

# Progressive Agenda for the States 2008

## Leadership for America

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# From the Executive Director

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Dear Friends:

For the eighth 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 63 model bills. Eighty other topics, with model legislation, are also available on our website, [www.stateaction.org](http://www.stateaction.org).



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

I am delighted to report that, despite the partisan stalemate at the federal level, state legislators won more than 200 major progressive victories in 2007. 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 70 percent resemble solutions featured in the *Progressive Agenda*.

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

We wish the best of luck to all our allies in 2008. 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

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# Introduction

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Dear Friends:

For the past several years, the introduction to the *Progressive Agenda* has discussed CPA's work on values and message framing. This year I'm pleased to announce that our ideas are the subject of a new book, *Framing the Future: How Progressive Values Can Win Elections and Influence People*, which will be available in bookstores nationwide by January 2008. For more information, go to [www.framingthefuture.org](http://www.framingthefuture.org). Reprinted below is the introduction to that book.

Bernie Horn  
Senior Director for Policy and Communications

## The Emerging Progressive Majority

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Most Americans are progressive on most issues. By margins of at least two to one, our fellow citizens believe corporations and upper-income people are paying too little in federal taxes; oppose repealing the federal estate tax; favor quality, affordable health care for all “even if it means raising your taxes”; support the idea that the federal Medicare program should negotiate prescription drug prices directly with pharmaceutical companies; want federal action to address global warming; would require auto manufacturers to make cars more energy efficient; say laws covering the sale of handguns should be more strict; think labor unions are necessary to protect workers; believe that gays and lesbians should be able to serve openly in the military; and do not want the Supreme Court to overturn *Roe v. Wade*.

That's the good news. Here's the bad. Most Americans also support traditional conservative principles—limited government, lower taxes, free markets, and personal responsibility. (You'll see the polling data in Chapter 4.)

In other words, a large group of Americans favor both progressive policy and conservative philosophy. As a result, they may side with either progressives or conservatives, depending on how a political question is framed. These Americans are usually called inde-

pendents, undecideds, uncommitteds, swing voters, or ticket-splitters. But in this book, they're called persuadables, because that's the important thing about them—they're not part of the progressive/Democratic or conservative/Republican base; they can be persuaded to join either side.

You may well be asking, if they're so darn persuadable, why have they sided with conservatives so often? During the past four decades, we've suffered through twenty-eight years of Republican presidents and “enjoyed” only twelve years with Democratic presidents. From 1994 to 2006, we had a U.S. House of Representatives that was not only controlled by Republicans, but dominated by right-wing extremists. During the same period, the U.S. Senate was only a little less reactionary. Why? Unlike partisans, persuadable voters are usually more interested in a candidate's philosophy than her list of policy positions.

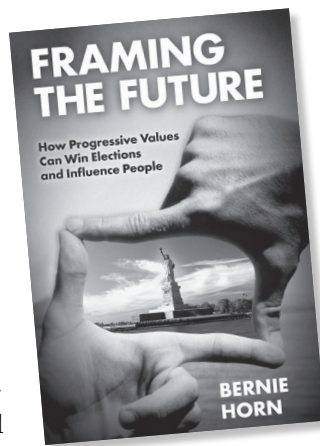
## The Solution

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This is not a battle that can be won with a single strategy, a silver bullet. But progressives can go a long way toward altering the balance of power if we agree on and espouse an attractive progressive philosophy. Then voters would favor both our policies and our principles.

This book suggests such a philosophy. The short version is “freedom, opportunity, and security for all.” Chapter 1 explains each of these three concepts, and Chapter 3 lays out the results of a nationwide poll which found that “freedom, opportunity and security for all” is enormously popular among both persuadables and partisans. Most important, it is the only progressive message that outpolls the generic conservative philosophy.

Let me be clear. I am not suggesting that progressives change their positions on public policy. I am saying that there are specific words that represent progressive values, that these values fit together into a coherent vision of a progressive America, and that by using these values, we can communicate our principles in a way that persuadable voters will understand and appreciate. In short, we need to use values to describe our vision—that's framing the future.



In politics, framing is employed in three ways. An issue can be framed, the way right-wingers have presented the federal estate tax as the “death tax.” A political campaign can be framed, the way Clinton strategists presented the 1992 presidential race as a question of “the economy, stupid.” Or a whole political philosophy can be framed, the way conservatism has been presented as the ideology of “small government, lower taxes, strong military, and moral values.”

Freedom, opportunity, and security can be used in all three situations. It can help progressive candidates defeat their conservative counterparts, help progressive advocates enact legislation, and help rank-and-file progressives win day-to-day arguments.

### It's an Emergency!

There's no doubt that George W. Bush's administration has been a catastrophe, and that historians will one day rank him as one of our nation's very worst presidents. That's why the next few elections are so critical—the very soul of America hangs in the balance. We've got to take back America, and soon, before solutions to national and global problems slip beyond our reach.

But winning elections in the coming years won't be easy. Despite progressive victories in 2006, the next few elections will be razor close. You can tell by looking at the last few.

In 2000, Vice President Al Gore held all the trump cards. He could claim responsibility for eight years of peace and prosperity. He was smart and flush with accomplishments. His opponent was the tongue-tied son of an unpopular former president. And yet Al Gore won only a bare majority of votes and ultimately lost the election. But if the ballots of just 538 Florida voters who intended to vote for Gore had been counted—Al Gore would have been elected.

In 2004, Senator John Kerry was a terrible standard-bearer. He was as cold as a dead log in the snow. His campaign was as limp as a wet paper napkin. George

Bush had all the powers of incumbency, all the money of America's super-rich, all the party discipline of an authoritarian-style regime—in wartime! And yet, Kerry almost won. If just 59,301 Ohioans had been persuaded to vote for Kerry instead of Bush—less than 0.05 percent of the Americans who voted that day—John Kerry would have been elected.

In 2006, Democrats won control of the United States Senate based on a squeaker in Montana. If a mere 1,782 Montana voters had supported Conrad Burns instead of Jon Tester, the Senate would have remained in GOP hands. The House contest wasn't quite as close. Still, Republicans would have maintained control if they had won just sixteen more seats. Looking at the closest races, if fewer

than 50,000 well-placed voters had switched their support from the Democratic to the Republican candidates, Dennis Hastert would still be Speaker of the U.S. House of Representatives.

And think about what it took for voters to finally embrace the Democrats in 2006: a wildly unpopular president prosecuting a wildly unpopular war; monumental deficits and debt; attempts to destroy bedrock programs like Social Security; corruption on a grand scale (House Majority Leader Tom DeLay, Rep. Duke Cunningham, Rep.

Bob Ney, and the scandal ignited by lobbyist Jack Abramoff involving Congress, the White House, and Christian conservative Ralph Reed). And even with all that, would Democrats have won if not for the sexual appetites of Congressman Mark Foley?

Here's some advice for progressives: don't count on another sex scandal. We get that lucky only once. We're going to have to win the next election the old-fashioned way—by persuading American voters that progressives have better ideas. Now—what ideas?

Excerpt from *Framing the Future: How Progressive Values Can Win Elections and Influence People* by Bernie Horn (published with permission from Berrett-Koehler Publishers). Original hardcover, \$24.95, Pub Date: January 2008. For more information, see [www.framingthefuture.org](http://www.framingthefuture.org).

“This is a great book! Bernie explains values and framing in a practical way that every activist can use. If you liked George Lakoff's *Don't Think of an Elephant*, you'll love this.”

—Celinda Lake, President, Lake Research Partners

“Every football player requires a playbook from their coach. For public servants with progressive values, author Bernie Horn is our coach and *Framing the Future* is our playbook.”

—Congressman Kendrick Meek

# Acknowledgements

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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:

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Ballot Initiative Strategy Center*	National Center for Fair & Open Testing
Brady Campaign to Prevent Gun Violence	National Center for Lesbian Rights*
Breast Cancer Action	National Consumer Law Center*
Brennan Center for Justice	National Council of La Raza*
Campaign for Tobacco-Free Kids*	National Employment Law Project*
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Coalition for Juvenile Justice	National Legislative Association on Prescription Drug Prices*
Consumers Union	National Partnership for Women and Families*
Corporation for Enterprise Development	Natural Resources Defense Council
Defenders of Wildlife	Public Citizen
Demos*	Sentencing Project
Economic Policy Institute*	U.S. PIRG
Good Jobs First*	Wider Opportunities for Women

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

# Budget and Taxation

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# Balancing State Budgets

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

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

After three years of losses, state revenues rebounded strongly. In 2006, 22 states responded by lowering taxes. Such tax cuts threaten the stability and sustainability of state finances, reducing revenue needed to fund education, health, transportation and public safety in future years.<sup>1</sup>

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

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

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

It is a myth that overspending exhausted state coffers. In fact, for state-raised funds, spending growth per capita increased only about two percent annually during the 1990s—well below average for the past 50 years.<sup>3</sup> Rather, 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. From 1994 to 2001, some 44

states slashed taxes significantly.<sup>4</sup> 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 eventually be forced to do one or both. The following are 26 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.<sup>5</sup> Since 2002, 43 states (AL, AK, AZ, AR, CO, CT, DE, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MT, NE, NV, NH, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WY) have raised cigarette taxes. Of these, Arizona, Colorado, Montana, Oklahoma, Oregon, South Dakota and Washington increased tobacco taxes by statewide referendum. In 2007, five states (CT, DE, IN, IA, TN) raised their tobacco taxes which will increase revenues by hundreds of millions. States have also expanded the tax to cover chewing tobacco and snuff. In addition to the fiscal benefits, higher tobacco taxes save thousands of lives by reducing tobacco use.

✱ **Alcohol Excise Tax**—Increase the tax. All states impose a “sin” tax on alcohol, but most tax alcohol at low rates. The average excise tax on liquor is about four dollars per gallon; several



state taxes exceed six dollars per gallon. Most states tax beer and wine at much lower rates than spirits, based on the percentage of alcoholic content. States with the lowest alcohol taxes include AR, CO, IN, KS, KY, LA, MD, MO, ND, TX. A 2004 poll conducted for the American Medical Association found that, by a margin of two-to-one, voters favor a state alcohol tax increase to help cover the ancillary healthcare and law enforcement costs of drinking.<sup>6</sup> In 2005, both Kentucky and Washington increased their alcohol excise taxes, resulting in \$14.4 and \$22 million increases, respectively, in state revenues.<sup>7</sup> Since 2002, eight states (AK, AR, ID, NE, NV, UT, TN, WA) increased the tax on alcohol.<sup>8</sup>

★ **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 will be completely phased out by 2010. As a result, revenues are plummeting. Fourteen states (IL, ME, MD, MA, MN, NE, NJ, NY, NC, OK, RI, VT, WA, WI) have taken action to decouple from the federal estate tax. Three states (CT, KS, WA) have estate taxes that are not tied to the federal tax. Seven other states (IN, IA, KY, OH, OK, PA, TN) were never coupled to the federal estate tax.<sup>9</sup> Washington's new estate tax, which uses a rate structure different from federal law, generated approximately \$40 million in 2005.<sup>10</sup>

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

nent or temporary tax. During the last recession, four states increased top rates permanently, while five others enacted temporary increases.

★ **Personal Income Tax**—Implement a more graduated scale. If taxes must be raised, why not do it fairly? Of the 41 states with a personal income tax on earnings, only 14 have graduated tax brackets that truly differentiate between lower- and upper-income taxpayers. Six states have a flat tax rate—no income brackets at all. In 16 other states, the top tax bracket is \$25,000 or less. In other words, about half of the states are ripe for a fundamental reform of income tax brackets. In 2007, Arkansas adjusted its tax brackets so the poorest pay no state income taxes.

★ **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 2007, Oregon gained \$9.3 million in tax revenue after phasing out a personal exemption for high-income tax filers.<sup>11</sup>

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

★ **Personal Income Tax**—Implement a tax amnesty. Over the past 20 years, 41 states and the District of Columbia have implemented tax amnesty periods to collect overdue taxes. In

## BALANCING STATE BUDGETS

2007, Iowa passed a tax amnesty bill creating a two-month window during which overdue taxes can be paid at half interest and without risk of prosecution. California, Indiana, New York, Ohio, Rhode Island and Texas have also offered tax amnesties since 2005. A 2003 Illinois amnesty collected over \$582 million in back taxes from almost 20,000 businesses and individuals.<sup>12</sup> However, by offering amnesties too often, states lower taxpayers' incentive to pay on time.

★ **Corporate Income Tax**—Mandate disclosure of what specific corporations pay. For almost three decades, states have collected less and less corporate income tax revenues. Complex loopholes and exemptions in state tax codes make it difficult—if not impossible—for policymakers to discern which corporations pay their fair share. Requiring corporations to spell out how much they pay provides a tool for policymakers to evaluate the real-world outcomes of a state's corporate tax policy. Mandating company-specific disclosure also provides useful financial data to be used in determining the effectiveness of state programs designed to stimulate economic growth, such as tax breaks or other incentives.<sup>13</sup>

★ **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, Vermont and Maine have graduated scales from \$25,000 to \$250,000, with tax rates ranging from 3.5 percent at the lowest to 12 percent at the highest. If necessary, a graduated scale can be implemented temporarily by imposing a surcharge on corporate profits over a certain level—for example, a five percent surcharge on corporate profits over \$250,000. In 2006, New Jersey imposed a corporate surtax expected to raise \$121 million.<sup>14</sup>

★ **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. In 2007, Michigan, New York and West Virginia enacted combined reporting, bringing the total to 20 states (AK, AZ, CA, CO, HI, ID, IL, KS, ME, MI, MN, MT, NE, NH, ND, NY, OR, UT, VT, WV) that require combined reporting.<sup>15</sup>

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

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

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

★ **Corporate Income Tax**—Tighten rules on “silent partners.” Certain business entities, such as S-corporations, partnerships and limited-liability companies, are not taxed because income flows directly to their partners, who are supposed to pay tax on that income. But many out-of-state

partners do not report their earnings to the states where the partnerships earned profits. Often, states do not check to see if these “silent” partners reported any income to the state. Most states’ efforts to check on pass-through reporting are inadequate, and millions of dollars of tax revenue are lost. Ohio, New Jersey and New York have tightened the rules on pass-through entities in recent years.

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

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

★ **Corporate Income Tax**—Decouple from federal bonus depreciation. States lost billions of dollars in tax revenue because of a change in the federal corporate income tax that was enacted in March 2002. A new federal tax deduction, called “bonus depreciation,” allows businesses to claim 50 percent depreciation in the first year for certain business machinery placed in service after September 2001. Thirty states that had previously followed federal depreciation rules have decoupled from the federal tax code, which effectively disallows the new bonus depreciation provision. However, AL, CO, DE, FL, KS, LA, MO, MT, NM, NC, ND, OK, OR, SD, UT, VT and WV stand to lose more than \$1.1 billion over the next two years if they do not permanently decouple from the federal depreciation rules.<sup>16</sup>

## BALANCING STATE BUDGETS

★ **Corporate Income Tax**—Decouple from the federal qualified production activities income depreciation. Twenty-nine states will lose between \$850 million to \$1.2 billion annually if they don't act to disallow a new federal tax break known as the "qualified production activities income," or QPAI. The federal QPAI, enacted in 2004, is the largest new federal tax break for American corporations in years. Eighteen states (AR, CA, GA, HI, IN, ME, MD, MA, MN, MS, NH, NC, ND, OR, SC, TN, TX, WV) and the District of Columbia have disallowed the QPAI tax break. New Jersey has partially decoupled.<sup>17</sup>

★ **Corporate Income Tax**—Reform the Alternative Minimum Tax. It is all too common for corporations to use a series of tax loopholes to avoid paying any state tax at all. The federal government has an Alternative Minimum Tax (AMT) for these situations. Currently, 13 states impose a corporate minimum tax that is a fixed amount—ranging from ten dollars in Oregon to \$2,000 in New Jersey. Seven states go further and require businesses to pay the higher of a tax calculated as a percentage of profit or a tax calculated on some other basis. In Texas, the alternative basis is the business' net worth; in New Hampshire, it is "value-added" within the business; and in New Jersey, it is the business' gross receipts.<sup>18</sup>

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

★ **Sales Tax**—Apply to some services. The sales tax—the largest source of revenue for many states—usually applies only to the purchase of tangible personal property (e.g. clothing,

housewares, appliances), and in some cases, to the installation or repair of property (e.g. plumbing, auto repair). However, most business, financial and professional services are exempt from the sales tax. States can expand revenue by extending the sales tax to cover specific categories of services, such as advertising, data processing, business consulting, engineering, or architectural services.

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

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

★ **Gasoline Tax**—Increase the state tax. Every state levies a gasoline tax in addition to the federal tax of 18.4 cents per gallon. Some states charge a flat rate per gallon, while others tax the price, rather than the quantity, of gas sold. Some states, like Washington and Wisconsin, charge over 30 cents per gallon, while the average state gasoline tax is around 24 cents per gallon. Twenty states have gas taxes below 20 cents per gallon (AL, AK, AZ, CA, FL, GA, HI, IL, 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.<sup>19</sup> In 2006, New Jersey raised its gasoline tax by referendum.

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

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

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

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

## Endnotes

- 1 Nicholas Johnson and Sarah Farkas, "Tax Cuts on Layaway: The Short- and Long-Term Fiscal Implications of 2006 State Tax Actions," Center on Budget and Policy Priorities, October 10, 2006.
- 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.
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- 4 Nicolas Johnson, Jenifer Schiess and Joseph Llobrera, "State Revenues Have Fallen Dramatically," Center on Budget and Policy Priorities, November 25, 2003.
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- 7 National Conference of State Legislatures, "State Budget & Tax Actions 2005: Preliminary Report," 2005.
- 8 Alcohol Policies Project, "State Alcohol Tax Increases, 2002-2005," November 4, 2005.
- 9 Elizabeth McNichol, "State Taxes on Inherited Wealth Remain Common: 24 States Levy an Estate or Inheritance," September 8, 2006.
- 10 "State Budget & Tax Actions 2005: Preliminary Report."
- 11 National Conference of State Legislatures, "State Budget & Tax Actions 2007: Preliminary Report," 2007.
- 12 Federal Tax Administrators, "State Tax Amnesty Programs: Nov. 1982 – Present," July 2007.
- 13 Michael Mazerov, "State Corporate Tax Disclosure: The Next Step in Corporate Tax Reform," Center on Budget and Policy Priorities, February 13, 2007.
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- 16 Nicholas Johnson, "Federal Tax Changes Likely to Cost States Billions of Dollars in Coming Years," Center on Budget and Policy Priorities, June 2003.
- 17 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.
- 18 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.
- 19 Nicholas Johnson, "Should States Suspend Their Gasoline Taxes?" Center on Budget and Policy Priorities, September 8, 2005.

# Balancing State Budgets

## Combined Reporting Act

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

### SECTION 1. SHORT TITLE

This Act shall be called the “Combined Reporting Act.”

### SECTION 2. COMBINED REPORTING FOR CORPORATE INCOME TAXES

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

#### (A) DEFINITIONS—In this section:

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

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

#### **(B) COMBINED REPORTING REQUIRED**

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



## BALANCING STATE BUDGETS

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, 2008 and shall apply to tax returns filed for any tax year beginning on or after January 1, 2008.

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# Earned Income Tax Credit

- ✱ More than one in six American children live in poverty.
- ✱ The federal Earned Income Tax Credit (EITC) was created in 1975 to support low-income workers.
- ✱ Most of the federal EITC's benefits are targeted toward families with children.
- ✱ The federal program is a "refundable" credit.
- ✱ The EITC is the most effective anti-poverty program in America.
- ✱ EITCs are finely-targeted and effective in reaching the working poor and near-poor.
- ✱ EITCs are administratively simple, efficient and nonbureaucratic.
- ✱ EITCs garner bipartisan support.
- ✱ The EITC continues to gain 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.<sup>1</sup>

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

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

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

In tax year 2007, qualifying families with two or more children received up to \$4,716, and families with one child received up to \$2,853. Workers with no dependent children were eligible only to receive a maximum of \$428 from the federal EITC.<sup>3</sup>

## **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. Twenty states (CO, IL, IN, IA, KS, LA, MD, MA, MI, MN, NE, NJ, NM, NY, NC, OK, OR, RI, VT, WI) and the District of Columbia offer a refundable credit that is a percentage of the federal EITC. Three states (DE, 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. Each year, the federal EITC lifts more than 4 million people out of poverty, including more than 2.4 million children.<sup>4</sup> 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.<sup>5</sup> Studies have found that as many as 81 to 86 percent of those eligible for the credit apply for it.<sup>6</sup>

**EITCs are administratively simple, efficient and nonbureaucratic.**

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

**EITCs garner bipartisan support.**

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

**The EITC continues to gain momentum at the state level.**

Twenty-one states and the District of Columbia have adopted or substantially increased their EITCs since 2000. In 2007, Louisiana and New Mexico created refundable state EITC programs. In Iowa, the existing EITC program was adjusted to allow for refunds to the poorest wage earners and its credit level was raised to seven percent. New Jersey increased its credit from 20 to 25 percent, while Kansas increased its credit from 15 to 17 percent. In 2006, both Michigan and Nebraska adopted refundable EITCs.

