identified by the [State Board of Education] as a [school in corrective action, a school in restructuring, or a challenge school];
 - b. For firefighters, based on areas served by a fire station that the [State Board of Fire Safety] has designated as chronically understaffed; and
 - c. For law enforcement officers, based on precinct boundaries of a police district that is designated by the [Superintendent of State Police] as having high levels of serious crime.
3. The Foundation shall identify "well-qualified" applicants for housing assistance:
 - a. For teachers, based on educational attainment and years of experience, giving preference to National Board Certified Teachers;
 - b. For firefighters, based on educational attainment, years of experience, and rank; and
 - c. For law enforcement officers, based on educational attainment, years of experience, and rank.

MORTGAGE ASSISTANCE FOR PUBLIC EMPLOYEES POLICY MODEL

4. The Foundation may solicit and accept private donations for housing incentive programs, including gifts, grants and bequests.

(C) MORTGAGE ASSISTANCE

1. Based on available funding, the Foundation shall provide mortgage assistance to applicants who, in the opinion of the Board, are the most promising candidates to provide excellent public service to high priority areas for many years to come. Applicants must agree to remain on the job in a high priority area for at least five years.
2. Applicants for housing assistance shall submit three letters of recommendation, explain the reasons that they are available for employment in the high priority area, and state why they want such employment.
3. The Foundation shall develop, implement and administer a home loan program to provide special home loan financing to selected teachers, firefighters and law enforcement officers. To the extent possible, the following financing options shall be included in the home loan program:
 - a. A conventional 30 year mortgage available for the purchase of an eligible home, at a favorable interest rate determined by the Foundation;
 - b. Other mortgage options at favorable interest rates determined by the Foundation; and
 - c. A forgivable loan equal to not more than ten percent of the total cost of an eligible home, which is intended as assistance with the down payment. The applicant shall receive one-fifth credit on a forgivable loan for each year that he or she serves in the high-risk area.
4. If a successful applicant leaves the job for any reason within five years after exercising an option for a mortgage under this section, then the remaining balance on the mortgage shall become due and payable within six months of the termination of the applicant.
5. If a successful applicant leaves the job for any reason within five years after exercising an option for a forgivable loan under this section, then the remaining balance on the forgivable loan shall become due and payable within six months of the termination of the applicant.
6. The Foundation may develop a supplemental loan program that converts the forgivable loan into a conventional loan for those who do not fulfill their obligation.

SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

Predatory Mortgage Lending

Summary:

- ▶ 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 brokered in the subprime market; by 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 Measured a different way, the value of subprime mortgages issued each year grew from \$35 billion in 1994 to \$322 billion in 2003.⁴

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 are 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 so weakened over the past 20 years that predatory lending practices—modern day loan-sharking—are legal. Although federal law prohibits specific predatory practices, those provisions

PREDATORY MORTGAGE LENDING POLICY SUMMARY

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, CA, GA, IL, 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. Eleven other states have enacted laws that purport to address the problem, but actually provide no substantive consumer protections.

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 Roberto Quercia, Michael Stegman and Walter Davis, "Assessing the Impact of North Carolina's Predatory Lending Law," *Housing Policy Debate*, Fannie Mae Foundation, Vol. 15, No. 3, 2004; "Predatory Mortgage Lending Robs Homeowners & Devastates Communities."
- 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.
- 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; "Fannie Mae Has Played Critical Role in Expansion of Minority Homeownership," *Business Wire*, March 2, 2000.
- 9 Center for Responsible Lending, "North Carolina's Predatory Mortgage Lending Law: Celebrating Over 5 Years of Success," 2005.

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 “[State] 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 non-standard 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.

PREDATORY MORTGAGE LENDING POLICY MODEL

(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.

PREDATORY MORTGAGE LENDING POLICY MODEL

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, 2006.

HOUSING RESOURCES

Building Rehabilitation Codes

National Association of Home Builders

Smart Growth America

Expanding Low-Income Access to Housing

Fannie Mae Foundation

National Low-Income Housing Coalition

National Rural Housing Coalition

Mortgage Assistance for Public Employees

Fannie Mae Foundation

Freddie Mac Foundation

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 285.



2006 POLICY AGENDA

Workforce Investments

A healthy American economy requires a well-trained and well-supported workforce. States are investing in innovative programs to create good jobs and reduce reliance on public assistance.

Microenterprise Development

Summary:

- ▶ 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 the existing low-income microentrepreneurs in the United States 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, 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 Small Business Administration programs, the Microloan Program and Program for Investments in Microenterprise (PRIME), provide only about \$40 million in funding. In 2005, the Bush Administration proposed the elimination of the Microloan Program, which is the larger of the two programs.⁵

MICROENTERPRISE DEVELOPMENT POLICY SUMMARY

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 micro-entrepreneurs.

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: Two-year Findings."
- 5 California Association for Microenterprise Opportunities, "Federal Issues," September 2005.

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.

MICROENTERPRISE DEVELOPMENT POLICY MODEL

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 2007, \$XXXXXX 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, 2006.