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

**Endnotes**

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**STATE EARNED INCOME TAX CREDITS BASED ON THE FEDERAL EITC**

State	Percentage of the Federal EITC
<b>Refundable Credits</b>	
Colorado*	10%
District of Columbia	35%
Illinois	5%
Indiana	6%
Iowa	7%
Kansas	17%
Louisiana	3.5%
Maryland**	20%
Massachusetts	15%
Michigan	10% in 2008, 20% in 2009
Minnesota	33% on average, varies with earnings
Nebraska	10%
New Jersey	22.5% in 2008, 25% in 2009
New Mexico	8%
New York	30%
North Carolina	3.5%
Oklahoma	5%
Oregon	6%
Rhode Island	25%, of which 10% is refundable
Vermont	32%
Wisconsin	4% - one child 14% - two children 43% - three or more children
<b>Non-Refundable Credits</b>	
Delaware	20%
Maine	5%
Virginia	20%

\* The Colorado EITC is currently suspended.

\*\* 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.

- 4 Ibid.
- 5 "The Earned Income Tax Credit."
- 6 Michael O'Connor, "Using the Internet to Make Work Pay for Low-Income Families," The Brookings Institution, May 2002.

# Earned Income Tax Credit

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## Earned Income Tax Credit Act

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

### SECTION 1. SHORT TITLE

This Act shall be called the “Earned Income Tax Credit Act.”

### SECTION 2. EARNED INCOME TAX CREDIT

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

#### EARNED INCOME TAX CREDIT

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

### SECTION 3. EFFECTIVE DATE

This Act shall take effect for taxable years beginning on or after January 1, 2008.

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# Tobacco Taxes

- ✱ States can raise hundreds of millions of dollars in new revenue by increasing tobacco taxes.
- ✱ Higher tobacco taxes save thousands of lives by reducing tobacco use, especially by teens.
- ✱ States that have increased tobacco taxes have had only minor problems with cigarette smuggling and tax evasion.
- ✱ Americans strongly support increasing tobacco taxes.
- ✱ Since 2002, 43 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.<sup>1</sup> Wisconsin, a state that has raised its tobacco tax four times in 15 years, has seen a sharp rise in tax revenues with every increase. The state's current 77-cent per pack tax brought in just over \$300 million in 2006.<sup>2</sup>

## **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.<sup>3</sup> 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.<sup>4</sup> It is also worth noting that the smuggling and tax avoidance that followed New York's 55-cent tax increase in 2000 did not discourage the state from adding another 39 cents in 2002, bringing the tax to \$1.50 per pack—nor did it prevent New York City's eight cent supplementary local cigarette tax increase to \$1.50 per pack the same year.

## **Americans strongly support increasing tobacco taxes.**

Poll after poll has shown strong support for increased tobacco taxes in every region of the country. More than 30 different state polls conducted across the country since 2002 report that Americans favor tobacco tax increases of 50 to 75 cents per pack. Even in North Carolina, a major center of the U.S. tobacco industry, 60 percent of voters favored a 700 percent tax increase in 2005.<sup>5</sup> In most states, voters favor the tax increase by at least a two-to-one margin. Every poll in every state found at least majority support among Democrats, Republicans and Independents. And in nearly every state, a large majority preferred a state tobacco tax increase over any other measure that would significantly increase taxes or cut programs.

## **Since 2002, 42 states have increased their tobacco taxes.**

Since 2002, the average state cigarette tax has increased from 67 cents to \$1.03 per pack. Forty-three states (AL, AK, AZ, AR, CO, CT, DE,



GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MT, NE, NV, NH, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WY) have raised cigarette taxes.<sup>6</sup> Of these, Arizona, Colorado, Montana, Oklahoma, Oregon, South Dakota and Washington increased tobacco taxes by statewide referendum. Most of the recent tax increases were quite large—60 cents or more per pack. Eighteen states more than doubled their tobacco taxes. Tennessee raised its tax for the first time in 33 years. Tobacco taxes now range from South Carolina's seven cents per pack to New Jersey's \$2.58. Twenty-four states and the District of Columbia have tobacco taxes of one dollar per pack or more.<sup>7</sup>

*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 Ann Boonn & Eric Lindblom, "Tobacco Tax Increases Are a Reliable Source of Substantial New Revenue in Wisconsin," Campaign for Tobacco-Free Kids, March 28, 2007.
- 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 Campaign for Tobacco-Free Kids, "Voters Support Significant Increases in Cigarette Taxes," May 25, 2007.
- 6 Curtis Dubay and Gerald Prante, "State Tobacco Tax Rates Have Skyrocketed Since Last Federal Tax Increase," *Tax Foundation Fiscal Facts*, July 13, 2007.
- 7 Katie McMahon, "State Cigarette Excise Tax Rates and Rankings," Campaign for Tobacco-Free Kids, September 1, 2006.

## State Cigarette Excise Tax Rates & Rankings

Rank	State	Tax (¢ / pack)
1	New Jersey	258
2	Rhode Island	246
3	Washington	202.5
4	Alaska	200
4	Arizona	200
4	Connecticut	200
4	Maine	200
4	Maryland	200
4	Michigan	200
10	Hawaii	180
11	Vermont	179
12	Montana	170
13	South Dakota	153
14	Massachusetts	151
15	New York	150
16	Minnesota	149
17	Texas	141
18	Iowa	136
19	Pennsylvania	135
20	Ohio	125
21	Oregon	118
22	Delaware	115
23	New Hampshire	108
24	Oklahoma	103
25	District of Columbia	100
26	Indiana	99.5
27	Illinois	98
28	New Mexico	91
29	California	87
30	Colorado	84
31	Nevada	80
32	Kansas	79
33	Wisconsin	77
34	Utah	69.5
35	Nebraska	64
36	Tennessee	62
37	Wyoming	60
38	Arkansas	59
39	Idaho	57
40	West Virginia	55
41	North Dakota	44
42	Alabama	42.5
43	Georgia	37
44	Louisiana	36
45	North Carolina	35
46	Florida	33.9
47	Kentucky	30
47	Virginia	30
49	Mississippi	18
50	Missouri	17
51	South Carolina	0
Overall Average		109.1
Major Tobacco States' Average		33.5
Other States' Average		119.4

# Tobacco Taxes

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## 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, 2008.

## **BUDGET AND TAXATION RESOURCES**

### **Balancing State Budgets**

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

### **Earned Income Tax Credit**

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

### **Tobacco Taxes**

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American Cancer Society  
American Lung Association  
Campaign for Tobacco-Free Kids  
Maryland Citizens' Health Initiative

**A full index of resources with contact information can be found on page 297.**

# Business and Labor

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# Equal Pay

- ★ 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 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 work.
- ★ States have led the way in narrowing the wage gap for more than 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.<sup>1</sup> African American women earn 72 cents and Latinas earn 60 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.<sup>2</sup>

## **The gender wage gap results in an average annual loss of more than \$4,000 per American family.<sup>3</sup>**

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

## **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. In recent years, U.S. employers have been compelled to pay hundreds of millions of dollars to settle wage discrimination claims.<sup>6</sup> For example, in April 2007 FedEx settled a race and national origin discrimination class action lawsuit for nearly \$55 million. A discrimination suit against Wal-Mart on behalf of nearly two million women employees gained class-action status in 2007.<sup>7</sup> Moreover, women and people of color tend to be channeled into lower paid positions. More than half of all women workers hold sales, clerical, service or caregiving jobs (child care, elder care, and nursing) which pay less than equivalent jobs held by men.

## **Existing laws do not address the problem of occupations that are undervalued because they are dominated by women or people of color.**

Yet, it is a straightforward matter 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. 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 business leaders consider the elimination of wage discrimination between different jobs to be “good business,” and say that equal pay is necessary to remain competitive.<sup>8</sup> 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 for equivalent work 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 narrowing the wage gap for more than two decades.**

In 1982, Minnesota first implemented equal pay for equivalent work 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.

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

**Endnotes**

- 1 U.S. Census Bureau, “Current Population Survey,” 2006.
- 2 U.S. Census Bureau, “Current Population Survey,” 2005.
- 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 Bob Egelko, “Wal-Mart sex discrimination suit advances,” *San Francisco Chronicle*, February 7, 2007.
- 8 National Committee on Pay Equity, “Questions and Answers on Pay Equity,” 2000.



# Equal Pay

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## 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, 2008.

# EQUAL PAY

## 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**

### **(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, 2008.

# Family Leave Benefits

- ✱ Millions of American workers who qualify for unpaid family or medical leave simply cannot afford to take it.
- ✱ Our nation's policies have failed to keep up with dramatic shifts in family and work patterns.
- ✱ Employers have found that family leave strengthens businesses.
- ✱ States have led the way in fostering family-friendly workplaces by guaranteeing family leave benefits.
- ✱ California enacted the first comprehensive family leave insurance statute.
- ✱ Americans overwhelmingly support paid family leave.

## **Millions of American workers who qualify for unpaid family or medical leave simply cannot afford to take it.**

Although the Family and Medical Leave Act (FMLA) guarantees unpaid leave for childbirth or to care for a family member, many workers can't afford to take leave. Seventy-eight percent of American workers who qualify for leave under the FMLA say they do not take it because they cannot afford to go without pay. Without paid family leave, families suffer from the loss of income—increasing the strain on state unemployment insurance and the state welfare system. Nearly one in ten workers who take unpaid leave are forced onto public assistance.<sup>1</sup> The right to take leave is meaningless if a worker can't afford it.

## **Our nation's policies have failed to keep up with dramatic shifts in family and work patterns.**

In most families, both parents work for pay and simultaneously care for family members. The proportion of mothers whose children are aged six to 17 who are in the workforce increased from 38 to 78 percent between 1955 and 2004. During the same period, mothers of children under six have increased their numbers in the workforce from 18 to 62 percent. Today, 56 percent of mothers with a child one year of age or younger are in the workforce.<sup>2</sup> Many families are also caring for elderly relatives. In one longitudinal study, 35 percent of Americans reported that they had significant eldercare responsibilities; a third of that group had to reduce their work hours or take time off to provide care.<sup>3</sup> Despite these changing demographics, only eight percent of workers have access to paid family and medical leave.<sup>4</sup>

## **Employers have found that family leave strengthens businesses.**

Employers were extremely wary when the FMLA was enacted. But afterwards, the great majority of employers—84 percent—reported that granting workers leave under the FMLA resulted in benefits that outweigh its costs. Ninety percent found that productivity, profitability and growth were either positively or neutrally affected by FMLA compliance.<sup>5</sup> Paid family leave would multiply the benefits of this policy.

## **States have led the way in fostering family-friendly workplaces by guaranteeing family leave benefits.**

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. Minnesota, Montana and New Mexico have laws or pilot initiatives that establish At-Home Infant Care (AHIC) programs to provide eligible low-income working parents with some wage replacement while they care for new children. At least seven states (CA, CT, HI, ME, MN, WA, WI) have laws that require private-sector employers to permit employees to use their paid sick days to care for certain sick family members.



**California enacted the first comprehensive family leave insurance statute.**

California's law, enacted in 2004, allows workers to collect partial wages for up to six weeks while they take time off to care for an infant or a seriously ill family member. The law covers approximately 12 million workers and is employee-funded. Workers are eligible for benefits roughly equal to 55 percent of their wages. In 2007, Washington enacted a paid parental leave program. The law grants parents a \$250 a week stipend to take up to five weeks off to care for a newborn or newly adopted child.

**Americans overwhelmingly support paid family leave.**

A national poll conducted in June 2007 by Lake Research Partners shows that 76 percent of voters support expanding the FMLA to offer paid family and medical leave. Support is strong across geographic, demographic and party lines.<sup>6</sup> In an earlier poll, four out of five working women said that access to paid family and medical leave is more important than increased pay, promotions or job flexibility.<sup>7</sup>

*This policy summary relies in large part on information from the National Partnership for Women & Families.*

**Endnotes**

- 1 U.S. Department of Labor, "Balancing the Needs of Families and Employees: Family and Medical Leave Surveys," 2000.
- 2 Bureau of Labor Statistics, "Employment Characteristics of Families," May 2007.
- 3 Families and Work Institute, "Highlights of the 2002 National Study of the Changing Workforce," September 2003.
- 4 "Balancing the Needs of Families and Employees."
- 5 Ibid.
- 6 Lake Research Partners, "National Paid Sick Days Polling," conducted for National Partnership for Women and Families, June 2007.
- 7 Lake Snell Perry & Associates, "Ask a Working Woman Survey," conducted for the AFL-CIO, March 2002.

# Family Leave Benefits

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## Family Leave Benefits Insurance Act

*Summary: The Family Leave Benefits Insurance Act establishes a fund to provide a safety net for men and women who are temporarily unable to work due to their own serious illness, or their need to provide care to a newborn, newly adopted or newly placed foster child, or to a seriously ill child, spouse or parent.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Family Leave Benefits Insurance Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds:

1. Although family leave laws have assisted employees to balance the demands of the workplace with their family responsibilities, more needs to be done to achieve the goals of workforce stability and economic security.
2. Many employees do not have access to family leave, and those who do may not be in a financial position to take leave that is unpaid.
3. Employer-paid benefits meet only a small part of this need.
4. The establishment of paid family leave benefits will reduce the impact on state income-support programs by increasing the ability of workers to recover from illness or provide caregiving services for family members while maintaining employment.

**(B) PURPOSE**—This law is enacted to establish a Family Leave Benefits Insurance Program to provide limited income support for a reasonable period while an employee is away from work on family leave, a policy which protects the health and safety of [State] residents and strengthens the [State] economy.

### SECTION 3. FAMILY LEAVE BENEFITS INSURANCE

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

**(A) DEFINITIONS**—In this section:

1. “Application year” means the 12-month period beginning on the first day of the calendar week in which an employee files an application for family leave benefits and, thereafter, the 12-month period beginning with the first day of the calendar week in which the employee files a subsequent application for family leave benefits after the expiration of the employee’s last preceding application year.
2. “Child” means a person who is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, and who is:
  - a. Under 18 years of age; or
  - b. Eighteen years of age or older and incapable of self-care because of a mental or physical disability.
3. “Department” means the [Department of Labor].

4. “Employer” means the same as the definition in [cite workers compensation law] and the state and its political subdivisions.
5. “Employment” means the same as the definition in [cite workers compensation law].
6. “Family leave” means leave taken by an employee who is temporarily disabled and unavailable to work because she or he has to care for a newborn, newly-adopted or foster child (and leave is completed within 12 months after the birth or the placement of the child for foster care or adoption), to care for a family member who has a serious health condition, or because of the employee’s own serious health condition, making them unable to perform the functions of the employee’s position.
7. “Family member” means a child, spouse, domestic partner or the parent of the employee or employee’s spouse or domestic partner.
8. “Healthcare provider” means a person licensed as a physician under [cite applicable code section].
9. “Parent” means a biological or adoptive parent, a stepparent, or a person who stood in loco parentis to an employee or an employee’s spouse or domestic partner.
10. “Premium” means the money payments required by this chapter to be made to the Department for the Family Leave Benefits Insurance Account.
11. “Qualifying year” means the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the employee’s application year.
12. “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or continuing treatment by a healthcare provider.

#### **(B) APPLYING FOR FAMILY LEAVE BENEFITS**

1. The Department shall establish and administer a Family Leave Benefits Insurance Account, and establish procedures and forms for filing benefit claims. The Department shall notify the employer within two business days of a claim being filed.
2. The Department may require that a claim for benefits under this chapter be supported by a certification issued by a healthcare provider who is providing care to the employee or the employee’s family member, as applicable.
3. Information contained in the files and records pertaining to an employee under this chapter is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the employee or an authorized representative of an employee may review the records or receive specific information from the records on the presentation of the signed authorization of the employee. An employer or the employer’s duly authorized representative may review the records of an employee in connection with a pending claim. At the Department’s discretion, other persons may review records when such persons are rendering assistance to the Department at any stage of the proceedings on any matter pertaining to the administration of this chapter.

#### **(C) QUALIFYING FOR FAMILY LEAVE BENEFITS—**Family leave benefits are payable to an employee during a period in which the employee is on unpaid family leave if the employee:

1. Files a claim for benefits as required by rules adopted by the Department.
2. Has been employed for at least 520 hours during the employee’s qualifying year.
3. Establishes an application year. An application year may not be established if the qualifying year includes hours worked before establishment of a previous application year.

## **FAMILY LEAVE BENEFITS**

4. Documents that he or she has provided the employer from whom family leave is to be taken with written notice of his or her intention to take family leave as follows:
  - a. If the necessity for family leave was foreseeable based on an expected birth, placement or treatment, notice was given at least 30 days before the family leave was to begin, stating the anticipated starting date and ending date of the family leave.
  - b. If the date of birth, placement or treatment requiring family leave will begin in less than 30 days, as much notice as practicable was given.
  - c. In the case of medical treatment, the employee made reasonable efforts to schedule the treatment so as not to unduly disrupt the operations of the employer, subject to the approval of the healthcare provider of the employee or his or her ill family member.
5. Discloses whether or not she or he owes child support obligations.

### **(D) DISQUALIFICATION FROM BENEFITS**

1. An employee is disqualified from family leave insurance benefits beginning with the first day of the calendar week, and continuing for the next 52 consecutive weeks, if the employee:
  - a. Willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter; or
  - b. Seeks benefits based on a willful and intentional self-inflicted serious health condition or a serious health condition resulting from the employee's perpetration of a felony.
2. Benefits are not payable for any weeks in which compensation is payable to the employee under Title XXX or another federal or state workers compensation program.
3. An employee is not disqualified for benefits for any week when there is a strike or lockout at the factory, establishment, or other premises at which the employee is or was last employed.

### **(E) DURATION AND AMOUNT OF BENEFITS**

1. In an application year, family leave benefits are payable for a maximum of 12 weeks.
2. The first payment of benefits shall be made to an employee within two weeks after the claim is filed or the family leave began, whichever is later. Subsequent payments must be made at least twice a month thereafter.
3. Family leave benefits shall be paid as follows:
  - a. For family leave beginning on or after July 1, 2008, benefits shall be \$250 per week for an employee who at the time family leave began was regularly working 40 hours or more per week, or a prorated amount based on the weekly hours regularly worked for an employee regularly working less than 40 hours per week.
  - b. By June 30, 2009, and by each subsequent June 30, the Department shall calculate to the nearest dollar an adjusted maximum benefit to account for inflation using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index. The adjusted maximum benefit takes effect for family leave beginning after the relevant June 30.

- c. If an employee was regularly working 40 hours a week or more per week at the beginning of family leave, and during family leave is working less than 40 hours but at least eight hours a week, the employee's weekly payment shall be .025 times the maximum benefit times the number of hours of family leave taken in the week. Benefits are not payable for less than eight hours of family leave taken in a week.
  - d. If an employee discloses that he or she owes child support obligations and the Department determines that the employee is eligible for benefits, the Department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits pursuant to [insert appropriate citation].
  - e. If an employee elects to have federal income tax deducted and withheld from benefits, the Department shall deduct and withhold the amount specified in the federal Internal Revenue Code.
- 4. If family leave benefits are paid erroneously or as a result of fraud, or if a claim for benefits is rejected after benefits are paid, the Department shall seek repayment of benefits from the recipient.
  - 5. If an employee dies before receiving payment of benefits, the payment shall be made by the Department to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the payment shall be made and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of [insert appropriate citation].

#### **(F) EXISTING BENEFITS NOT DIMINISHED**

- 1. Nothing in this chapter shall be construed to limit an employee's right to leave from employment under other laws or employer policy.
- 2. If an employer provides paid family leave or an employee is covered by disability insurance, the employee may elect whether first to use the paid family leave or to receive temporary disability benefits. An employee may not be required to use his or her paid family leave to which she or he is entitled before receiving benefits under this chapter.
- 3. An employer may require that family leave for which an employee is receiving or received benefits under this chapter be taken concurrently with leave under the federal Family and Medical Leave Act or other applicable federal, state or local law, except that:
  - a. Family leave taken for sickness or temporary disability because of pregnancy or childbirth is in addition to leave under the federal Family and Medical Leave Act or other applicable federal, state or local law.
  - b. Family leave during which the employee is receiving or received benefits under this chapter is in addition to leave from employment during which benefits are paid or are payable under [cite] or a similar federal or state workers compensation law and that is designated as leave under the federal Family and Medical Leave Act.
  - c. If an employer requires that family leave for which an employee is receiving or received benefits under this chapter be taken concurrently with leave under the federal Family and Medical Leave Act, or other applicable federal, state or local law, the employer must give all employees written notice of the requirement.

## **FAMILY LEAVE BENEFITS**

4. This entitlement is supplementary to a federal, state or local law establishing a similar entitlement, and if a federal, state or local law applying to the employee establishes a more favorable right to return to his or her position than is established under this section, the application of that federal, state or local law is not affected by this section.
5. An employee who has received benefits under this chapter shall not lose any employment benefit, including seniority or pension rights accrued before the date that family leave commenced. However, this chapter does not entitle an employee to accrue employment benefits during a period of family leave or to a right, benefit or position of employment other than a right, benefit or position to which the employee would have been entitled had the employee not taken family leave.
6. This chapter is not to be construed to diminish an employer's obligation to comply with a collective bargaining agreement or an employment benefit program or plan that provides greater benefits to employees than family leave insurance benefits provided under this chapter.
7. An agreement by an employee to waive his or her rights under this chapter is void as against public policy. The benefits provided to employees under this chapter may not be diminished by a collective bargaining agreement or an employment benefit program or plan entered into or renewed after the effective date of this section.

### **(G) ELECTION OF COVERAGE**

1. An employer of employees not covered by this chapter or a self-employed person may elect coverage under the Family Leave Benefits Insurance Program for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. The employer or self-employed person must file a notice of election in writing with the Department. The election becomes effective on the date of filing the notice.
2. An employer or self-employed person who has elected coverage may withdraw from coverage within 30 days after the end of the three-year period of coverage, or at such other times as the Department may prescribe by rule, by filing written notice with the Department. Such withdrawal shall take effect not sooner than 30 days after the filing of the notice.
3. The Department may cancel elective coverage if the employer or self-employed person fails to provide required payments or reports. The Department may collect due and unpaid premiums and may levy an additional premium for the remainder of the period of coverage. The cancellation shall be effective no later than 30 days from the date of the notice in writing advising the employer or self-employed person of the cancellation.

### **(H) RECORDS AND REPORTS**

1. The Department shall specify the forms and times for employers to provide reports, furnish information and remit premiums. If the employer is a temporary services agency that provides employees on a temporary basis to its customers, the temporary services agency is considered the employer for purposes of this section. However, if the temporary services agency fails to remit the required premiums, the customer to whom the employees were provided is liable for paying the premiums.
2. An employer must keep at its place of business a record of employment from which the information needed by the Department for purposes of this chapter may be obtained. This record shall at all times be open to the inspection of the Department pursuant to rules promulgated by the Department.

3. Information obtained from employer records under this chapter is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, an interested party shall be supplied with information from employer records to the extent necessary for the proper presentation of the case in question. An employer may authorize inspection of its records by written consent.

#### **(I) DISPOSAL OF BUSINESS**

1. When an employer quits business, or sells out, exchanges, or otherwise disposes of the business or stock of goods, any premium payable under this chapter is immediately due and payable, and the employer must, within 10 days thereafter, make a return and pay the premium due. Any person who becomes a successor to the business is liable for the full amount of the premium and must withhold from the purchase price a sum sufficient to pay any premium due from the employer until the employer produces a receipt from the Department showing payment in full of any premium due or a certificate that no premium is due and, if the premium is not paid by the employer within 10 days from the date of the sale, exchange, or disposal, the successor is liable for the payment of the full amount of premium. The successor's payment thereof is, to the extent thereof, a payment upon the purchase price, and if the payment is greater in amount than the purchase price, the amount of the difference is a debt due the successor from the employer.
2. A successor is not liable for any premium due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the Department of the acquisition and no assessment is issued by the Department within 180 days of receipt of the notice against the former operator of the business and a copy is mailed to the successor.

#### **(J) FAMILY LEAVE BENEFITS INSURANCE ACCOUNT**

1. The Family Leave Benefits Insurance Account is created in the custody of the [state treasurer]. All receipts from the premium or penalties imposed under this chapter must be deposited in the account. Expenditures from the account may be used only for the purposes of the Family Leave Benefits Insurance Program.
2. Each employer shall retain from the earnings of each employee a premium of one cent per hour worked, up to a maximum of 40 hours per week. The employer shall match the amount retained by an equal amount, and the money retained shall be paid to the Department in the manner and at such intervals as the Department directs for deposit in the Family Leave Benefits Insurance Account.
3. The Department shall adjust the amount of the premium from time to time to ensure that the amount is the lowest rate necessary to pay family leave benefits and administrative costs, and maintain actuarial solvency in accordance with recognized insurance principles.
4. The Department may adopt rules to permit an employee with multiple employers and his or her employers to petition for refunds or credits of amounts paid to the Department for hours in excess of 40 hours per week worked by the employee.

#### **(K) TAXATION OF FAMILY LEAVE BENEFITS**—The Department must advise an employee filing a new claim for family leave benefits, at the time of filing such claim, that:

1. Benefits are subject to federal income tax.
2. Requirements exist pertaining to estimated tax payments.
3. The employee may elect to have federal income tax deducted and withheld from the employee's payment of benefits at the amount specified in the Internal Revenue Code.



## FAMILY LEAVE BENEFITS

4. The employee is permitted to change a previously elected withholding status.

**(L) NO DISCRIMINATION AGAINST CLAIMANTS**—An employer, temporary services agency, employment agency, employee organization, or other person may not discharge, expel, or otherwise discriminate against a person because he or she has filed or communicated to the employer an intent to file a claim, a complaint, or an appeal, or has testified or is about to testify or has assisted in any proceeding under this chapter.

### **(M) NO ENTITLEMENT**

1. Family leave benefits are payable under this chapter only to the extent that moneys are available in the Family Leave Benefits Insurance Account for this purpose. Neither the state nor the Department is liable for any amount in excess of these limits.
2. This chapter does not create a continuing entitlement or contractual right. There is no vested private right of any kind against amendment or repeal of this chapter.

**(N) RULES AND REGULATIONS**—The Department may adopt rules as necessary to implement this chapter. In adopting rules, the Department shall maintain consistency with the rules adopted to implement the federal Family and Medical Leave Act, to the extent such rules are not in conflict with this chapter.

## **SECTION 4. APPROPRIATION**

The sum of \$XXXXXX is appropriated for the purposes of administering the Family Leave Benefits Insurance Program. This sum shall be repaid from the Family Leave Benefits Insurance Account by June 30, 2009.

## **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 remainder of this Act shall not be affected.

## **SECTION 6. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

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# High Road Economic Development

- ✱ 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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

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

When businesses provide low-wage, low-benefit 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.<sup>4</sup> 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.<sup>5</sup> Businesses that bring low-road jobs into a community displace other businesses, replacing good jobs with bad jobs.<sup>6</sup>

## **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.<sup>7</sup>

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

The federal minimum wage of \$5.85 per hour is simply insufficient to support a family. A wage earner who works full-time at the minimum wage earns about \$12,000 a year—\$5,170 below the 2007 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.<sup>8</sup> Twenty-nine states have programs that require companies which receive government contracts or subsidies to provide health insurance—a major improvement over 2000, when just 17 states had such a requirement.<sup>9</sup>

**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*, Winter 2004.
- 2 See Greg LeRoy, *The Great American Job Scam: Corporate Tax Dodging and the Myth of Job Creation*, 2005.
- 3 For a full discussion of High Road economic policy, visit [www.cows.org](http://www.cows.org) or [www.highroadnow.org](http://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

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## Minimum Standards for Subsidized Jobs Act

*Summary: The Minimum Standards for Subsidized Jobs Act requires economic development subsidies 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, 2008 and shall apply to any economic development subsidy awarded or renewed on or after October 1, 2008.

# Majority Sign-Up for Public Workers

- ✱ In most states where public workers are allowed to organize, public employers are not required to honor their workers' decision to form a union, even if 100 percent want to unionize.
- ✱ Current election procedures leave employees vulnerable to prolonged delays, coercion and intimidation.
- ✱ Majority sign-up is a democratic process.
- ✱ Improving working conditions for public employees benefits all state residents.
- ✱ Freedom to form a union is a worker's fundamental right.
- ✱ Majority sign-up has a proven track record of success.
- ✱ Nine states allow public employees to use the majority sign-up process.

## **In most states where public workers are allowed to organize, public employers are not required to honor their workers' decision to form a union, even if 100 percent want to unionize.**

When a majority of workers decides to form a union, their decision should be respected by their employer. In most states, however, public employees must do much more than endorse unionization in order to have their union. Public employers can delay and obstruct the will of the majority by forcing workers through the government's time-consuming, costly and disruptive election process in order to gain union recognition.

## **Current election procedures leave employees vulnerable to prolonged delays, coercion and intimidation.**

The current representation process is inherently coercive.<sup>1</sup> The typical advice given by union-busting consultants is to generate so much conflict in the workplace that workers vote against union representation just to make the conflict go away. Employers often force workers to attend mandatory meetings and even threaten that workers will lose their jobs through privatization or layoffs.<sup>2</sup> Employers are allowed to bombard employees with anti-union messages anywhere, anytime in the workplace, while pro-union workers are

allowed to promote a union only on break time and only in the break area. The employer can post anti-union messages anywhere in the workplace while banning similar messages by the pro-union side. The employer also controls the list of workers eligible to vote—the “registered voters” in this election—and can use it to contact employees. But the list need not be turned over to the union until shortly before election day. And even then, pro-union advocates receive only names and addresses, not telephone numbers or e-mail addresses. The current process is structured so that employers can game the system and create such substantial delays that employees become frustrated and discouraged and give up.

## **Majority sign-up is a democratic process.**

Majority sign-up is much faster than the government-run balloting process—which can take months or years—and reduces the opportunity harassment and intimidation of workers.<sup>3</sup> With a majority sign-up process, a union is formed when a majority of all employees sign written authorization forms choosing union representation. Any employee who does not sign an authorization form is presumed not to support union representation.<sup>4</sup>



**Improving working conditions for public employees benefits all state residents.**

Collective bargaining for public employees helps ensure that state residents will receive the highest quality public services possible because front-line public employees, who provide these services, will have a voice on the job.<sup>5</sup>

**Freedom to form a union is a worker's fundamental right.**

The right to form and to join trade unions is enshrined in basic human rights doctrine. Union representation affords workers a say in what happens at the workplace and provides an opportunity to negotiate with the employer about wages, benefits, safety rules and other policies. The current system of forcing divisive and delay-ridden elections inhibits public workers from forming unions and exercising their basic right to bargain collectively.

**Majority sign-up has a proven track record of success.**

Federal labor law has always allowed majority sign-up for private sector unions. In the early years, most labor unions were formed using majority sign-up.<sup>6</sup> But now majority sign-up in the private sector can only be used when the employer agrees to allow it. Agreements to use the majority sign-up process for workers to decide about unionization have been shown to dramatically decrease antagonism between workers and management; majority sign-up avoids the divisiveness and disruption associated with the government-run representation process.

**Nine states allow public employees to use the majority sign-up process.**

Nine states (CA, IL, MA, NH, NJ, NM, NY, OH, OR) have enacted legislation allowing public employees to unionize with majority sign-up. Such legislation has gained momentum in recent years—Massachusetts, New Hampshire and Oregon authorized majority sign-up in 2007.

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

**Endnotes**

- 1 AFL-CIO Working Families State Legislative Agenda, "Majority Sign-Up for Public Workers," 2007.
- 2 Lance Compa, "A Shield Against Corporate Bullying," *The Washington Post*, February 27, 2007.
- 3 AFL-CIO Weblog, "New Hampshire Public Employees Get Freedom to Form Unions by Majority Sign-Up, July 18, 2007.
- 4 AFL-CIO Weblog, "Oregon Set to Ensure Freedom to Form Unions for Public Employees," June 12, 2007.
- 5 AFL-CIO Policy Paper, "Expanding Workers' Collective Bargaining Rights," 2007.
- 6 AFL-CIO, "The Employee Free Choice Act Questions and Answers About Majority Sign-Up."

# Majority Sign-Up for Public Workers

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## Majority Sign-Up for Public Workers Act

*Summary: The Majority Sign-Up for Public Workers Act allows public employees to use a majority sign-up process to authorize union representation.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Majority Sign-Up for Public Workers Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. The will of the majority of public employees should govern whether they wish to authorize union representation.
2. The current system of union representation elections is needlessly time-consuming, expensive and disruptive and too often exposes workers to intimidation.
3. The majority sign-up process is fair to both management and workers.

**(B) PURPOSE**—This law is enacted to improve the administration of government by making the process of deciding on union representation freer and fairer, allowing workers—instead of their employers—to choose how to form their union, and ensuring that the workers’ choice is honored expeditiously.

### SECTION 3. MAJORITY SIGN-UP FOR PUBLIC WORKERS

After section XXX, the following new section XXX shall be inserted [in a section referring to public employees]:

**(A) DEFINITIONS**—In this section, “authorizations” means evidence signed and dated by employees in the form of authorization cards, petitions, or other such evidence as the [state labor relations agency] shall find suitable, in which employees designate a labor organization as their representative for the purpose of collective bargaining.

#### **(B) UNION RECOGNITION BY MAJORITY SIGN-UP**

1. If a majority of employees in a unit appropriate for the purpose of collective bargaining have signed authorizations designating a labor organization as their representative for the purpose of collective bargaining, the [state labor relations agency] shall certify the labor organization as the representative of that unit.
2. Paragraph (B)(1) shall not apply when another labor organization is currently certified as the exclusive representative of any of the employees in the petitioned-for unit.

#### **(C) ADMINISTRATION**

1. The [state labor relations agency] shall establish rules for the prompt verification of authorizations for union representation. These rules shall protect the privacy of the individuals who submit authorizations, and guarantee that the verification procedure is completed no later than ten days after authorizations are submitted.

2. The [state labor relations agency] shall investigate and consider allegations that the authorizations were subsequently changed, altered, withdrawn, or withheld as a result of fraud, coercion, or any other unfair labor practice. If it is determined that a labor organization would have had a majority interest but for an employer's interference, fraud, coercion, or unfair labor practice, it shall certify the labor organization as an exclusive representative without conducting an election.

### **SECTION 3. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

# Privatizing Public Assets and Services

- ✱ For the past two decades, states have spent billions of dollars every year outsourcing public services.
- ✱ Recently, states have taken privatization to a new level—the selling off of public assets.
- ✱ The privatization of public services usually does not save money.
- ✱ The privatization of public assets is extremely expensive for taxpayers in the long run.
- ✱ Privatization decreases accountability and jeopardizes the quality of services.
- ✱ Privatization can place American security in the hands of foreign companies.
- ✱ States are starting to withdraw support for new privatization projects.
- ✱ Americans strongly support public accountability legislation.

## **For the past two decades, states have spent billions of dollars every year outsourcing public services.**

Based on “free market” ideology, states have implemented a variety of privatization schemes involving every sector of government. State officials expect that privatization will continue or escalate in coming years. No one expects the practice to go away.<sup>1</sup> Money spent on the outsourcing of state and local technology jobs alone is expected to increase from \$10 billion in 2003 to \$23 billion in 2008.<sup>2</sup>

## **Recently, states have taken privatization to a new level—the selling off of public assets.**

It has become increasingly common for states to consider and sometimes accept proposals to sell off or lease public assets like roads, utilities, lotteries, parking garages, water systems and airports. In 2005, 99-year control of The Chicago Skyway was sold to a Spanish-Australian group. In 2006, Indiana sold 75-year control of a 157-mile toll road to the same foreign partnership. Colorado is near completion of a contract to lease a toll road to companies from Portugal and Brazil. Texas is negotiating a highway sell-off. In fact, private investors have approached more than half of all the states, proposing long-term leases to privatize a wide variety of public assets. Over the next two years, more than \$100 billion worth of public property could be leased, up from less than \$7 billion in 2005.<sup>3</sup>

## **The privatization of public services usually does not save money.**

Bids to privatize services usually do not reflect the hidden costs required to transfer responsibility to a non-government entity, including the use of public equipment, facilities and human resources. Other hidden costs include the need for a new layer of bureaucracy to administer the bidding process, oversee contracts, and monitor results. A survey of state budget directors revealed that over 68 percent cite cost savings as the primary reason for privatization, but less than 20 percent could report any quantifiable cost savings.<sup>4</sup> An Ohio study found that school districts that privatized bus services paid significantly more per pupil and per mile than districts that did not privatize.<sup>5</sup> An in-depth cost-comparison of New York’s privatized public services determined that the state could save over \$500 million by de-privatizing.<sup>6</sup>

## **The privatization of public assets is extremely expensive for taxpayers in the long run.**

Cash-strapped states are attracted to privatization deals because investors are willing to offer spectacular sums in up-front money. But that’s because the investment groups realize that they can make spectacular profits by raising tolls and other public charges. The Indiana toll road deal, for example, allowed the private owners to double tolls in just three years—and continue to increase charges for 75 years. While those investors paid the seemingly huge sum of \$3.8 billion for their monopoly, Merrill Lynch estimated that the operation could break even in year 15 and ultimately produce \$21 billion in profits.

**Privatization decreases accountability and jeopardizes the quality of services.**

Private sector workers who deliver public services are accountable to their company, not to citizens. This reduces the public's ability to hold anyone responsible for the quality and timeliness of public services. In fact, privatization nearly always deteriorates the quality of services because the company's primary motivation is profit, not the public good. As a result, private contractors invariably reduce costs by hiring contingent and inexperienced personnel at low wages, skimping on contract requirements, or providing inadequate supervision.

**Privatization can place American security in the hands of foreign companies.**

Obviously, allowing foreign-owned companies to own and operate fundamental assets like roads, bridges and ports poses an unnecessary risk to national security. This was recognized in 2006 when the sale of a port management firm would have placed United Arab Emirates-owned Dubai Ports World in control of over 20 major American ports. Bipartisan opposition pressured the company into selling its American operations.<sup>7</sup> But any private company can be bought by any other. Even if American highways were being sold off to American companies (which is not currently the case), those businesses could be bought by any rich entity—the government of China, or Dubai, or the bin Laden family.

**States are starting to withdraw support for new privatization projects.**

In 2006, Wisconsin's governor signed a bill that requires state agencies to compare contracting costs with the cost of using state employees to do the work. In 2005, Montana enacted a law that gives state employee unions early access to privatization plans as well as a voice in the decision-making process. Connecticut's governor issued an executive order in 2006 that creates a

State Contracting Standards Board that will set standards for state agencies to evaluate proposals to privatize public services. Kentucky, Maryland, Massachusetts, Oklahoma and Vermont also have privatization standards.

**Americans strongly support public accountability legislation.**

While the public supports the concept of improving the delivery of government services, Americans also support laws that ensure the continuity of quality public services. In a national poll, three out of four voters favored standards and accurate comparisons of cost between privatizing and retaining public oversight of services. Support was equally strong among Republicans, Democrats and Independents, with more than 60 percent of each group favoring the policy.<sup>8</sup>

*This policy summary relies in large part on information from the American Federation of State, County and Municipal Employees.*

**Endnotes**

- 1 Geoffrey F. Segal, "Annual Privatization Report 2004," Reason Foundation, 2004.
- 2 National Association of State Chief Information Officers, "Offshore Outsourcing: Contracting Out IT Services in a Global Marketplace," February 2004.
- 3 Emily Thornton, "Roads to Riches," *Business Week*, May 7, 2007.
- 4 Council of State Governments, "Privatization in State Government: Trends and Issues," October 2003.
- 5 Mark Cassell, "Taking Them for a Ride: An Assessment of the Privatization of School Transportation in Ohio's Public School System," Kent State University, April 2000.
- 6 Frank J. Mauro, "Privatization without Competition Equals Huge Losses," Fiscal Policy Institute, June 2005.
- 7 Eben Kaplan and Lee Hudson Teslik, "Foreign Ownership of U.S. Infrastructure," Council on Foreign Relations, February 13, 2007.
- 8 Lake Snell Perry & Associates, "Public Service Privatization Survey," May 2000.

# Privatizing Public Assets and Services

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## Public Services Accountability Act

*Summary: The Public Services Accountability Act improves public oversight and accountability of privatization contracts.*

### SECTION 1. SHORT TITLE

This Act may be cited as the “Public Services Accountability Act”.

### SECTION 2. PUBLIC SERVICES ACCOUNTABILITY

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

#### (A) DEFINITIONS—In this section:

1. “Agency” means an executive office, department, division, board, commission or other office or officer in the executive branch of the government.
2. “Employee of a private contractor” means a worker directly employed by a private contractor, as defined in this section, as well as an employee of a subcontractor or an independent contractor that provides supplies or services to a private contractor. “Employee or private contractor” includes former employees of a private contractor or subcontractor and former independent contractors.
3. “Discrimination or retaliation” means a threat, intimidation, or any adverse change in an employee’s wages, benefits, or terms or conditions of employment. In the case of a person who is not an employee of the private contractor, such term includes any adverse action taken against the person or the person’s employer, including the cancellation of or refusal to renew a contract with the person or the person’s employer.
4. “Services” means, with respect to a private contractor, all aspects of the provision of services provided by a private contractor pursuant to a privatization contract, or any services provided by a subcontractor of a private contractor.
5. “Person” means an individual, institution, federal, State, or local governmental entity, or any other public or private entity.
6. “Privatization contract” means an agreement or combination or series of agreements by which a non-governmental person or entity agrees with an agency to provide services, valued at [insert value, i.e.: one hundred thousand dollars or more], which are substantially similar to and in lieu of, services heretofore provided, or that could have been provided, in whole or in part, by regular employees of an agency.
7. “Private contractor” means any entity which enters into a privatization contract.
8. “Public employee” means an employee as defined in section XXX of the civil service law [or cross reference to the state law which defines public employment].
9. “Public record” means a public record as defined in [insert reference to state freedom of information act], and also includes any document relating to the privatization contract or performance under the contract, prepared, received or retained by a contractor or subcontractor whether such document be handwritten, typed, tape-recorded, printed, photocopied, photographed or recorded by any other method.

10. “Subcontractor” means a subcontractor of a private contractor for work under a privatization contract or an amendment to a privatization contract.