Municipal Wireless Internet

Summary:

- ▶ There is a digital divide between those with Internet access and those without.
- ▶ The digital divide widens for high-speed Internet access.
- ▶ 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 38 municipal Wi-Fi networks in operation.
- ▶ Telecommunications companies widen the digital divide by fighting municipal Wi-Fi.
- ▶ The Electronic Telecommunications Open Infrastructure Act (ETOPA) 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-2005, 68 percent of American adults—about 137 million people—used the Internet, while the remaining 65 million people did not. Older, less educated, and minority Americans disproportionately lack Internet access. Twenty-six percent of people aged 65 and older go online, compared to 67 percent of those aged 50 to 64, 80 percent of those aged 30 to 49, and 84 percent of those aged 19 to 29. Twenty-nine percent of Americans who have never graduated from high school have Internet access, compared to 89 percent of college graduates. And 57 percent of African Americans go online, compared to 70 percent of whites.¹

The digital divide widens for high-speed Internet access.

Fifty-three percent of home Internet users had high-speed connections in 2005, up from 21 percent in 2002. 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 high-speed Internet access as high school graduates; households that earn \$75,000 or more are twice as likely to have broadband connections as households that earn \$30,000 or less.²

Internet access has become a social and economic necessity.

On a typical day in 2004, 70 million Americans went online. Fifty-eight million used the Internet for email, 35 million looked at news stories, and 25 million checked the weather. In a single day, 24 million Americans went online to do research for their jobs and 14 million more to do research for school. Nineteen million Americans researched a product online, and four 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, health care 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.

MUNICIPAL WIRELESS INTERNET POLICY SUMMARY

There are 38 municipal Wi-Fi networks in operation.

There are 38 municipal wireless Internet networks in 23 states (AZ, CA, DE, FL, GA, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, NM, NY, OH, OK, TX, VT, WA, WI) and the District of Columbia. At least 34 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. Unfortunately, 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 Colorado and Louisiana restrictions were enacted in 2005.

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 Ibid.
- 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, "Second Anniversary Report," July 2005.
- 7 "Remarks before the National Association of Telecommunications Officers and Advisors."

Municipal 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.

MUNICIPAL WIRELESS INTERNET POLICY MODEL

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.

MUNICIPAL WIRELESS INTERNET POLICY MODEL

(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, 2006.

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Self-Sufficiency Standard

Summary:

- ▶ At \$19,350 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 \$19,350 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 2005 poverty measure of \$19,350 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 \$19,350—the 2005 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 like Boston, the same family needs more than \$59,000.²

SELF-SUFFICIENCY STANDARD POLICY SUMMARY

Americans understand that basic costs for families far exceed the Federal Poverty Measure.

A Lake Snell Perry poll found that 69 percent of Americans believe it takes at least twice the Federal Poverty Measure to “make ends meet.”

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. In Pennsylvania, welfare and workforce development caseworkers use the Self-Sufficiency Standard to help clients understand what jobs or career paths will pay wages that will help them move toward self-sufficiency. In Illinois and Pennsylvania, as well as Seattle, Tulsa and the District of Columbia, Workforce Investment Boards (WIB) use the Self-Sufficiency Standard to determine eligibility for training services through One-Stop job sites.

This policy summary relies in large part on information from Wider Opportunities for Women.

Endnotes

- 1 U.S. Department of Health and Human Services, “2005 Federal Poverty Guidelines,” February 2005.
- 2 Wider Opportunities for Women, “Coming Up Short,” 2004.
- 3 Lake Snell Perry and 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.

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, 2007. 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, 2007, 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, 2006.

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Smart Start Child Care

Summary:

- ▶ 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 child-care 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 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 WAGES 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,

SMART START CHILD CARE POLICY SUMMARY

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 and VT. 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 child care expenses or offer on-site care.

Endnotes

- 1 Children's Defense Fund, "Child Care Basics," 2001.
- 2 Bureau of Labor Statistics, "Employment Characteristics of Families in 2003," 2004.
- 3 Children's Defense Fund, "The State of America's Children 2004," 2004.
- 4 National Center for Children in Poverty, "The Changing Demographics of Low-Income Families and Their Children," August 2003.
- 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 childcare 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 child care provider, health care 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.

SMART START CHILD CARE POLICY MODEL

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.

SMART START CHILD CARE POLICY MODEL

(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 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 child care 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, 2006.

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 after-school 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. After-school 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 after-school 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.

SMART START CHILD CARE POLICY MODEL

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, 2007.

SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2006.

For policy toolkits covering more than
100 state issues, visit

www.stateaction.org

WORKFORCE INVESTMENTS RESOURCES

Microenterprise Development

Aspen Institute

Corporation for Enterprise Development

Municipal 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 285.

Index of Resources

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.acluf.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

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/ciw

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.ccae.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 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 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

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

Demos

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

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.fanniemaec.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 10018
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

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

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.infol

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.nrhweb.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

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.publiccampaign.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

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

1313 L Street NW
Washington, DC 20005
202-898-3200
www.seiu.org

Smart Growth America

1707 L Street NW, Suite 1050
Washington, DC 20036
202-207-3355
www.smartgrowthamerica.com

State Environmental Resource Center-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

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

For policy toolkits covering
more than 100 state issues, visit
www.stateaction.org