### **(B) PRIVATIZATION CONTRACT REQUIREMENTS**

1. **Generally.** No agency shall make any privatization contract and no such contract shall be valid unless the agency and the contractor comply with each of the requirements in this section.
2. **Statement of services, analysis of bids for privatization contract.** The agency shall prepare a specific written statement of the services proposed to be the subject of the privatization contract, including the specific quantity and standard of quality of the subject services. The agency shall solicit competitive sealed bids for the privatization contracts based upon this statement. The day designated by the agency upon which it will accept these sealed bids shall be the same for any and all parties. This statement shall be a public record, shall be filed in the agency, and shall be published in the state register not later than 30 business days prior to the date on which bids are due.
3. **Disclosure.** Every bid shall detail:
  - a. The length of continuous employment of current employees with the contractor by job classification without identifying employee names. In addition, the contractor may submit information detailing the relevant prior experience of employees within each job classification. If the positions identified by the bidder shall be newly created, the bid shall identify the minimum requirements for prospective applicants for each such position;
  - b. The annual rate of current staff turnover;
  - c. The number of hours of training planned for each employee in subject matters directly related to providing services to state residents and clients;
  - d. Any legal complaints issued by an enforcement agency for alleged violations of applicable federal, state or local rules, regulations or laws, including laws governing employee safety and health, labor relations and other employment requirements, and any citations, court findings or administrative findings for violations of such federal, state or local rules, regulations or laws. The information must include the date, enforcement agency, the rule, law or regulation involved and any additional information the contractor may wish to submit;
  - e. Any collective bargaining agreements or personnel policies covering the employees to provide services to the state;
  - f. Political contributions made by the bidder or any employee in a management position with the bidding company, to any elected officer of the state or member of the state legislature, during the four years prior to the due date of the bid.
4. **Maintenance of Wage Standards.** For each position in which a contractor will employ any person pursuant to the privatization contract, the minimum compensation to be paid for said position shall be the greater of the wage rate paid at step one of the grade or classification under which an agency employee whose duties are most similar is paid, plus the cash value of health and other benefits provided to such state employees, or the average private sector compensation rate, including the value of health and other benefits, for said position as determined by the state department of employment and training.
5. **Term.** The term of any privatization contract shall not exceed two years. No amendment to a privatization contract shall be valid if it has the purpose or effect of avoiding any requirement of any section of this Act.



## PRIVATIZING PUBLIC ASSETS AND SERVICES

6. **Offer to current employees.** Every privatization contract shall contain provisions requiring the contractor to offer available employee positions pursuant to the contract to qualified regular employees of the agency whose state employment is terminated because of the privatization contract. Every such contract shall also contain provisions requiring the contractor to comply with a policy of nondiscrimination and equal opportunity for all persons, and to take affirmative steps to provide such equal opportunity for all such persons.

### (C) REVIEW OF CONTRACT COSTS

1. **Estimate of Costs.** Any agency considering whether to enter into a privatization contract shall prepare a comprehensive written estimate of the costs of regular agency employees' providing the subject services in the most cost efficient manner. The estimate shall include all direct and indirect costs of regular agency employees providing the subject services, including but not limited to, pension, insurance and other employee benefit costs. For the purpose of this estimate, any employee organization may, at any time before the final day for the agency to receive sealed bids, propose amendments to any relevant collective bargaining agreement to which it is a party. Any such amendments shall take effect only if necessary to reduce the cost estimate pursuant to this paragraph below the contract cost. Such estimate shall remain confidential until after the final day for the agency to receive sealed bids for the privatization contract at which time the estimate shall become a public record, shall be filed in the agency, and shall be published in the state register.
2. **Evaluation of Contractor Performance and Costs.** After soliciting and receiving bids, the agency shall publicly designate the bidder to which it proposes to award the privatization contract. In selecting a contractor, the agency shall consider the contractors' past performance and its record of compliance with federal, state and local laws. The agency shall prepare a comprehensive written analysis of the contract cost based upon the designated bid, specifically including the costs of transition from public to private operation, of additional unemployment and retirement benefits, if any, and of monitoring and otherwise administering contract performance. If the designated bidder proposes to perform any or all of the contract outside the boundaries of the state, said contract cost shall be increased by the amount of income tax revenue, if any, which will be lost to the state by the corresponding elimination of agency employees, as determined by the department of revenue to the extent that it is able to do so.
3. **Agency Certification.** The head of the agency shall certify in writing that:
  - a. He or she has complied with all provisions of this section and of all other applicable laws;
  - b. The quality of the services to be provided by the designated bidder is likely to satisfy the quality requirements, and to equal or exceed the quality of services which could be provided by regular agency employees;
  - c. The contract cost will be at least 10 percent less than the estimated cost, taking into account all comparable types of costs and all the additional costs of the contract;
  - d. The proposed privatization contract is in the public interest, in that it meets the applicable quality and fiscal standards set forth herein.
  - e. Any privatization contract entered into by a state agency and the agency certification described above shall be public records subject to disclosure pursuant to the [Freedom of Information Act].

**(D) MONITORING AND ENFORCEMENT OF PRIVATIZATION CONTRACTS****1. Subcontracts, amendments to Privatization Contracts.**

- a. No contractor shall award a subcontract for work under a contract or for work under an amendment to a contract without the approval of the agency head or his or her designee of the selection of the subcontractor, and the provisions of the subcontract.
- b. Each such contractor shall file a copy of each executed subcontract or amendment to the subcontract with the agency, who shall maintain the subcontract or amendment as a public record, as defined in the [Freedom of Information Act].

**2. Submission of Audits.** Any private contractor awarded a privatization contract, and any subcontractor to a private contractor subject to these provisions, shall file with the agency head copies of financial audits of the private contractor prepared at least annually during the course of the contract term.**3. Access.** All privatization contracts shall include a contract provision specifying that in order to determine compliance with these principles as well as the contract, the private contractor shall be required to provide the state or its agents, except where prohibited by federal or state laws, regulations or rules, reasonable access, through representatives of the private contractor, to facilities, records and employees that are used in conjunction with the provision of contract services.**4. Performance standards.** The private contractor shall submit a report, not less than annually during the term of the privatization contract, detailing the extent to which the contractor has achieved the specific quantity and standard of quality of the subject services and its compliance with all federal state and local laws including any complaints, citations or findings issued by administrative agencies or courts.**5. Enforcement.** The state agency may seek contractual remedies for any violation of a privatization contract. In addition, if a contractor fails to comply with sections that protect individual persons or entities, such persons or entities may bring a claim for equitable and other relief including backpay. In such a suit, an aggrieved person or entity shall be entitled to costs and attorney fees.**(E) COMPLIANCE WITH FREEDOM OF INFORMATION, PRIVACY PROVISIONS****1. Ownership of Public Records.**

- a. No contractor or subcontractor, or employee or agent of a contractor or subcontractor, shall have any ownership rights or interest in any public records which the contractor, subcontractor, employee or agent possesses, modifies or creates pursuant to a contract, subcontract or amendment to a contract or subcontract.
- b. No contractor or subcontractor, or employee or agent of a contractor or subcontractor, shall impair the integrity of any public records which the contractor, subcontractor, employee or agent possesses or creates.
- c. Public records which a contractor, subcontractor, or employee or agent of a contractor or subcontractor, possesses, modifies or creates pursuant to a contract, or subcontract shall at all times and for all purposes remain the property of the state.

# PRIVATIZING PUBLIC ASSETS AND SERVICES

## 2. Public Access to Information.

- a. Any public record which a state agency provides to a contractor or subcontractor or which a contractor or subcontractor creates shall be and remain a public record for the purposes of the [Freedom of Information Act] and the enforcement provisions of that law shall apply to any failure to disclose records under this section.
- b. With regard to any public record, the state agency and the contractor or subcontractor shall have a joint and several obligation to comply with the obligations of the state agency under the freedom of information act, as defined in section [Freedom of Information Act] as amended, provided the determination of whether or not to disclose a particular record or type of record shall be made solely by such state agency.
- c. No contractor or subcontractor, or employee or agent of a contractor or subcontractor, shall disclose to the public any public records which it possesses, modifies or creates pursuant to a contract, subcontract or amendment to a contract or subcontract and which the state agency:
  - (1) Is prohibited from disclosing pursuant to state or federal law in all cases;
  - (2) May disclose pursuant to state or federal law only to certain entities or individuals or under certain conditions; or
  - (3) May withhold from disclosure pursuant to state or federal law. No provision of this subsection shall be construed to prohibit any such contractor from disclosing such public records to any of its subcontractors to carry out the purposes of its subcontract.
- d. No contractor or subcontractor, or employee or agent of a contractor or subcontractor, shall sell, market or otherwise profit from the disclosure or use of any public records which are in its possession pursuant to a contract, subcontract or amendment to a contract or subcontract, except as authorized in the contract, subcontract or amendment.
- e. Any contractor or subcontractor, or employee or agent of a contractor or subcontractor, which learns of any violation of the provisions of this section act shall, no later than seven calendar days after learning of such violation, notify the agency head and the attorney general of such violation.

## 3. Penalties. In addition to any remedies provided under the [Freedom of Information Act]:

- a. The Attorney General may bring an action seeking damages on behalf of the state, restitution for damages suffered by any person as a result of the violation, or imposition and recovery of a civil penalty of not more than fifty thousand dollars for the violation.
- b. Any person aggrieved by a violation of this section may bring an action in any state court to recover any damages suffered as a result of such violation.
- c. In any action, the court may order disgorgement of any profits or other benefits derived as a result of a violation, award punitive damages, costs and reasonable attorneys fees, and order injunctive or other equitable relief. Proof of public interest or public injury shall not be required in any action.
- d. Any person who knowingly and willfully violates any provision of this section, for each such violation, be fined not more than five thousand dollars or imprisoned not less than one year nor more than five years, or be both fined and imprisoned.

**(F) PROHIBITION AGAINST DISCRIMINATION OR RETALIATION FOR DISCLOSURE OF INFORMATION**

1. **In General.** No person shall retaliate or discriminate in any manner against any public employee or employee of a private contractor because that employee (or any person acting on behalf of the employee) in good faith:
  - a. Engaged in any disclosure of information relating to the services provided by a private contractor pursuant to a privatization contract;
  - b. Advocated on behalf of service recipients with respect to the care or services provided by the private contractor; or
  - c. Initiated, cooperated, or otherwise participated in any investigation or proceeding of any governmental entity relating to the services provided pursuant to a privatization contract.
2. **Attempts.** No person shall retaliate or discriminate in any manner against any public employee or employee of a private contractor because the employee has attempted or has an intention to enforce his or her rights under this section.
3. **Restrictions on reporting prohibited.** No person shall by contract, policy, or procedure prohibit or restrict any employee of a private contractor from engaging in any action for which a protection against discrimination or retaliation is provided in this section.
4. **Confidential information.** This section does not protect disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by state or federal law.
5. **Good faith action.** An employee of a private contractor shall be considered to be acting in good faith if the employee reasonably believes that:
  - a. The information is true; and
  - b. The information disclosed by the employee evidences a violation of any law, rule, or regulation, or of a generally recognized professional or clinical standard, or relates to the care, services or conditions which potentially endanger one or more recipients of service or employees employed pursuant to a privatization contract.
6. **Confidentiality of complaints to government agencies.** The identity of an employee of a private contractor who complains in good faith to a government agency or department or any member or employee of the state legislature about the quality of services provided by a private contractor shall remain confidential and shall not be disclosed by any person except upon the knowing written consent of the employee of the private contractor and except in the case in which there is imminent danger to health or public safety or an imminent violation of criminal law.

**(G) ENFORCEMENT**

1. **Private cause of action.**
  - a. Any current or former public employee or employee of a private contractor who believes that he or she has been retaliated or discriminated against in violation of this section may file a civil action in any state court of competent jurisdiction against the person believed to have violated this section.

## PRIVATIZING PUBLIC ASSETS AND SERVICES

- b. If the court determines that a violation occurred, the court shall award such damages which result from the unlawful act or acts, including compensatory damages, reinstatement, reimbursement of any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation, as well as punitive damages, attorneys' fees, and costs (including expert witness fees). The court shall award interest on the amount of damages awarded at the prevailing rate.
  - c. The court may issue temporary, preliminary, and permanent injunctive relief restraining violations of this law, including the restraint of any withholding of the payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due and the restraint of any other change in the terms and conditions of employment and may award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.
2. **Civil penalty.** Any person who violates this section shall be subject to a civil penalty of not to exceed \$10,000 for each violation. In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be:
  - a. Deducted from any sums owing by the state to the person charged; or
  - b. Ordered by the court, in an action brought for a violation of this section brought by the employee (or employees) who suffered retaliation or discrimination.
3. **Burden of Proof.**
  - a. In any civil action brought under this section, the Complainant shall have the initial burden of making a prima facie showing that any behavior was a contributing factor in the adverse action or inaction alleged in the complaint. A prima facie case shall be established if the complainant can show that:
    - (1) The respondent knew of the complainant's protected activities at the time that the alleged unfavorable action or inaction was taken; and
    - (2) The discriminatory action occurred within a period of time such that a reasonable person could conclude that an activity protected by subsections A or B was a contributing factor in the discriminatory treatment.
  - b. Once the complainant establishes a prima facie case, the burden shifts to the respondent to demonstrate, by clear and convincing evidence, that it would have taken the same adverse action or inaction in the absence of such behavior.
4. **Notice.**
  - a. Each private contractor shall post and keep posted, in conspicuous places on its premises where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this act and information pertaining to the filing of a charge under this section.
  - b. Any employer that willfully violates this section may be assessed by the secretary a civil penalty not to exceed \$100 for each separate offense.

5. **Greater Protections.** Nothing in this section shall be construed or interpreted to impair or diminish in any way the authority of any locality, municipality or subdivision to enact and enforce any law which provides equivalent or greater protections for its employees.

**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, 2008.

# Sick Leave Protection

- ✱ More than 57 million workers have no paid sick leave.
- ✱ More than 94 million workers are unable to take paid sick leave to care for children or adult family members.
- ✱ The lack of paid sick leave is detrimental to public health.
- ✱ The lack of paid sick leave is bad for business.
- ✱ Almost every state provides paid sick leave to state employees that covers the illnesses of employees and their family members.
- ✱ While no state guarantees sick leave to all workers, some provide limited forms of leave benefits.
- ✱ Americans strongly support paid sick leave.

## **More than 57 million workers have no paid sick leave.<sup>1</sup>**

Forty-seven percent of all private-sector workers in the United States do not have a single paid sick day to care for themselves or a family member when they are ill.<sup>2</sup> The situation is even worse for those who are most in need: over three out of four low-wage workers have no access to paid sick days.<sup>3</sup> For millions of workers struggling to make ends meet, having no paid sick leave means losing pay or even a job when they get sick or need to care for a family member who becomes ill.

## **More than 94 million workers are unable to take paid sick leave to care for children or adult family members.**

Children need access to routine medical visits and immunizations—and they inevitably get sick. It is no surprise that studies show children get well faster when a parent cares for them.<sup>4</sup> But 94 million workers have no paid sick days they can use to care for a sick child.<sup>5</sup> Parents who cannot afford an unpaid day off are forced to make the difficult decision whether to send their children to school or child care sick, or leave them home alone. In addition, working women and men are increasingly responsible for taking care of elderly parents or relatives. By 2020, one in three U.S. households is expected to have responsibility for caring for elderly or disabled relatives.<sup>6</sup> Many workers simply cannot afford to take unpaid time off work to assist elderly relatives or accompany them to doctor visits.

## **The lack of paid sick leave is detrimental to public health.**

When Americans are forced to go to work sick because they cannot afford to take unpaid leave, they risk infecting others. Workers in jobs requiring frequent contact with the public—food service and hotel workers, child care, retail, and nursing home workers—are even less likely to have paid sick days.<sup>7</sup> This is an issue that affects all of us, whether or not we individually have access to sick leave.

## **The lack of paid sick leave is bad for business.**

Without paid sick days, millions of Americans go to work sick, causing lower productivity, higher employee turnover, and of course, spreading illness to co-workers. If workers were provided just seven paid sick days per year, our national economy would experience a net savings of \$8.1 billion per year.<sup>8</sup>

## **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.<sup>9</sup>



**While no state guarantees sick leave to all workers, some provide limited forms of leave benefits.**

Currently, no federal or state law guarantees paid sick days for all workers. However, in November of 2006, San Francisco became the first jurisdiction in the country to enact a minimum sick leave standard for all of its 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 and New Mexico have similar programs. Since 2002, seven states (CA, CT, HI, ME, MN, WA, WI) have enacted laws that require 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. These laws do not provide additional leave to workers, but 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.**

A national poll conducted by Lake Research Partners in 2007 found that 89 percent of voters support a basic labor standard guaranteeing paid sick days. Support for paid sick days is consistent among both women and men and it is strong across party lines. While support among Democrats is highest (94 percent), support among Independents and Republicans is also very high at 90 percent and 83 percent, respectively.<sup>10</sup>

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

### Endnotes

- 1 Vicky Lovell, calculations in 2007 updating "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 Ibid.
- 4 Jody Heymann, Alison Earle, and Brian Egleston, "Parental Availability for the Care of Sick Children," *Pediatrics* 98 (August): 226-230, 1996.
- 5 Vicky Lovell, calculations in 2007.
- 6 National Alliance for Caregiving and the MetLife Mature Market Institute, "The MetLife Caregiving Cost Study: Productivity Losses to U.S. Business," July 2006.
- 7 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.
- 8 Vicky Lovell, calculations in 2007.
- 9 National Partnership for Women & Families, "Get Well Soon: Americans Can't Afford to Be Sick," June 2004.
- 10 Lake Research Partners, "National Paid Sick Days Polling," conducted for National Partnership for Women & Families, June 2007.

# Sick Leave Protection

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## 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 caretaking 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.

## SICK LEAVE PROTECTION

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.
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, 2008. 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, 2009, whichever is earlier.

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## Flexible Sick Leave Act

*Summary: The Flexible Sick Leave Act allows employees to use employer-granted leave to care for family members with serious medical conditions.*

### SECTION 1. SHORT TITLE

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

**SECTION 2. FLEXIBLE SICK LEAVE**

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. “Grandparent” means a parent of a parent.
3. “Parent” means a biological parent or an individual who stood in loco parentis when a person was a child.
4. “Parent-in-law” means a parent of the spouse.
5. “Sick leave or other paid time off” means time allowed under the terms of a collective bargaining agreement or employer policy, as applicable, to an employee for illness, vacation, or personal holiday.
6. “Spouse” means a husband, wife or domestic partner.

**(B) USE OF SICK LEAVE**

1. If, under the terms of an employment contract, a collective bargaining agreement or employer policy, an employee is entitled to sick leave or other paid time off, then the employer shall allow the employee to use any or all of the employee’s choice of sick leave or other paid time off to care for:
  - a. A child of the employee with a health condition that requires treatment or supervision; or
  - b. A spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency condition.
2. An employee may not exercise a right under this section to take leave until it has been earned. The employee taking leave under the circumstances described in this section must comply with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms which contradict this section.

**(C) ENFORCEMENT**

1. This section shall be enforced by [appropriate state agency], which shall promulgate such regulations as are necessary to implement and administer compliance. Regulations shall include procedures to receive, investigate and attempt to resolve complaints; and bring actions in any court of competent jurisdiction to recover appropriate relief for aggrieved employees.
2. 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 to enforce this section.

**SECTION 3. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

# Unemployment Insurance—Options For Reform

- ✱ Millions of Americans fall outside unemployment insurance safety nets.
- ✱ Unemployment insurance is more critical than ever in the “new” economy.
- ✱ Despite increased need, unemployment insurance benefits fall below standard in most states.
- ✱ In many states, unemployment insurance doesn’t protect enough jobless workers.
- ✱ A majority of states can afford UI program improvements.
- ✱ States can implement a wide range of UI reforms to broaden eligibility rules and provide better protections to unemployed workers.
- ✱ Americans strongly support measures that help laid off workers.

## **Millions of Americans fall outside unemployment insurance safety nets.**

Only 36 percent of unemployed workers received unemployment insurance (UI) benefits in 2006. The most vulnerable workers—those with lower wages or part-time jobs—are the most likely to be ineligible to draw UI benefits.

## **Unemployment insurance is more critical than ever in the “new” economy.**

Because of globalization, the risk of job loss has spread to all sectors of our economy. Both mid- and low-wage workers are losing jobs due to offshoring, mergers, relocation of work overseas, and technological change. At the same time, there has been a general shift from temporary layoffs toward permanent job loss.

## **Despite increased need, unemployment insurance benefits fall below standard in most states.**

The rule of thumb is that UI benefits should replace 50 percent of lost wages, up to a maximum weekly benefit set at roughly 2/3rds of average state wages. A majority of states have abandoned these once-accepted standards, and in some states benefit levels are at or near poverty levels. Four states (AL, AK, AZ, MS) paid average benefits below \$200 a week in 2006. The worst states for UI benefits in 2006 were AL, AK, AZ, CT, DE, FL, LA, MS, MO, NY, SD and TN.

## **In many states, unemployment insurance doesn’t protect enough jobless workers.**

Many states have overly restrictive UI eligibility rules and burdensome procedures. In 2006, 18 states (AZ, CO, GA, KS, KY, LA, MD, MS, NH, OH, OK, SC, SD, TN, TX, UT, VA and WY) paid UI benefits to 30 percent—or less than 30 percent—of their unemployed workers.

## **A majority of states can afford UI program improvements.**

At the same time that significant numbers of states are paying low benefits and/or paying benefits to a low proportion of jobless workers, half of the states have UI reserves that are sufficient to pay benefits during any foreseeable economic downturn and can certainly afford to make reforms that will improve benefit levels or broaden UI eligibility rules. Those states are AK, AZ, DE, FL, GA, HA, IA, KS, LA, MD, ME, MS, MT, NE, NV, NH, NM, ND, OK, OR, UT, VT, WA and WY. Other states that have neglected their UI financing or have made unwise UI payroll tax reductions now face tough choices.

## **States can implement a wide range of UI reforms to broaden eligibility rules and provide better protections to unemployed workers.**

Over the past decade, some states have adopted model reforms that address common shortcomings of state UI systems, making their programs more effective social safety nets. These reforms include:



★ **Alternative Base Periods (ABPs)**—When calculating UI eligibility and benefit levels, these ABPs take more recent wages into account than traditional “base periods.” ABPs expand UI eligibility, especially among women, new entrants into the labor market, and low wage workers. In 2008, 19 states (CT, GA, HI, IL, ME, MA, MI, NH, NM, NY, NC, OH, OK, RI, VA, VT, WA, WI) and the District of Columbia will use ABPs. In states that have adopted ABPs, UI benefit costs have not increased significantly—usually in the neighborhood of 5 to 6 percent of total benefit outlays.

★ **Expanded eligibility for part time workers**—

Part time workers make up roughly 20 percent of the workforce, but do not typically qualify for UI benefits. Currently, nine states (CA, DE, KS, NE, NM, PA, SD, VT and WY) provide full UI eligibility to jobless workers seeking part time work. Twenty states (AL, AK, AZ, GA, ID, IN, KY, MD, MI, MS, MO, NV, ND, OH, OR, SC, TN, UT, VA, WV) require jobless workers to seek full time work to gain UI eligibility, while the remaining states have a range of policies. Expanding part time UI eligibility is important to affected workers and its costs are modest.

★ **Benefit extensions for workers in approved training**—Given the pressures of globalization, many workers now lose work permanently and they need retraining in a new field to have a realistic chance of maintaining a viable standard of living. The great majority of workers cannot complete retraining without income support. Seven states (CA, ME, MA, NJ, NY, OR, WA) give benefit extensions to workers in approved training programs. In addition, all state laws contain approved training provisions that permit workers to draw regular state UI benefits during training, but few states have fully implemented this option.

★ **Family friendly UI reforms**—A number of states have features in their state UI laws that help workers forced to choose between conflicting

family and work rules. Among the most significant of these family friendly UI rules, 16 states (AK, AZ, CA, HI, IN, KS, KY, ME, NC, NE, NV, NY, OK, OR, PA, RI) have a statute, ruling, or policy permitting a spouse and/or partner to leave work to move with a spouse relocating for a new job, while 6 states (CO, FL, GA, NE, NM, SC) protect military spouses that leave work to follow a spouse transferred to another base. Twenty-eight states and the District of Columbia protect individuals forced to quit work due to the consequences of domestic violence and/or sexual assault.

**Americans strongly support measures that help laid off workers.**

Polls consistently show that jobs and the economy are among the public’s biggest concerns. Anxiety about offshoring and globalization appears to have shifted opinion toward increased support for government programs in recent years. A March 2007 report by the Pew Research Center found that 69 percent believe that government has a responsibility to take care of those who can’t take care of themselves, the highest level found for this position since 1991. A stronger safety net for jobless workers is an important way for states to address these widespread concerns while preventing unnecessary hardship for jobless workers and their communities.

*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

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## 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, 2008.

## 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, 2008.

# Worker Freedom from Mandatory Meetings

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

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

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

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

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

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

## **Intimidation and coercion at the workplace is un-American.**

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

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

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

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

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

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

The National Labor Relations Act neither protects nor prohibits mandatory meetings of workers. Section 8(c) of the Act says that an employer's *non-coercive* expression of views "shall not constitute or be evidence of an unfair labor practice," but nothing in the Act gives employers the right to compel workers to listen. The Worker Freedom Act addresses only the coercive expression of political and religious views, something that is entirely within states' rights to legislate.<sup>5</sup>

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

## Endnotes

- 1 Lewis Maltby, "Office Politics: Civic speech shouldn't get employees fired," *Legal Times*, August 29, 2005.
- 2 Stephan Singer, "Conn. Considers Bill to Prevent Proselytism in the Workplace," *Associated Press*, March 11, 2006.
- 3 Dr. Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing," U.S. Trade Deficit Review Commission, 2000.
- 4 "Office Politics: Civic speech shouldn't get employees fired."
- 5 Paul Secunda, "Towards the Viability of State-Based Legislation to Address Workplace Captive Audience Meetings in the United States," *Comparative Labor Law & Policy Journal*, Vol. 29, No. 1, 2007.

# Worker Freedom from Mandatory Meetings

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## Worker Freedom Act

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

### SECTION 1. SHORT TITLE

This Act shall be called the “Worker Freedom Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

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

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

### SECTION 3. WORKER FREEDOM

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

**(A) DEFINITIONS**—In this section:

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

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

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

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

#### **(C) ENFORCEMENT**

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

#### **SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

## BUSINESS AND LABOR RESOURCES

### Equal Pay

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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

### Family Leave Benefits

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AFL-CIO  
Economic Opportunity Institute  
National Partnership for Women & Families

### High Road Economic Development

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AFL-CIO Working for America Institute  
Center on Wisconsin Strategy  
Policy Matters Ohio  
Worker Center  
King County Labor Council, AFL-CIO

### Majority Sign-Up for Public Workers

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AFL-CIO

### Privatizing Public Assets and Services

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American Federation of State, County and Municipal Employees  
Service Employees International Union

### Sick Leave Protection

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AFL-CIO  
Economic Opportunity Institute  
Institute for Women's Policy Research  
National Employment Law Project  
National Parenting Association  
National Partnership for Women & Families

### Unemployment Insurance—Options for Reform

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AFL-CIO  
Center on Budget and Policy Priorities  
Economic Policy Institute  
National Employment Law Project

### Worker Freedom from Mandatory Meetings

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AFL-CIO

**A full index of resources with contact information can be found on page 297.**



# Civil Rights & Liberties

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# Divestment to Support Human Rights in Sudan

- ✱ Hundreds of thousands of people have died and over two million have been displaced by government-supported genocide in Sudan.
- ✱ Darfur remains a humanitarian crisis.
- ✱ The Sudanese government depends heavily on foreign investment for military funding.
- ✱ Divestment is a proven tactic in the battle for human rights.
- ✱ Divestment will not harm U.S. companies.
- ✱ State divestment is legal in the absence of federal legislation that expressly or impliedly preempts state authority.
- ✱ Americans favor divestment from Sudan.
- ✱ Twenty states have enacted divestment legislation.

## **Hundreds of thousands of people have died and over two million have been displaced by government-supported genocide in Sudan.<sup>1</sup>**

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

## **Darfur remains a humanitarian crisis.**

Slaughter, intimidation and malnutrition persist in Sudan's western Darfur region despite mounting international pressure on the Sudanese government. Sudanese leaders continue policies of hypocrisy and defiance by obstructing the deployment of United Nations and African Union peacekeepers, resisting peace talks with rival factions, and stubbornly refusing to comply with international courts.<sup>4</sup> Violence has spilled into neighboring Chad and the Central African Republic, where both countries accuse the Sudanese central government of fomenting instability by sponsoring Janjaweed attacks across their borders.<sup>5</sup>

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

Foreign investment in the oil, energy and construction sectors of the Sudanese economy is largely used to strengthen that nation's military. For example, more than 60 percent of the country's 2001 oil revenue was used to support the military.<sup>6</sup> Little of Sudan's revenues benefit the civilian population south and west of Khartoum. For example, in 2000, the government announced that it had spent three million dollars on development in the south—an amount equivalent to one percent of the military budget in that year.<sup>7</sup>

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

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

**Divestment will not harm U.S. companies.**

In the 1990s, the U.S. government listed Sudan as a country which supports terrorism. As a result, the Clinton Administration imposed trade sanctions which remain in place today. The sanctions prohibit companies based in the U.S. from operating in Sudan. Therefore, divestment legislation only requires states to end their investments in multinational and foreign-based companies that do business in Sudan. In fact, several multinational companies, including Xerox and 3M, have already limited operations in Sudan to humanitarian work.<sup>8</sup>

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

In the 2000 case of *Crosby v. National Foreign Trade Council*, the U.S. Supreme Court struck down a Massachusetts law forbidding state purchases from companies doing business with Burma.<sup>9</sup> But the court limited its ruling to the issue of preemption, finding that Congress had enacted a law that substantially conflicted with the Massachusetts statute. The Supreme Court did not adopt arguments that the U.S. Constitution bars states from ever having the power to enact divestment provisions.<sup>10</sup> In 2007, an Illinois District Court struck down that state's 2005 divestment law, finding its restrictions too broad to be constitutional.<sup>11</sup> Since there is no federal law that conflicts with state divestment from Sudan, and since the Illinois ruling only applies in that state, such legislation is legal.

**Americans favor divestment from Sudan.**

A November 2006 Lake Research poll found that, by a three-to-one margin, voters favor legislation "that directs state pension funds to boycott companies that do business in Sudan, until that government protects the people in Darfur."<sup>12</sup>

**Twenty states have enacted divestment legislation.**

Seventeen states (CA, CO, FL, HI, IL, IN, IA, KS, ME, MN, NJ, NY, NC, OR, RI, TX, VT) have enacted statutes to divest state pension funds from companies that do business with the government of Sudan. Thirteen states enacted the new rules in 2007. Three other states (AR, CT, MD) have passed non-binding resolutions that encourage divestment from Sudan.

**Endnotes**

- 1 Eric Reeves, "A Tragedy Straight Out of Shakespeare," *Washington Post*, June 3, 2007.
- 2 Sudan Divestment Task Force, "Options and Resources for Sudan Divestment," updated July 5, 2006.
- 3 Sudan Divestment Task Force, "Arguments for the Efficacy of Targeted Divestment from Sudan," updated August 17, 2006.
- 4 Reuters, "Darfur Conflict," August 1, 2007.
- 5 Nicholas Kristof, "A First Step to Save Darfur," *New York Times*, August 3, 2007.
- 6 "Arguments for the Efficacy of Targeted Divestment from Sudan."
- 7 Christian Aid Society, "The Scorched Earth: Oil and War in Sudan," March 2001.
- 8 Nora Boustany, "Sudan Divestment Effort Gains Momentum at State Level," *Washington Post*, October 7, 2006.
- 9 *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000).
- 10 Michelle Cadin, "State Autonomy and International Policy Making: *Crosby v. National Foreign Trade Council*," *New England Journal of International and Comparative Law*, 2002.
- 11 Jeanne Frimmet, "State and Local Economic Sanctions: Constitutional Issues," CRS Report for Congress, April 2, 2007.
- 12 Lake Research Partners, conducted for Center for Policy Alternatives, November 2006.

# Divestment to Support Human Rights in Sudan

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## Sudan Genocide Divestment Act

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

### SECTION 1. SHORT TITLE

This Act shall be called the “Sudan Genocide Divestment Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

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

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

### SECTION 3. DIVESTMENT FROM SUDAN

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

#### **(B) RULES OF DIVESTMENT**

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

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

#### SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2008.

# GLBT Anti-Discrimination

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

## **Seventy-four percent of gay, lesbian or bisexual individuals have been the victims of discrimination based on their sexual orientation.<sup>1</sup>**

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

## **In 30 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 20 states (CA, CO, CT, HI, IL, IA, ME, MD, MA, MN, NV, NH, NJ, NM, NY, OR, RI, VT, WA, WI) and the District of Columbia prohibit discrimination based on sexual orientation. Without anti-discrimination laws, GLBT people have no legal recourse when landlords deny housing or employers fire or refuse to hire them.

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

More than 470 of the Fortune 500 companies and more than 2,600 private companies, colleges and universities, nonprofits and unions in the United States have adopted anti-discrimination policies that cover sexual orientation. One hundred forty-seven Fortune 500 companies have adopted their policies since 2003.<sup>4</sup> Anti-discrimination policies do not require employers to hire gay, lesbian, bisexual or transgender individuals. Rather, the policies prevent employers from using sexual orientation or gender identity or expression as the sole basis for refusing to hire, demoting, or discharging an individual.

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

According to a May 2007 Gallup poll, 89 percent of Americans believe that GLBT individuals should have equal rights in the workplace.<sup>5</sup> 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.<sup>6</sup> Sixty-one percent of Americans also favor laws to prevent employment discrimination against transgender people.<sup>7</sup>

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

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

**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**

- \* 20 states and the District of Columbia
- \* More than 290 cities or counties
- \* 470 of the Fortune 500 companies
- \* More than 2,055 private companies, nonprofit organizations, and labor unions
- \* More than 562 colleges and universities

**Endnotes**

- 1 The Henry J. Kaiser Family Foundation, “Inside-OUT: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public’s Views on Issues and Policies Related to Sexual Orientation,” November 2001.
- 2 U.S. General Accounting Office, “Sexual Orientation-Based Employment Discrimination,” July 9, 2002.
- 3 “Inside-OUT.”
- 4 Equality Forum, “Fortune 500 Project,” August 29, 2007.
- 5 Gallup poll, May 10-13, 2007.
- 6 “Inside-OUT.”
- 7 Human Rights Campaign, “Public Perceptions of Transgender People,” 2002.
- 8 National Gay and Lesbian Task Force, “State Nondiscrimination Laws in the U.S.,” updated September 17, 2007.
- 9 National Gay and Lesbian Task Force, “Glass Nearly Half Full,” January 2005.



# GLBT Anti-Discrimination

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## 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, 2008.

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# Immigrant Assistance in Crime Fighting

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

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

Since the September 11 terrorist attacks, both documented and undocumented immigrants have been more afraid of local law enforcement agents and less likely to report crimes. For example, Arab Americans have become more fearful of racial profiling and immigration investigations, according to a two-year study commissioned by the U.S. Department of Justice.<sup>1</sup> Similarly, Latino immigrants became wary after the Bush Administration encouraged local police to enforce federal immigration law.<sup>2</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Endnotes**

- 1 Andrea Elliott, "After 9/11, Arab-Americans Fear Police, Study Finds," *New York Times*, June 12, 2006.
- 2 Appleseed, "Forcing Our Blues into Gray Areas: Local Police and Federal Immigration Enforcement," 2006.
- 3 National Council of La Raza, "State and Local Police Enforcement of Federal Immigration Laws: A Tool Kit for Advocates," March 2006.
- 4 Ibid.
- 5 National Employment Law Project, "More Harm Than Good: Responding to States' Misguided Efforts to Regulate Immigration," March 2006.
- 6 "Forcing Our Blues into Gray Areas."

# Immigrant Assistance in Crime Fighting

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## Immigrant Assistance in Crime Fighting Act

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

### SECTION 1. SHORT TITLE

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

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

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

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

### SECTION 3. IMMIGRANT ASSISTANCE IN CRIME FIGHTING

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

**(A) DEFINITION**—In this section:

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

#### **(B) PROTECTION OF IMMIGRANT COMPLAINANTS AND WITNESSES**

1. No law enforcement or other agent of state or local government shall inquire into the immigration status of any person who complains of, or is a witness to, a violation of state or local law.
2. No law enforcement or other agent of state or local government shall ask a complainant or witness for their social security number or other information that might disclose an individual’s immigration status.
3. During the course of any court proceedings, the state or local government shall oppose efforts of any party to discover a complainant’s or witness’ immigration status and shall seek a protective order or other similar relief.

4. In the rare occasion that an agent of state or local government must know the complainant's immigration status, the agent shall keep that status confidential and not disclose that information to third parties, including to other government agents, unless required by federal law.
5. Law enforcement officers may inquire into the immigration status of a person when an officer has reasonable grounds to believe that the person:
  - a. Has been convicted of a felony criminal law violation;
  - b. Was deported or left the United States after the conviction; and
  - c. Is again present in the United States.
6. Nothing in this section is intended to prevent government agents from knowing a person's immigration status or viewing a document that might provide evidence of a person's immigration status, as long as the person volunteered the information or document to the government agent.

#### **(C) TRAINING OF LAW ENFORCEMENT AND OTHER GOVERNMENT AGENTS**

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

#### **(D) PREEMPTED AND SUPERCEDING LAW**

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

#### **SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

# Marriage Equality

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

## State and federal laws discriminate against same-sex couples.

The U.S. General Accounting Office lists more than 1,000 federal rights, protections and responsibilities that are automatically granted to married heterosexual couples but denied to same-sex couples.<sup>1</sup> 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.

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. In 2005 and again in 2007, the Massachusetts legislature defeated a constitutional amendment that would have banned same-sex marriage. Four states (CT, NH, NJ, VT) now recognize civil unions and five others (CA, HI, ME, OR, WA) recognize domestic partnerships. More than 22 nations, including Belgium, Canada, Denmark, Germany, Spain, Iceland, Netherlands, Portugal and Sweden, allow same-sex couples to marry or enter into federally-recognized domestic partnerships.

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

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



**Marriage promotes stable, long-lasting relationships between partners.**

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

**Marriage strengthens families and safeguards children.**

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

**No religious institution would be required to perform a ceremony.**

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

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

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

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

In 2007, New Hampshire and New Jersey legalized civil unions, Oregon and Washington recognized domestic partnerships, and the Massachusetts legislature soundly rejected a constitutional amendment to ban same-sex marriage. In 2006, Arizona became the first state to vote down a constitutional amendment that would have defined marriage as the union of one man and one woman. Ten states (CA, CT, HI, ME, MA, NH, NJ, OR, VT, WA) formally recognize same-sex couples. And, ten states (CA, CT, IA, ME, NM, NY, OR, RI, VT, WA) and the District of Columbia offer domestic partner benefits to the same-sex partners of public employees, as do more than 137 cities and counties.

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

**Endnotes**

- 1 U.S. General Accounting Office, “Defense of Marriage Act: Update to Prior Report,” January 2004.
- 2 U.S. Census Bureau, “Married-Couple and Unmarried-Partner Households,” 2003.

# Marriage Equality

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## 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, 2008.

## 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.

## **MARRIAGE EQUALITY**

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

### **(C) ADMINISTRATION AND ENFORCEMENT**

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

### **SECTION 4. NONCONFORMING SECTIONS**

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

### **SECTION 5. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

## 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.

## MARRIAGE EQUALITY

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, 2008.

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# Racial Profiling

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

## About 32 million Americans have been victims of racial profiling.

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

## Racial profiling of African Americans and Latinos is widespread.

A 2007 report by the U.S. Department of Justice found that among drivers stopped by police, African Americans and Latinos were three times more likely to be subjected to a search than whites.<sup>3</sup> Police are four times more likely to use force on African Americans and twice as likely to use force on Latinos than whites during a police stop.<sup>4</sup> A 2005 Rhode Island study 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.<sup>5</sup> A 1999 investigation revealed that fully three-fourths of the cars searched by New Jersey state troopers were driven by African Americans or Latinos.<sup>6</sup>

## 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.<sup>7</sup> Arab Americans are three times more likely than whites to have experienced racial profiling since the attacks.<sup>8</sup> Nearly three-quarters of Arab Americans report that they have experienced discrimination more frequently since September 11.<sup>9</sup> 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.<sup>10</sup>

## 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. Forty-six states collect at least some such data today.<sup>11</sup>

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

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

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

In 2007, Maryland extended a study of information on traffic stops to determine the extent and severity of racial profiling within that state. In 2005, Arkansas, Florida, Kansas, Montana, New Jersey and Tennessee adopted or strengthened racial profiling laws. Twenty-five states (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.<sup>13</sup>

### 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, 2005," April 2007.
- 4 Ibid.
- 5 American Civil Liberties Union, "The Persistence of Racial Profiling in Rhode Island: An Update," August 2005.
- 6 Chad Thevenot, "Crises of the Anti-Drug Effort, 1999," Criminal Justice Policy Foundation, 1999.
- 7 American Civil Liberties Union, "The USA PATRIOT Act and Government Actions that Threaten our Civil Liberties," 2003.
- 8 "Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States."
- 9 Bendixon and Associates, "Multilingual Poll of Arab, Iranian and Pakistani Americans on President Bush's Iraq Policy and Post-9/11 Discrimination," August 26, 2004.
- 10 American Sikh Council, "Your Sikh Neighbors," 2001.
- 11 Racial Profiling Data Collection Resource Center at Northeastern University.
- 12 U.S. Department of Justice, "A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned," November 2000.
- 13 Racial Profiling Data Collection Resource Center at Northeastern University.

# Racial Profiling

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## Racial Profiling Prevention Act

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

### SECTION 1. SHORT TITLE

This Act shall be called the “Racial Profiling Prevention Act.”

### SECTION 2. RACIAL PROFILING PREVENTION AND DATA COLLECTION

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

#### (A) DEFINITIONS—In this section:

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

#### (B) PROHIBITION AGAINST RACIAL PROFILING

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

#### (C) DATA COLLECTION

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

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

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

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

### SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2008. The forms described in section (D) shall be developed and distributed by October 1, 2008. 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, 2009.

## **CIVIL RIGHTS AND LIBERTIES RESOURCES**

### **Divestment to Support Human Rights in Sudan**

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Public Citizen

Sudan Divestment Task Force

### **GLBT Anti-Discrimination**

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Equality Federation

Human Rights Campaign

Lambda Legal Defense and Education Fund

National Center for Lesbian Rights

National Gay and Lesbian Task Force

### **Immigrant Assistance in Crime-Fighting**

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International Association of Chiefs of Police

National Council of La Raza

National Immigration Law Center

National Employment Law Project

### **Marriage Equality**

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Equality Federation

Human Rights Campaign

Lambda Legal Defense and Education Fund

National Center for Lesbian Rights

National Gay and Lesbian Task Force

### **Racial Profiling**

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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 297.**

# Consumer Protection

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# Credit Card Interchange Fees

- \* Credit card interchange fees cost merchants and consumers billions of dollars each year.
- \* Because of interchange fees, consumers pay higher prices, even if they use cash.
- \* The cost of interchange fees is rapidly growing.
- \* Americans pay some of the highest credit card fees in the world.
- \* Because Visa and MasterCard dominate the credit card industry, market forces won't solve the problem of over-inflated interchange fees.
- \* Visa and MasterCard keep their rules secret so neither merchants nor customers know how to lower costs.
- \* Americans overwhelmingly support greater transparency by credit card companies.
- \* States can take steps to curb exorbitant interchange fees.

## **Credit card interchange fees cost merchants and consumers billions of dollars each year.**

Each time a customer uses a Visa, MasterCard or other credit card issued by a bank, the merchant is charged a fee by the bank that issued the card. If the customer pays \$100 through the credit card, for example, the merchant receives about \$98. The money withheld by the bank is called the “discount fee,” which is actually composed of several fees. The largest of those fees—typically 70 to 90 percent of the discount fee—is called the “interchange fee” and it supposedly covers bank processing costs. But in fact, the interchange fee is just inflated profit—only 13 percent of the credit card interchange fee goes for transaction processing.<sup>1</sup>

## **Because of interchange fees, consumers pay higher prices, even if they use cash.**

Because merchants have no realistic option but to accept credit and debit cards, they have no choice but to include the cost of hidden credit card interchange fees in the prices they charge to all their customers. A full 38 percent of all transactions were made with credit or debit cards in 2005, and it is estimated that will rise to 52 percent by 2010.<sup>2</sup> In 2006, the average family paid over \$300 in interchange fees, an amount that is expected to rise sharply.<sup>3</sup>

## **The cost of interchange fees is rapidly growing.**

Even though advances in technology bring down the cost of transaction processing, interchange fees keep going up. Visa and MasterCard collected more than \$36 billion in interchange fees in 2006, up 117 percent since 2001.<sup>4</sup> More money is spent on interchange fees than on credit card annual fees, cash advance fees, late fees, and over-the-limit fees.

## **Americans pay some of the highest credit card fees in the world.**

Visa and MasterCard charge Americans among the highest credit card interchange fees in the world, averaging about two percent per transaction. The fee averages less than one percent in many other industrialized countries, such as Great Britain (0.7 percent) and Australia (0.5 percent).

## **Because Visa and MasterCard dominate the credit card industry, market forces won't solve the problem of over-inflated interchange fees.**

Visa and MasterCard—which together account for more than 80 percent of credit and debit card charges—each works with its own member banks to set the price of interchange fees, a method strikingly similar to price fixing. Moreover, the top five credit card issuing banks (JPMorgan Chase, Citigroup, Bank of America, Capital One and HSBC) control about 90 percent of all credit card accounts, according to the FDIC.<sup>5</sup>



### **Visa and MasterCard keep their rules secret so neither merchants nor customers know how to lower costs.**

The interchange fee system is so complex that it is practically impossible for merchants to tell customers how much the fees are costing them. There are different fees for different types of Visas and MasterCards, different types of stores, and different types of purchases. The credit card companies' rules are over 1,000 pages long, but they are not publicly available. The only way retailers can view the complete set of Visa rules is to sign an agreement that forbids them from discussing the rules publicly. The complete set of MasterCard rules is not available to retailers or customers at all.<sup>6</sup>

### **Americans overwhelmingly support greater transparency by credit card companies.**

According to a February 2007 Harris Interactive poll, 94 percent of Americans believe that credit card companies should be required to disclose how much they charge in interchange fees and how those fees are set. A full 91 percent believe the government should require credit card companies to be more open, and 84 percent of those surveyed believe credit card companies should not be allowed to continue to charge interchange fees without changing their policies. The same poll found that 7 in 10 Americans are not aware that interchange fees exist.<sup>7</sup>

### **States can take steps to curb exorbitant interchange fees.**

In 2007, legislators in ten states introduced bills dealing with interchange fees. The most common proposals would:

- ★ Prohibit levying an interchange charge on the sales or use tax portion of a transaction involving credit or debit cards.
- ★ Require processors and banks to provide those who accept credit and debit cards with a copy of the full operating rules applicable to their agreements and/or a complete schedule of card transaction rates and fees.
- ★ Ban chargebacks against merchants if the chargeback is based on going over a pre-set transaction limit.

*This policy summary relies in large part on information from the Merchants Payments Coalition.*

### **Endnotes**

- 1 Shawn Zeller, "Lobbying War Brewing Over Credit Card Fees," *CQ Weekly*, March 19, 2007.
- 2 Merchants Payments Coalition, "Unfair Credit Card Fees Fact Sheet," 2007.
- 3 Merchants Payments Coalition, "Credit Card Interchange Fees: Issues and Answers," prepared for the House Judiciary Committee Antitrust Task Force, September 14, 2007.
- 4 Molly Hennessy-Fiske, "Card Issuers, Retailers at Odds," *Los Angeles Times*, April 2, 2007.
- 5 Douglas Akers, Jay Golter, Brian Lamm, and Martha Solt, "Overview of Recent Developments in the Credit Card Industry," Federal Deposit Insurance Corporation, November 2005.
- 6 "Credit Card Interchange Fees: Issues and Answers."
- 7 "U.S. Adults Say Visa and MasterCard Should Disclose Hidden Interchange Fees," Harris Interactive, February 6, 2007.

# Credit Card Interchange Fees

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## Credit Card Interchange Fee Disclosure Act

*Summary: The Credit Card Interchange Fee Disclosure Act requires card-issuing banks to provide a complete copy of the credit or debit card rules and rates to merchants that accept those cards.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Credit Card Interchange Fee Disclosure Act.”

### SECTION 2. CREDIT CARD INTERCHANGE FEES

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

#### (A) DEFINITIONS—In this section:

1. “Acquiring bank” means a financial institution licensed to do business in this state providing merchant accounts.
2. “Chargeback” means a credit card or debit card transaction that is either billed back to a merchant or deducted from a merchant’s account.
3. “Credit card” means:
  - a. Any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card or identification card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder on a promise to pay in part or in full at a future time, whether or not all or any part of the indebtedness represented by this promise to make deferred payment is secured or unsecured;
  - b. Any stored value card, smart card or other instrument or device that enables a person to obtain goods, services or anything else of value through the use of value stored on the instrument or device; and
  - c. The number assigned to an instrument or device described in paragraphs (1) or (2) even if the physical instrument or device is not used or presented.
4. “Debit card” means:
  - a. Any instrument or device whether known as a debit card, ATM card, electronic benefit transfer card or any other access instrument or device, other than a check, that is signed by the holder or other authorized signatory on the deposit account that draws moneys from a deposit account in order to obtain money, goods, services or anything else of value; and
  - b. The number assigned to an instrument or device described in paragraph (1) even if the physical instrument or device is not used or presented.
5. “Financial institution” means any bank, savings association, savings bank, credit union or industrial loan company.
6. “Interchange fee” means the fee that an acquiring bank pays to an issuing bank when a cardholder uses a credit card or debit card as payment during a retail transaction.
7. “Issuing bank” means a financial institution which issues credit cards to cardholders.

8. “Merchant account” means a bank account that allows a merchant to accept credit card or debit card payments.
9. “Merchant” means a person or entity licensed to business in this state which offers goods or services for sale in this state.

### **(B) DISCLOSURE REQUIRED**

1. Whenever a contract authorizing a merchant to accept a credit card or debit card specifies that the merchant is bound by the rules of a financial institution, the contracting financial institution must:
  - a. Give the merchant access in this state to the complete rules referenced in the contract, either individually or through an acquiring bank;
  - b. Notify the merchant when a referenced rule has been changed or new rule added; and
  - c. Provide a copy of the new or modified rule.
2. A contract authorizing a merchant to accept a credit card must contain:
  - a. The contracting financial institution’s complete schedule of interchange fees, credit card and debit card transaction rates and any other fees that the financial institution charges to merchants; and
  - b. An explanation of which rates apply to the merchant and the situations in which those rates apply.
3. A contract authorizing a merchant to accept a credit card or debit card may not require a merchant to agree not to disclose the contracting financial institution’s rules or rates as a condition of receiving access to the rules or rates.

### **(C) ENFORCEMENT**

1. If an issuing bank or credit card company fails to give a merchant access to its rules or rates as required by section (B), and amendments thereto, then:
  - a. The merchant shall not be liable for any chargeback or fees associated with its credit card or debit card transactions from the time the contract was executed until the rules and rates are provided; and
  - b. The issuing bank or credit card company will be liable for a civil penalty of \$10,000 per charge levied prior to providing the rules.
2. Any merchant whose rights under this act have been violated may maintain a civil action for damages or equitable relief as provided for in this section.

## **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, 2008.

# CREDIT CARD INTERCHANGE FEES

## Credit Card Interchange Fee Limitation Act

*Summary: The Credit Card Interchange Fee Limitation Act prohibits card-issuing banks from charging interchange fees on the tax portion of any credit or debit card transaction.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Credit Card Interchange Fee Limitation Act.”

### SECTION 2. CREDIT CARD FEES ON STATE TAXES PROHIBITED

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

#### **(A) DEFINITIONS—**In this section:

1. “Credit card” means:

- a. Any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card or identification card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder on a promise to pay in part or in full at a future time, whether or not all or any part of the indebtedness represented by this promise to make deferred payment is secured or unsecured;
- b. Any stored value card, smart card or other instrument or device that enables a person to obtain goods, services or anything else of value through the use of value stored on the instrument or device; and
- c. The number assigned to an instrument or device described in paragraphs (1) or (2) even if the physical instrument or device is not used or presented.

2. “Debit card” means:

- a. Any instrument or device whether known as a debit card, ATM card, electronic benefit transfer card or any other access instrument or device, other than a check, that is signed by the holder or other authorized signatory on the deposit account that draws moneys from a deposit account in order to obtain money, goods, services or anything else of value; and
- b. The number assigned to an instrument or device described in paragraph (1) even if the physical instrument or device is not used or presented.

#### **(B) FEES PROHIBITED ON STATE TAXES—**Discount rates, transaction charges, interchange rates or any other charges or fees charged to merchants or deducted from credit card or debit card sales for processing credit card or debit card transactions shall not be applied to the tax portion of any credit card or debit card sales.

**(C) ENFORCEMENT**

1. Any merchant whose rights under this act have been violated may maintain a civil action for damages or equitable relief as provided for in this section.
2. Any person who violates this section will be subject to a civil penalty of \$5,000 per violation.
3. The attorney general shall have the power to maintain an action to enforce the penalties provided for in this section.

**SECTION 3. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

# Financial Privacy

- \* Over eight million Americans were victims of identity theft in 2006, at a cost of \$49 billion.
- \* Financial institutions routinely share private information about their customers, but Americans are largely unaware of the practice.
- \* The sharing of private information makes individuals vulnerable to identity theft.
- \* The sharing of private information results in unwanted marketing and consumer profiling.
- \* Federal law makes it easy for companies to legally sell customers' private financial information.
- \* States are permitted to regulate the transfer of information from financial institutions to nonaffiliated companies.
- \* States are acting to protect consumer financial privacy and reduce the incidence of identity theft.
- \* Financial privacy legislation has strong support among liberals and conservatives.

## **Over eight million Americans were victims of identity theft in 2006, at a cost of \$49 billion.<sup>1</sup>**

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.<sup>2</sup> The average victim lost \$6,383 and spent 40 hours to resolve the problem.<sup>3</sup>

## **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.<sup>4</sup> 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.<sup>5</sup>

## **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.<sup>6</sup>

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

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

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

The financial services industry argues that the Fair and Accurate Credit Transactions Act (FACTA), signed into law by President Bush in December 2003, preempts state financial privacy laws—but that is not true. In 2005, the federal Ninth Circuit Court of Appeals upheld the “opt in” provision of the California Financial Information Privacy Act that requires companies to ask for their customers’ explicit written permission before sharing or selling private information with nonaffiliated businesses.<sup>7</sup>

**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.<sup>8</sup>

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

**Endnotes**

- 1 California Office of Privacy Protection, “Identity Theft,” February 2007.
- 2 First Data Corporation, “New Identity Theft Survey Reveals Latest Count of Victims, Need for Greater Protection,” May 17, 2005.
- 3 “Update to the Federal Trade Commission’s Identity Theft Survey Report.”
- 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 CBS News/*New York Times*, “Poll: Privacy Rights Under Attack,” October 2, 2005.



# Financial Privacy

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## Financial Information Privacy Act

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

### SECTION 1. SHORT TITLE

This Act shall be called the “Financial Information Privacy Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

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

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

### SECTION 3. FINANCIAL INFORMATION PRIVACY

**(A) DEFINITIONS**—In this section:

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

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

#### **(B) PERSONAL FINANCIAL INFORMATION PROTECTED**

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

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

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

## FINANCIAL PRIVACY

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

### (D) ENFORCEMENT

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

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

**SECTION 4. SEVERABILITY**

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

**SECTION 5. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

# Gift Card Consumer Protection

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

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

Americans spent over \$80 billion on gift cards during the past year.<sup>1</sup> Almost 75 percent of American consumers said they planned on purchasing at least one gift card during the 2005 holiday season, a substantial increase from the previous year.<sup>2</sup> But nearly two-thirds of those consumers were not aware that gift cards may expire before fully used and may contain hidden fees.<sup>3</sup> Because of service fees and expiration dates, consumers lose at least 10 percent of the value of gift cards each year—a loss of more than \$7 billion.<sup>4</sup>

## **Gift card service fees are often unreasonably high.**

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

## **Gift card expiration periods are often unreasonably short.**

Many retailers place expiration dates in fine print on the back of gift cards, cutting off the cards' value after six months or a year. In some states, unused cards are treated as lost property and their value escheats to the state. In other states, retailers can keep customers' money after gift cards expire. For example, the nation's second-largest

retailer, Home Depot, announced that it made \$43 million in 2005 from the sale of gift cards it did not expect to be redeemed.

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

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

## **States are limiting gift card service fees and expiration dates.**

Nine states (CA, CT, FL, ME, MN, MT, OR, RI, WA) have enacted laws which prohibit gift card expiration dates. In addition, 17 states (AR, HI, ID, IL, KS, KY, LA, MD, MA, NJ, NM, ND, OH, OK, SC, TN, VT) have laws that require expiration dates to exceed a minimum period ranging from one to seven years. New Hampshire has no expiration date for gift cards worth less than \$100, and a five year minimum expiration period for cards worth more than \$100. Thirteen states (CT, FL, HI, IL, KY, MN, MT, NH, NM, ND, OR, RI, VT) have laws prohibiting any type of service fees, and four states

(CA, LA, OK, WA) have such laws with minor exceptions. Ten states (AR, KS, MD, NV, NJ, NY, NC, OH, TN, TX) have laws preventing fees over a given period. For those states without prohibitions, or with limited prohibitions, some require that gift cards clearly indicate expiration dates (AZ, AR, GA, IL, LA, NE, NV, NJ, NM, NY, SC, TX, UT) and any applicable fees (AZ, AR, GA, ME, NE, NV, NJ, NY, NC, SC, UT).

### Three states have strong gift card laws.

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

### Endnotes

- 1 Steven Dubner and Steven Levitt, "The Gift Card Economy," *New York Times*, January 7, 2007.
- 2 David Weber, "Gift Cards: What Franchisors Should Know," *Franchising World*, July 2006; National Retail Federation, "Gift Card Survey," 2005.
- 3 *Consumer Reports*, "The gift of plastic," December, 2004.
- 4 "Gift Cards: What Franchisors Should Know."
- 5 Montgomery County, Maryland Office of Consumer Protection, "Consumer Gift Card Report 2005," 2005.
- 6 Beth McConnell, "Comments before the joint House Consumer Affairs and Finance Committees regarding the use and regulation of consumer gift cards and escheat rules," Pennsylvania Public Interest Research Group, April 20, 2005.
- 7 "Gift Cards: What Franchisors Should Know."

#### States that prohibit gift card expiration dates:

CA, CT, FL, ME, MN, MT, NH (less than \$100), OR, RI, WA

#### States that prohibit gift card service fees:

CA (except dormancy), CT, FL, HI, IL, KY, LA (except 1 time handling fee of \$1), MN, MT, NH, NM, ND, RI, VT, OK (with exception), OR, WA (with exception)

#### States that limit gift card expiration dates:

AR (2 yrs), HI (2 yrs), ID (5 yrs), IL (5 yrs), KY (1 yr), KS (5 yrs), LA (5 yrs), MA (7 yrs), MD (4 yrs), NH (5 yrs, more than \$100), NJ (2 yrs), NM (5 yrs), ND (6 yrs), OH (2 yrs), OK (5 yrs), SC (1 yr), TN (2 yrs), VT (3 yrs)

#### States that limit gift card service fees:

AR (2 yrs), KS (1 yr), MD (4 yrs), NV (1 yr), NJ (2 yrs, dormancy fees), NY (13 mos), NC (1 yr), OH (2 yrs), TN (2 yrs), TX (1 yr)

#### States requiring conspicuous notification of expiration dates:

AZ, AR, GA, IL, LA, NV, NE, NJ, NM, NY, TX, UT

#### States requiring conspicuous notification of service fees:

AZ, AR, GA, ME, NE, NJ, NY, NC, SC, UT

# Gift Card Consumer Protection

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## Gift Card Consumer Protection Act

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

### SECTION 1. SHORT TITLE

This Act shall be called the “Gift Card Consumer Protection Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

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

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

### SECTION 3. GIFT CARD CONSUMER PROTECTION

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

#### **(B) PROHIBITIONS**

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



2. A gift card may contain an expiration date if that date is disclosed clearly and legibly on the gift card and the gift card was:
  - a. issued pursuant to an awards or loyalty program where no money or thing of value was given in exchange for the gift card, or
  - b. donated to a charitable organization without any money or other thing of value being given in exchange for the gift card.
3. This section shall not apply to gift cards issued by banks, savings and loan associations, and credit unions to the extent that state restrictions on such federally-regulated financial institutions are pre-empted by federal law.
4. A gift card shall not escheat to the state.

#### **(C) ENFORCEMENT**

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

#### **SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008 and apply to gift cards sold on or after July 1, 2008.

# Payday Lending

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

## **Every year, over five million families are victimized by predatory payday lending.<sup>1</sup>**

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

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

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

## **Predatory payday lending disproportionately impacts women and African Americans.**

A national survey found that two out of three payday borrowers were women.<sup>3</sup> An Illinois study found that over 60 percent of payday borrowers sued by a major payday lender were women.<sup>4</sup> An industry newsletter describes the customer base as being over 60 percent women.<sup>5</sup> 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."<sup>6</sup> A 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.<sup>7</sup> Another North Carolina study found that African American households are almost twice as likely as white households to take out payday loans.<sup>8</sup>

## **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 2007, approximately 25,000 payday offices generated 100 million transactions. *Sixty Minutes* reported that across the nation, payday lending shops now outnumber McDonald's restaurants.

## **State laws generally fail to stop predatory payday lending practices.**

Thirty-six states (AL, AZ, AR, CA, CO, DE, FL, HI, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NH, NM, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VA, WA,

WY) have laws or regulations that specifically permit payday loans. In addition, Wisconsin has no small loan usury caps that apply to payday loans, effectively authorizing payday lending practices. Of the states that allow payday lending, only seven (CA, CO, IN, LA, MT, OK, VA) have statutes that prohibit local companies from partnering with out-of-state banks to evade state restrictions.<sup>9</sup>

## Thirteen states prohibit payday loans with increasingly effective enforcement.

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

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

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

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

Georgia's law caps small loans at 60 percent APR, prescribes harsh penalties for violators, and explicitly bars non-bank lenders from partnering

with out-of-state institutions in order to avoid the state usury limit. Soon after the law's 2004 enactment, several payday lenders and their bank partners sued the state, claiming it was unconstitutional. However, their effort failed and the 11th Circuit Court of Appeals eliminated the last legal threat to the Georgia law in April 2006.

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

## Endnotes

- 1 Keith Ernst, John Farris and Uriah King, "Quantifying the Economic Cost of Payday Lending," Center for Responsible Lending, February 2004.
- 2 Ibid.
- 3 Patricia Cirillo, "Payday Advance Consumer Satisfaction Survey," Cypress Research Group, May 2004.
- 4 Monsignor John Egan Campaign for Payday Loan Reform, "Greed: An In-depth Study of the Debt Collection Practices, Interest Rates, and Customer Base of a Major Illinois Payday Lender," March 2004.
- 5 Trihouse Enterprises, "Payday Loan Industry Newsletter," Issue 3-10, 2003.
- 6 "A Business Plan for The Cash Exchange," on file with the Center for Responsible Lending.
- 7 Uriah King, Wei Li, Delvin Davis and Keith Ernst, "Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina," Center for Responsible Lending, March 22, 2005.
- 8 Michael Stegman and Robert Faris, "Payday Lending: a Business Model that Encourages Chronic Borrowing," Center for Community Capitalism, University of North Carolina, 2003.
- 9 Jean Ann Fox, "Unsafe and Unsound: Payday Lenders Hide Behind FDIC Bank Charters to Peddle Usury," Consumer Federation of America, March 2004.
- 10 Ozlem Tanik, "Payday Lenders Target the Military; Evidence Lies in Industry's Own Data," Center for Responsible Lending, September 30, 2005..
- 11 Steven Graves and Christopher Peterson, *Predatory Lending and the Military*, March 2005.
- 12 "Unsafe and Unsound."

# Payday Lending

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## Payday Lending Prohibition Act

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

### SECTION 1. SHORT TITLE

This Act shall be called the “Payday Lending Prohibition Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

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

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

### SECTION 3. PAYDAY LENDING REFORM

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

#### **(A) PAYDAY LENDING PROHIBITED**

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

**(B) ENFORCEMENT**

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

**SECTION 4. SEVERABILITY**

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

**SECTION 5. EFFECTIVE DATE**

This Act shall become effective on July 1, 2008.

## CONSUMER PROTECTION RESOURCES

### Credit Card Interchange Fees

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Merchants Payments Coalition

### Financial Privacy

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Consumer Federation of California Education Foundation

Consumers Union

Electronic Privacy Information Center

U.S. PIRG

### Gift Card Consumer Protection

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Consumers Union

U.S. PIRG

### Payday Lending

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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 297.**

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# Electronic Recording of Interrogations

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

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

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

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

It is impossible to count how many people have been charged based on false confessions but released after exonerating evidence is discovered. A *Washington Post* investigation into one jurisdiction—Prince George’s County, Maryland—described four egregious cases of homicide detectives who coerced confessions that were proven false, which resulted in charges being dropped before a trial.<sup>3</sup> 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.<sup>4</sup>

## **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.<sup>5</sup> 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.<sup>6</sup>

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

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

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



### Ten states 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, and North Carolina enacted similar legislation in 2007. The Supreme Courts of Minnesota and Alaska were far ahead of the trend, mandating the electronic recording of custodial interrogations in 1984 and 1985.<sup>8</sup> Courts in Massachusetts, New Hampshire, New Jersey and Wisconsin have since ordered similar policies. Almost 500 localities have also adopted electronic recording, including Austin, Dallas and Houston, Texas; Denver, Colorado; San Diego County, California; Broward County, Florida; and Washington, D.C.

### 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.<sup>9</sup> 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."<sup>10</sup> Judges favor electronic recording because it streamlines the judicial process, and prosecutors and police argue that it helps to disprove phony claims of misconduct. In jurisdictions that tape custodial interrogations, motions by the defense to suppress a confession have declined, and guilty pleas have increased.

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

The only real argument against electronic recording is that cameras are costly to taxpayers. However, such technology—especially when purchased in bulk—has become quite inexpensive. Additionally, electronic recording saves tax money because it reduces multi-million dollar awards in false arrest and police misconduct lawsuits,

dramatically lowers the number of time-consuming evidence suppression hearings, and encourages more plea agreements before trial. Electronic recording also helps to prevent crimes by keeping police focused on the guilty rather than the innocent. For example, in the case of Keith Longtin, cited above, the real killer sexually assaulted seven more women while Longtin languished in jail. These crimes could have been prevented if law enforcement officers had kept working to solve the case.

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

### Endnotes

- 1 Steven Drizin and Marissa Reich, "Heeding the Lessons of History: The Need for Mandatory Recording of Police Interrogations to Accurately Assess the Reliability and Voluntariness of Confessions," *Drake Law Review*, 2004.
- 2 Richard P. Conti, "The Psychology of False Confessions," *The Journal of Credibility Assessment and Witness Psychology*, 1999.
- 3 April Witt, "Allegations of Abuses Mar Murder Cases," *Washington Post*, June 3, 2001.
- 4 Ken Armstrong, Steve Mills and Maurice Possley, "Coercive and illegal tactics torpedo scores of Cook County murder cases," *Chicago Tribune*, December 16, 2001.
- 5 Saul Kassin and Gisli Gudjonsson, "Mandatory Videotaping of All Police Interviews and Interrogations May Decrease False Confessions," *Psychological Science in the Public Interest*, 2005.
- 6 "Allegations of Abuses Mar Murder Cases."
- 7 Thomas Sullivan, "Electronic Recording of Custodial Interrogations: Everybody Wins," *Journal of Criminal Law and Criminology*, 2005.
- 8 *Minnesota v. Scales*, 518 N.W.2d 587 (Minn. 1984); *Stephan v. State*, 711 P.2d 1156 (Alaska 1985).
- 9 William Geller, "Police Videotaping of Suspect Interrogations and Confessions," Report to the National Institute of Justice, 1992.
- 10 Thomas Sullivan, "Police Experiences with Recording Custodial Interrogations," Northwestern University School of Law, Center on Wrongful Convictions, 2004.

# Electronic Recording of Interrogations

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## Electronic Recording of Interrogations Act

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

### SECTION 1. SHORT TITLE

This Act shall be called the “Electronic Recording of Interrogations Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

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

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

### SECTION 3. ELECTRONIC RECORDING OF INTERROGATIONS

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

**(A) DEFINITIONS**—In this section:

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

### **(B) ELECTRONIC RECORDING OF INTERROGATIONS REQUIRED**

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

sumed inadmissible.

3. The state may rebut a presumption of inadmissibility through clear and convincing evidence that the statement was both voluntary and reliable, and that law enforcement officers had good cause for failing to electronically record the entire interrogation. Examples of good cause include that:
  - a. The interrogation took place in a location other than a police station, correctional facility, or holding facility for prisoners and where the requisite recording equipment was not readily available;
  - b. The accused unambiguously 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, 2008. Section 3 of this Act shall take effect on July 1, 2009.

# Eyewitness Identification

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

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

An estimated 4,500 innocent people are convicted in the United States each year because of mistaken eyewitness identification.<sup>1</sup> Researchers have long known that mistaken eyewitness identification is the leading cause of wrongful convictions.<sup>2</sup> But the use of DNA evidence has led to a new focus on eyewitness identification by police, prosecutors and judges. Of more than 200 individuals who were convicted of crimes and subsequently exonerated by DNA evidence, more than 75 percent involved mistaken eyewitness identification.<sup>3</sup>

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

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

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

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

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

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

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

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

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

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

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

★ **Proper composition of line-up members**—Non-suspect (or “filler”) lineup members should be selected based on their resemblance to the description provided by the witness, yet should not stand out unduly from the suspect. Also, it

is generally accepted that photographic lineups should contain at least six photographs and live lineups should contain at least five individuals.

### States and localities have adopted eyewitness identification reforms.

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

*This policy summary relies in large part on information from the Innocence Project.<sup>8</sup>*

### Endnotes

- 1 Brian Cutler and Steven Penrod, *Mistaken Identification: The Eyewitness, Psychology and the Law*, 1995.
- 2 Gary Wells et al., “Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads,” *Law and Human Behavior*, 1998.
- 3 Innocence Project, “Eyewitness Identification Reform,” 2007.
- 4 Steven Penrod, “Eyewitness Identification Evidence: How Well Are Witnesses and Police Performing?” *Criminal Justice*, American Bar Association Criminal Justice Section, Spring 2003; Gary Wells and Elizabeth Olson, “Eyewitness Testimony,” *Annual Review of Psychology*, 2003.
- 5 “Eyewitness Testimony.”
- 6 Ibid.
- 7 Ibid.
- 8 The Innocence Project has a variety of model bills addressing eyewitness identification.

# Eyewitness Identification

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## Eyewitness Identification Reform Act

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

### SECTION 1. SHORT TITLE

This Act shall be called the “Eyewitness Identification Reform Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

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

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

### SECTION 3. EYEWITNESS IDENTIFICATION REFORM

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

**(A) DEFINITIONS**—In this section:

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



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

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

## EYEWITNESS IDENTIFICATION

13. Unless it is not practical, a video record of the identification procedure shall be made. If a video record is not practical, the reasons shall be documented and an audio record shall be made. If neither a video nor audio record are practical, the reasons shall be documented and the lineup administrator shall make a written record of the lineup. Whether video, audio, or in writing, the record shall include the following information:
- a. All identification and non-identification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's confidence statement.
  - b. The names of all persons present at the lineup.
  - c. The date, time and location of the lineup.
  - d. The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty of identification.
  - e. Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.
  - f. The sources of all photographs or persons used.
  - g. In a photo lineup, the photographs themselves.
  - h. In a live lineup, a photo or other visual recording of the lineup that includes all persons who participated in the lineup.

### (C) REMEDIES FOR NONCOMPLIANCE

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

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

### SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2008.



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# Gun Violence Prevention

- ✱ Every year, gun violence claims the lives of nearly 30,000 Americans.
- ✱ The Brady law is one of the most efficient law enforcement tools available and has prevented more than 1.3 million illegal firearms transactions.
- ✱ 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.
- ✱ Americans—including gun owners—strongly support gun restrictions.

## **Every year, gun violence claims the lives of nearly 30,000 Americans.**

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.<sup>1</sup>

## **The Brady law is one of the most efficient law enforcement tools available and has prevented more than 1.3 million illegal firearms transactions.<sup>2</sup>**

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.<sup>3</sup>**

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.<sup>4</sup>

## **More than 65 million handguns are in circulation in the United States today, a number that increases by two million each year.<sup>5</sup>**

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.

### Many states have strong laws that regulate firearms.

States have enacted a wide range of gun laws to protect their citizens. For example:

★ Seventeen states (CA, CT, FL, HI, IL, IA, MD, MA, MN, MO, NE, NJ, NY, NC, RI, SD, WI) require a license or permit, or mandate a waiting period, before the purchase of a handgun.

★ Seventeen states (CA, CT, CO, HI, IL, IA, MD, MA, MI, MO, NE, NJ, NY, NC, OR, PA, RI) have plugged the gun show loophole for handgun purchases.

★ Nineteen states (CA, CT, DE, FL, HI, IL, IN, IA, KS, MA, MD, MN, NY, NJ, NC, RI, TX, VA, WI) have “child access protection” laws that require adults to store loaded guns so that children can’t get access to them.

★ Seven states (CA, CT, HI, MD, MA, NJ, NY) ban or limit the sale of semiautomatic assault weapons.

★ Three states (CA, MD, VA) combat gun trafficking by prohibiting individuals from purchasing more than one handgun a month.

★ In 2007, California enacted a groundbreaking law requiring that all new semiautomatic handguns sold after January 1, 2010 must be equipped with microstamping technology to help police trace guns used in crime.

### Americans—including gun owners—strongly support gun restrictions.

An April 2007 ABC News poll found that 61 percent of Americans favor “stricter gun control,” while only 36 percent oppose it. The same poll found that 67 percent of Americans favor and only 30 percent oppose “a nationwide ban on the sale of assault weapons.” A 2001 Lake Snell Perry & 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 Brady Campaign to Prevent Gun Violence.*

### Endnotes

- 1 Philip Cook and Jens Ludwig, “Gun Violence: The Real Costs,” 2000.
- 2 Bureau of Justice Statistics, “Background Checks for Firearm Transfers, 2005,” November 2006.
- 3 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.
- 4 Bureau of Alcohol, Tobacco and Firearms, “Crime Gun Trace Reports (2000): National Report,” 2000.
- 5 “Guns in America: National Survey on Private Ownership and Use of Firearms, National Institute of Justice Research in Brief.”

# Gun Violence Prevention

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## 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 thumb-hole 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.
  - 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.

## GUN VIOLENCE PREVENTION

- 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, 2008.

## 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 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 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, 2008.

# GUN VIOLENCE PREVENTION

## 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.
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, 2008.

# 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, 2008.

## 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, 2008.

# Human Trafficking

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

## **About 15,000 women and girls are trafficked into the United States each year for coerced labor and sexual exploitation.<sup>1</sup>**

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

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

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

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

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

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

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

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

**Thirty-four states have criminalized human trafficking.**

AK, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NY, NC, OR, PA, RI, SC, TX, VA and WA have enacted laws that criminalize human trafficking.<sup>5</sup> Nine states enacted their laws in 2007.

*This policy summary relies in large part on information from the Center for Women Policy Studies.<sup>6</sup>*

## Endnotes

- 1 U.S. Department of State, "Ambassador John R. Miller Briefing on the Fifth Annual Trafficking in Persons Report," June 3, 2005.
- 2 Center for Women Policy Studies, "Resource Guide for State Legislators: Model Provisions for State Anti-Trafficking Laws," July 2005.
- 3 U.S. Department of State, "The 2006 Trafficking in Persons Report," June 2006.
- 4 "Resource Guide for State Legislators."
- 5 Center for Women Policy Studies, "Fact Sheet on State Anti-Trafficking Laws," October 2006.
- 6 The Center for Women Policy Studies has a comprehensive model state anti-trafficking law.

# Human Trafficking

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## Human Trafficking Prevention Act

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

### SECTION 1. SHORT TITLE

This Act shall be called the “Human Trafficking Prevention Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

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

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

### SECTION 3. PREVENTION OF HUMAN TRAFFICKING AND PROTECTION OF VICTIMS

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

#### **(A) CRIME OF HUMAN TRAFFICKING**

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

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

#### **(B) LEGAL PROTECTIONS FOR VICTIMS**

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

#### **(C) HELPING VICTIMS OBTAIN T-VISAS**

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

### **SECTION 4. ADMINISTRATION**

#### **(A) SOCIAL SERVICES FOR TRAFFICKING VICTIMS**

1. The Secretary of the Department of [Social Services] shall convene and chair a work group to develop written protocols for delivery of services to human trafficking victims. In addition to the Secretary, the work group shall include senior representatives from the Departments of [Health, Public Safety, Labor, and Education, the Attorney General, and five representatives from nonprofit organizations that provide assistance to trafficking victims].
2. The protocols shall set forth guidelines for providing for the social service needs of human trafficking victims, including housing, food, health and mental health care, English language classes, job training and placement. These services shall be available to victims of human trafficking without regard to their immigration status.
3. The work group shall finalize the protocols and submit them with a report to the legislature and the governor on or before July 1, 2009.

# HUMAN TRAFFICKING POLICY MODEL

## (B) LAW ENFORCEMENT TRAINING

1. On or before October 1, 2008, the Attorney General shall establish training standards for law enforcement officers on the subject of human trafficking. The course of instruction, learning and performance objectives, and training standards shall be developed by the Attorney General in consultation with experts in the field of human trafficking.
2. The training shall be compulsory for all state and local law enforcement officers and shall include:
  - a. Identification of human trafficking;
  - b. Communicating with traumatized persons;
  - c. Appropriate investigative techniques;
  - d. Collaboration with federal law enforcement officials;
  - e. Rights and protections afforded to victims;
  - f. Provision for documentation that satisfies the I-914 Supplement B Declaration of Law Enforcement Officer for Victim of Trafficking in Persons required by federal law; and
  - g. Availability of community resources to assist trafficking victims.
3. Where appropriate, the training presenters shall include human trafficking experts with experience in the delivery of services to victims of human trafficking.

## SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2008.



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# Innocence Protection

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

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

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

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

Since the advent of advanced DNA testing, 207 innocent people who had been convicted of serious crimes have been exonerated by DNA evidence. Sixteen of them were on death row.<sup>5</sup> More than 75 percent of these cases involved mistaken eyewitness identifications.<sup>6</sup> Nearly one in four involved false confessions.<sup>7</sup> Because of exonerations by DNA evidence, nearly three-quarters of Americans believe that at least one innocent person has been executed during the past five years.<sup>8</sup>

## **When an innocent person is convicted, the criminal remains free to commit more crimes.**

The wrongful conviction of an innocent American is doubly tragic. Not only must the innocent person endure prison and the tarnishing of his or her name, but the public is endangered by the criminal who remains at large. For example, an Ohio man named William Jackson was convicted of a series of rapes. After five years, it was determined that the serial rapist was actually another man who was similar in appearance and had the same last name.<sup>9</sup> How many others were victimized during those five years because the criminal justice system convicted the wrong man?

## **Access to post-conviction DNA testing protects the innocent.**

Sophisticated DNA testing has become available only recently, and in many cases, state legal processes have not caught up to the technology. It is all too common that innocent people have exhausted every possible appeal without being allowed access to DNA evidence in their cases. It is not unusual that DNA evidence available years before—even during the trial—was never tested, or that outdated DNA testing methods yielded unreliable results. In some cases, DNA evidence wasn't discovered until after the trial was over. For each of these scenarios, justice demands a route to post-conviction DNA testing without a costly, protracted legal battle to allow it—and thus, to allow the truth to be known.

### Federal law gives states a financial incentive to offer post-conviction DNA testing.

States are eligible for grants under the federal Justice for All Act of 2004 if they allow inmates reasonable access to DNA testing in order to establish their innocence.<sup>10</sup> The Act authorizes \$25 million for the Kirk Bloodsworth Post-Conviction DNA Testing Grant Program—named for the first death row inmate to be exonerated by DNA testing.

### Most states provide at least some access to post-conviction DNA testing.

Seven states (AZ, CA, IL, MI, NE, NC, TX) have strong laws guaranteeing access to post-conviction DNA testing and mandating the preservation of DNA evidence. Thirty-five other states (AR, CO, CT, DE, FL, GA, HI, ID, IN, IA, KS, KY, LA, ME, MD, MN, MO, MT, NV, NH, NJ, NM, NY, ND, OH, OR, PA, RI, TN, UT, VT, VA, WA, WV, WI) have DNA testing laws that are limited in scope and substance. Eight states (AL, AK, MA, MS, OK, SC, SD, WY) do not have any post-conviction DNA testing law at all.

### Several states have created Innocence Commissions to study wrongful convictions.

At least six states (CA, CT, IL, NC, PA, WI) have formed commissions to study the causes of and remedies for wrongful convictions. These commissions have differed widely in makeup, mandate and effectiveness. The North Carolina Actual Innocence Commission provides a good model for other states. It includes the Chief Justice of the state Supreme Court, the state attorney general, prosecutors, public defenders, law professors, judges and law enforcement officials. The panel reviews mistaken convictions—usually post-conviction DNA exonerations—identifies errors, and recommends procedures to avoid similar mistakes in the future.

### States have set up procedures to handle claims for compensation from innocent people who have been wrongfully convicted.

Twenty-two states (AL, CA, IL, IA, LA, ME, MD, MA, MO, MT, NH, NJ, NY, NC, OH, OK, TN, TX, VT, VA, WV, WI) have procedures to compensate the wrongfully convicted, although in many cases the compensation is very small. There is a recent trend toward more adequate compensation encouraged by the federal Justice for All Act of 2004. States have a solemn responsibility to help the innocent restore their lives.

*This policy summary relies in large part on information from the Innocence Project.<sup>11</sup>*

### Endnotes

- 1 C. Ronald Huff, *Convicted But Innocent: Wrongful Conviction and Public Policy*, 1996.
- 2 Brian Cutler and Steven Penrod, *Mistaken Identification: The Eyewitness, Psychology and the Law*, 1995.
- 3 Richard P. Conti, "The Psychology of False Confessions," *The Journal of Credibility Assessment and Witness Psychology*, 1999.
- 4 Barry Scheek, "The Case for Innocence," *Frontline*, October 2000.
- 5 Death Penalty Information Center, "Cases of Innocence 1973-Present," updated November 2007.
- 6 Innocence Project, "Eyewitness Identification Reform," 2007.
- 7 Steven Drizin and Marissa Reich, "Heeding the Lessons of History: The Need for Mandatory Recording of Police Interrogations to Accurately Assess the Reliability and Voluntariness of Confessions," *Drake Law Review*, 2004.
- 8 Gallup poll, May 2003.
- 9 *Convicted But Innocent: Wrongful Conviction and Public Policy*.
- 10 Public Law 108-405, signed October 30, 2004.
- 11 The Innocence Project has developed a series of model bills for state legislators.

# Innocence Protection

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## Innocence Protection Act

*Summary: The Innocence Protection Act ensures that all convicted persons have access to forensic testing that could prove their innocence.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Innocence Protection Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Deoxyribonucleic acid (DNA) testing has emerged as the most reliable forensic technique for identifying criminals when biological materials are left at a crime scene. Because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a judge or jury.
2. While DNA testing is increasingly commonplace in pretrial investigations today, it was not widely available in cases tried prior to 1994. Moreover, new forensic DNA testing procedures have made it possible to obtain results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce. Consequently, convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results.
3. In the past decade, there have been more than 100 post-conviction exonerations in the United States based upon DNA testing.
4. In at least 14 cases, post-conviction DNA testing that exonerated a wrongly convicted person also provided evidence that led to the apprehension of the actual perpetrator, thereby enhancing public safety.

**(B) PURPOSE**—This law is enacted by the legislature to protect public safety and guarantee the right of persons wrongfully convicted of crimes to prove their innocence.

### SECTION 3. DNA TESTING

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

**(A) DEFINITION**—In this section, the term “biological evidence” means the contents of a sexual assault examination kit and any item that contains blood, semen, hair, saliva, skin tissue, or other identifiable biological material, whether that material is catalogued separately (for example, on a slide, swab, or in a test tube) or is present on other evidence, including but not limited to clothing, ligatures, bedding or other household material, drinking cups, or cigarettes.

**(B) PETITION FOR POST-CONVICTION DNA TESTING**—A person convicted of a crime may at any time file a petition that requests the forensic DNA (deoxyribonucleic acid) testing of any evidence that was secured in relation to the investigation or prosecution that resulted in the judgment of conviction, and that may contain biological evidence. The petitioner shall serve a copy of such petition upon the attorney for the state. The state shall file its response within 30 days of the receipt of service. The court shall hear the petition no later than 90 days after it is filed.

**(C) ORDER FOR POST-CONVICTION DNA TESTING**—The court shall order DNA testing if it finds that:

1. A reasonable probability exists that the petitioner would not have been convicted, or would have received a lesser sentence, if favorable results had been obtained through DNA testing at the time of the original prosecution;
2. One or more of the items of evidence that the petitioner seeks to have tested is still in existence;
3. The evidence to be tested was secured in relation to the offense that is the basis of the challenged conviction, and was not previously subjected to DNA testing or can be subjected to additional DNA testing that provides a reasonable likelihood of more probative results;
4. The chain of custody of the evidence to be tested establishes that the evidence has not been tampered with, replaced or altered in any material respect or, if the chain of custody does not establish the integrity of the evidence, the testing itself has the potential to establish the integrity of the evidence. Evidence that has been in the custody of law enforcement, other government officials, or a public or private hospital shall be presumed to satisfy the chain-of-custody requirement of this subsection, absent specific evidence of material tampering, replacement, or alteration; and
5. The application for testing is made for the purpose of demonstrating innocence or the appropriateness of a lesser sentence, and not to unreasonably delay the execution of sentence or the administration of justice.

**(D) COUNSEL**

1. The court may, at any time, appoint counsel for an indigent petitioner.
2. If the petitioner has filed *pro se*, the court shall appoint counsel upon a showing that DNA testing may be material to the petitioner's claim of wrongful conviction.
3. The court, in its discretion, may refer *pro se* requests for DNA testing to qualified parties for further review, including, but not limited to, indigent defense organizations or clinical legal education programs, without appointing the parties as counsel at that time.
4. If the petitioner has retained private *pro bono* counsel (including, but not limited to, counsel from a nonprofit organization that represents indigent persons), the court may, in its discretion, award reasonable attorney's fees and costs at the conclusion of the litigation.

**(E) DISCOVERY**

1. At any time after a petition has been filed, the court may order the state to locate and provide the petitioner with any documents, notes, logs, or reports relating to items of physical evidence collected in connection with the case, or otherwise assist the petitioner in locating items of biological evidence that the state contends have been lost or destroyed. The court may further order the state to take reasonable measures to locate biological evidence that may be in its custody, or to assist the petitioner in locating evidence that may be in the custody of a public or private hospital, public or private laboratory, or other facility.

## INNOCENCE PROTECTION

2. If evidence was previously subjected to DNA testing, the court may order production of laboratory reports prepared in connection with the DNA testing, as well as the underlying data, and the laboratory notes.
3. If any DNA or other biological evidence testing was previously conducted by either the prosecution or defense without knowledge of the other party, such testing shall be revealed in the motion for testing or response, if any.
4. If the court orders DNA testing in connection with this section, the court shall order the production of any laboratory reports prepared in connection with the DNA testing, and may in its discretion order production of the underlying data, bench notes, or other laboratory notes.
5. The results of any post-conviction DNA testing conducted pursuant to this section shall be disclosed to the prosecution, the petitioner, and the court.

### (F) PRESERVATION OF EVIDENCE

1. All appropriate governmental entities shall retain all items of physical evidence that contain biological material which is secured in connection with a criminal case for the period of time that any person remains incarcerated, on probation or parole, civilly committed, or subject to registration as a sex offender in connection with that case. This requirement shall apply with or without the filing of a petition for post-conviction DNA testing, as well as during the pendency of proceedings under this section.
2. In cases where a petition for post-conviction DNA testing has been filed under this section, the state shall prepare an inventory of the evidence related to the case and submit a copy of the inventory to the defense and the court.
3. If evidence is intentionally destroyed after the filing of a petition under this section, the court shall impose appropriate sanctions on the responsible party or parties.

**(G) CHOICE OF LABORATORY**—If the court orders DNA testing, such testing shall be conducted by a facility mutually agreed upon by the petitioner and by the state and approved by the court. If the parties are unable to agree, the court shall designate the testing facility and provide parties with a reasonable opportunity to be heard on the issue of choice of laboratory. The court shall impose reasonable conditions on the testing to protect the parties' interests in the integrity of the evidence and the testing process.

**(H) PAYMENT FOR TESTING**—If DNA testing under this section is performed at a state or county crime laboratory, the state shall bear the costs of such testing. If testing is performed at a private laboratory, the court may require either the petitioner or the state to pay for the testing, as the interests of justice require. If the state or county crime laboratory does not have the ability or resources to conduct the type of DNA testing to be performed, the state shall bear the costs of testing at a private laboratory which does have such capabilities.

**(I) APPEAL**—The petitioner shall have the right to appeal a decision denying post-conviction DNA testing.

**(J) SUCCESSIVE PETITIONS**—If the petitioner has filed a prior petition for DNA testing, the petitioner may file, and the court shall adjudicate, a successive petition or petitions under this section provided the petitioner asserts new or different grounds for relief, including, but not limited to, factual, scientific, or legal arguments not previously presented, or the availability of more advanced DNA technology. The court may also, in its discretion, adjudicate any successive petition if the interests of justice so require.

**(K) ADDITIONAL ORDERS**

1. The court may in its discretion make such other orders as may be appropriate. This includes, but is not limited to, designating:
  - a. The type of DNA analysis to be used;
  - b. The testing procedures to be followed;
  - c. The preservation of some portion of the sample for replicating the testing;
  - d. Additional DNA testing, if the results of the initial testing are inconclusive or otherwise merit additional scientific analysis; and
  - e. The collection and DNA testing of elimination samples from third parties.
2. DNA profile information from biological samples taken from any person pursuant to a motion for post-conviction DNA testing shall be exempt from any law that requires disclosure of information to the public.

**(L) PROCEDURE AFTER TESTING RESULTS ARE OBTAINED**

1. If the results of forensic DNA testing are favorable to the petitioner, the court shall schedule a hearing to determine the appropriate relief to be granted. Based on the results of the testing and any evidence or other matter presented at the hearing, the court shall thereafter enter any order that serves the interests of justice, including an order:
  - a. Setting aside or vacating the petitioner's judgment of conviction, judgment of not guilty by reason of mental disease or defect, or adjudication of delinquency;
  - b. Granting the petitioner a new trial or fact-finding hearing;
  - c. Granting the petitioner a new sentencing hearing, commitment hearing, or dispositional hearing;
  - d. Discharging the petitioner from custody;
  - e. Specifying the disposition of any evidence that remains after the completion of the testing;
  - f. Granting the petitioner additional discovery on matters related to DNA test results or the conviction or sentence under attack, including, but not limited to, documents that pertain to the original criminal investigation, or the identities of other suspects; and
  - g. Directing the state to place any unidentified DNA profile obtained from post-conviction DNA testing into state and federal databases.

## INNOCENCE PROTECTION

2. If the results of the tests are not favorable to the petitioner, the court shall dismiss the petition and may make any further orders that are appropriate, including an order:
  - a. Providing that the parole board or a probation department be notified of the test results.
  - b. Requesting that the petitioner's DNA profile be added to the state convicted felon database.

**(M) CONSENT**—Nothing in this section shall be interpreted to prohibit a convicted person and the state from consenting to and conducting post-conviction DNA testing by agreement of the parties and without filing a petition for post-conviction DNA testing. If DNA test results obtained under testing conducted by consent of the parties are favorable to the petitioner, the petitioner may file, and the court shall adjudicate, a motion for post-conviction relief based on the DNA test results under this section.

### SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2008.

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## 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, 2008.

# Juvenile Transfer Reform

- ★ More than 200,000 children are prosecuted in adult courts each year.
- ★ Many of the young people transferred to adult court are nonviolent offenders who pose little threat to public safety.
- ★ African American youths are transferred to the adult criminal system in disproportionate numbers.
- ★ Children in the adult judicial system tend to become more serious criminals.
- ★ Children held in adult prisons are much more likely to be physically or sexually abused, or to commit suicide.
- ★ Juveniles transferred to adult courts often receive unnecessarily harsh sentences.
- ★ Transferring young people to adult courts strains the resources of correctional facilities and courts.
- ★ Judges are in the best position to decide when to transfer youths to adult courts.

## **More than 200,000 children are prosecuted in adult courts each year.<sup>1</sup>**

From 1992 to 1995, 40 states passed laws that make it easier to try juveniles as adults.<sup>2</sup> Eighteen states further expanded their juvenile transfer laws between 1998 and 2002.<sup>3</sup> The result is a flood of young people being handled by the adult criminal system and, in many cases, being placed in adult prisons. In fact, Nebraska is the only state not to expand the scope or strength of juvenile transfer laws since 1992.<sup>4</sup>

## **Many of the young people transferred to adult courts are nonviolent offenders who pose little threat to public safety.**

The U.S. Department of Justice reports that nearly 40 percent of juveniles incarcerated in adult prisons committed nonviolent offenses, generally drug or property crimes.<sup>5</sup> Minor offenses, including status offenses—running away from home or disobeying parents, for example, which are not illegal for adults—as well as petty shoplifting and failure to pay traffic tickets have resulted in juvenile detention in adult prisons.<sup>6</sup>

## **African American youths are transferred to the adult criminal system in disproportionate numbers.**

Every year from 1990 to 1999, more black youths were transferred to adult court than children of any other racial group.<sup>7</sup> Today, 67 percent of

juvenile defendants in adult court are African American, and 77 percent of juveniles sent to adult prison are racial minorities.<sup>8</sup>

## **Children in the adult judicial system tend to become more serious criminals.**

There is convincing evidence that juvenile transfers lead to increased recidivism. For example, a Florida study found that 49 percent of youths transferred to adult courts were arrested for future crimes, compared to 37 percent of those retained in the juvenile justice system. Twice as many youths transferred to the adult system as youths retained in the juvenile system were rearrested for more serious crimes.<sup>9</sup> Studies in New Jersey and New York generated similar results, and also found that, on average, transferred youths were rearrested sooner after release.<sup>10</sup>

## **Children held in adult prisons are much more likely to be physically or sexually abused, or to commit suicide.**

Youths held in adult jails are eight times more likely to commit suicide, five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50 percent more likely to be assaulted with a weapon than youth in juvenile facilities.<sup>11</sup> Youths in adult prisons also show far higher rates of psychological stress than their juvenile facility counterparts, often exhibiting “the same types of mental health problems experienced by soldiers returning from war and survivors of

natural disasters.”<sup>12</sup> Subjecting children to these conditions not only jeopardizes their safety, but it makes their rehabilitation almost impossible.

### **Juveniles transferred to adult courts often receive unnecessarily harsh sentences.**

One study found that juveniles in adult courts receive sentences that are 83 percent more severe than adults in similar cases, concluding that “judges may assign greater levels of culpability and dangerousness to transferred juveniles than to young adult offenders.”<sup>13</sup>

### **Transferring young people to adult courts strains the resources of correctional facilities and courts.**

The Office of Juvenile Justice and Delinquency Prevention found that the increased transfer of juveniles to the adult corrections system strained already-overburdened criminal courts and jails. Sending juveniles to adult prisons also creates costly logistical, programming and security concerns for corrections administrators. All of these factors put public safety at risk.

### **Judges are in the best position to decide when to transfer youths to adult courts.**

The American Bar Association (ABA) recommends that a judge make the decision to transfer a youth to adult court—only after finding probable cause to believe the juvenile has committed the offense, and determining that the juvenile court system cannot properly handle him or her. But only five states (HI, KS, ME, MO, NH) follow the ABA standard. Fourteen states (AZ, AR, CA, CO, FL, GA, LA, MI, MT, NE, OK, VT, VA, WY) give prosecutors, instead of judges, the discretion to decide whether to charge certain juveniles in adult courts. Thirty states (AL, AK, AZ, CA, CT, DE, FL, GA, ID, IL, IN, IA, LA, MD, MA, MN, MS, MT, NV, NM, NY, OK, OR, PA, SC, SD, UT, VT, WA, WI) automatically transfer juvenile cases for certain types of crimes. In 2007, Connecticut reversed its policy of transferring all offenses committed by 16- or

17-year olds to the adult court system. After the Connecticut law goes into effect in 2010, only two states (NY, NC) will automatically transfer all crimes by 16- or 17-year olds to adult courts.

*This policy summary relies in large part on information from the National Juvenile Defender Center.*

### **Endnotes**

- 1 Patricia Allard and Malcolm Young, “Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners,” Sentencing Project, 2002.
- 2 Patrick Griffin, Patricia Torbet and Linda Szymanski, “Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions,” Office of Juvenile Justice and Delinquency Prevention, 1998.
- 3 Patrick Griffin, “National Overviews,” National Center for Juvenile Justice, 2003.
- 4 Marilyn Elias, “Is Adult Prison Best for Juveniles?” *USA Today*, September 20, 2006.
- 5 J. Steven Smith, “Adult Prisons: No Place for Kids,” *USA Today Magazine*, July 2002.
- 6 Building Blocks for Youth, “Children in Adult Jails,” 2006.
- 7 Office of Juvenile Justice and Delinquency Prevention, *Juvenile Court Statistics*, 1999.
- 8 Bureau of Justice Statistics, “Juvenile Felony Defendants in Criminal Courts,” 1998, quoted in Malcolm Young and Jenni Gainsborough, “Prosecuting Juveniles in Adult Court, An Assessment of Trends and Consequences,” January 2000.
- 9 Florida Department of Juvenile Justice, “Trends in Transfer of Juveniles to Adult Criminal Court,” Management Report No. 02-03, January 2002.
- 10 “Children in Adult Jails.”
- 11 Jeffrey Fagan, M. Frost and T.S. Vivona, “Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy,” *Juvenile and Family Court*, 1989.
- 12 MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, “The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Adult Criminal Court,” Issue Brief 5, September 2006.
- 13 Megan Kurlychek and Brian Johnson, “The Juvenile Penalty: A Comparison of Juvenile and Young Adult Sentencing Outcomes in Criminal Court,” 2004.

# Juvenile Transfer Reform

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## Juvenile Transfer Reform Act

*Summary: The Juvenile Transfer Reform Act allows judges to transfer defendants from juvenile to adult courts based only upon consideration of specific criteria.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Juvenile Transfer Reform Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Each year in [State], more than [insert number] children are prosecuted in adult courts, and many of them are nonviolent offenders.
2. When children are handled in adult courts, they are more likely to become long-term criminals, and if held in adult prisons, are much more likely to be physically or sexually abused, or to commit suicide.
3. Judges are in the best position to decide whether a youth should be tried in adult courts.

**(B) PURPOSE**—This law is enacted to promote public safety, reduce recidivism, and improve the handling of children in the criminal justice system.

### SECTION 3. JUVENILE TRANSFERS

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

**(A) COURT HEARING**—When a juvenile is charged with committing an act which would be a [Class A, B or C/serious felony] if committed by an adult, upon request of the prosecuting attorney, the court shall hold a hearing to determine whether the case should be transferred from the jurisdiction of Juvenile Court to the [Superior/adult] Court.

**(B) RIGHTS ADVISED**—The court shall advise the juvenile and his or her parents, guardian or legal custodian of the possible consequences of a transfer, the right to be represented by counsel, and other constitutional and legal rights.

**(C) FACTORS FOR TRANSFER**—The court shall transfer the case from the jurisdiction of the Juvenile Court to the [Superior/adult] Court if it finds that the state has established by a preponderance of the evidence that such transfer is appropriate, based upon consideration of the following factors:

1. **Seriousness of the crime**—the nature and seriousness of the offense, with greater weight being given to offenses against a person than against property; whether the offense was committed in an aggressive, violent, premeditated or intentional manner.
2. **Characteristics of the juvenile**—the record and previous history of the juvenile; the age of the juvenile; the juvenile’s emotional attitude and pattern of living.

3. **Public safety**—whether the protection of the community requires commitment of the juvenile for a period longer than the greatest commitment authorized by juvenile criminal law; whether the protection of the community requires commitment of the juvenile to a facility that is more secure than any available in the juvenile correctional system.
4. **Rehabilitation**—whether future criminal conduct by the juvenile is more likely to be deterred by programs and services available in the juvenile correctional system or in the adult correctional system.

**SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

## **CRIMINAL JUSTICE RESOURCES**

### **Electronic Recording of Interrogations**

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

### **Eyewitness Identification**

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Brennan Center for Justice  
Innocence Project

### **Human Trafficking**

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Center for Women Policy Studies

### **Innocence Protection**

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American Bar Association  
American Civil Liberties Union  
Death Penalty Information Center  
The Innocence Project

### **Juvenile Transfer Reform**

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American Bar Association Juvenile Justice Center  
Coalition for Juvenile Justice  
National Juvenile Defender Center  
Office of Juvenile Justice and Delinquency Prevention

**A full index of resources with contact information can be found on page 297.**

# Education

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# Mandatory Testing

- ✱ The federal No Child Left Behind Act of 2001 dramatically increases the use and importance of standardized tests.
- ✱ Standardized tests are poor measurements of student achievement.
- ✱ An emphasis on standardized testing causes “teaching to the test.”
- ✱ An emphasis on standardized testing drives quality teachers out of the profession.
- ✱ Since standardized test scores can fluctuate rapidly, they are virtually useless for comparing a school’s progress from one year to the next.
- ✱ The Comprehensive School Assessment Act reduces the state’s reliance on standardized testing.
- ✱ The School Testing Right to Know Act highlights the primary causes of low student achievement.

## **The federal No Child Left Behind Act of 2001 dramatically increases the use and importance of standardized tests.**

President Bush’s No Child Left Behind Act of 2001 requires annual “assessments” of all students in grades three through eight in reading and math. Periodic science assessments will be added in the 2007-08 school year. These assessments are used to measure each school’s adequate yearly progress (AYP) toward the goal of making every public school student “proficient” in these subjects within 12 years. Schools that fail to make the required progress are declared “low performing” and are subject to sanctions.

## **Standardized tests are poor measurements of student achievement.**

Standardized tests reward the ability to quickly answer questions that do not require critical thinking or genuine analysis. They cannot measure writing, mathematical, scientific or reasoning skills, or gauge a student’s grasp of social science concepts. They cannot adequately assess thinking skills or predict what students can do when presented with real-world tasks.

## **An emphasis on standardized testing causes “teaching to the test.”**

Schools in low-income areas are under the most pressure to increase test scores. To raise scores, schools may drop entire subjects, like art, foreign languages, music and drama. They may abandon instruction of skills that tests don’t measure, such as research or laboratory experiments. Instead of aiming for actual reading comprehension and literacy, lessons begin to consist of short passages followed by multiple-choice questions. Writing becomes a series of lessons to master the “five-paragraph essay,” a form useless outside of standardized tests. Incessant drills and practice tests waste time that should be devoted to increasing students’ real knowledge and skills. Library budgets are spent on test prep materials. The major consequence of teaching to the test is that students are, in fact, left behind—they are not taught the knowledge and skills required to be successful in life.

## **An emphasis on standardized testing drives quality teachers out of the profession.**

Good teachers are often discouraged, even disgusted, by an overemphasis on testing. Teachers are converted to test-taking coaches, giving tips like “what to do with only one minute left.” Professional development is reduced to training teachers to be better test coaches. It is absurd to believe that the “best and brightest” will want to become teachers when teaching is reduced to test prep.



**Since standardized test scores can fluctuate rapidly, they are virtually useless for comparing a school's progress from one year to the next.**

Even at the very best schools, standardized test scores do not consistently rise every year. They fluctuate from year to year based on any number of factors, including student turnover, new teachers or even a bad flu season. An in-depth study of test scores in North Carolina elementary schools found, for example, that 70 percent of the year-to-year change in average test scores was caused by external factors rather than actual changes in student performance.<sup>1</sup> At the same time, a growing number of research studies have shown that the scores used to judge schools are often inaccurate because of statistical margins of error. This means that some satisfactory schools are punished for inaccurate bad scores while some unsatisfactory schools are rewarded for inaccurate good scores.

**The Comprehensive School Assessment Act reduces the state's reliance on standardized testing.**

The No Child Left Behind Act does not specifically mandate annual statewide standardized tests. It requires "yearly student academic assessments."<sup>2</sup> The model Comprehensive School Assessment Act is similar to Nebraska's School-based Teacher-led Assessment and Reporting System (STARS), which complies with No Child Left Behind without overrelying on standardized tests.<sup>3</sup> The model act holds the state Board of Education responsible for defining the core body of knowledge and skills that students should acquire. It directs local school boards to create assessment systems that meet the needs of their student populations and provide fair and comprehensive measurements of student learning. Each assessment system must be approved by the state education authorities and be consistent with uniform statewide standards.

**The School Testing Right to Know Act highlights the primary causes of low student achievement.**

Despite overwhelming evidence to the contrary, President Bush's No Child Left Behind Act is based on the assumption that student achievement is primarily the result of the instruction children receive in their current school. This premise focuses the blame for low-performing schools on teachers and school administrators, and distracts attention from the major causes of low student achievement: the special challenges faced by low-income students and a lack of resources available to meet those challenges. The School Testing Right to Know Act requires that whenever a government entity releases standardized test scores, it must simultaneously release school-specific data on the percentage of students who qualify for free or reduced-price meals, per-pupil expenditures, and average class size. With this information, policymakers and the public will have a more accurate idea of the real problems that must be addressed to ensure that our school-children can succeed.

*This policy summary relies in part on information from the National Center for Fair & Open Testing.*

## Endnotes

- 1 Monty Neill, Lisa Guisbond and Bob Schaeffer, "Failing our Children: How No Child Left Behind Undermines Quality and Equity in Education," National Center for Fair and Open Testing, May 2004.
- 2 20 U.S.C. § 6311(a)(3) 2006.
- 3 Sonja Steptoe, "How Nebraska Leaves No Child Behind," *Time Magazine*, May 30, 2007.

# Mandatory Testing

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## Comprehensive School Assessment Act

*Summary: The Comprehensive School Assessment Act allows local school boards to create student assessment systems that do not unduly rely on standardized tests.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Comprehensive School Assessment Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. The federal No Child Left Behind Act requires “yearly student academic assessments” in public school grades three through eight. The Act does not specifically mandate annual statewide standardized tests.
2. An emphasis on standardized testing results in teaching to the test, skews school programs and priorities, and discourages quality teachers—sometimes driving them out of the profession. As a result, it will inhibit, rather than support, high-quality learning, and may well cause more students to be left behind.
3. The best, most accurate school assessment system is one that is locally created and operated following established guidelines for the development and use of multiple assessment measures.

**(B) PURPOSE**—This law is enacted to meet the requirements of federal law while providing [State] schools and schoolchildren with the highest quality assessment system.

### SECTION 3. COMPREHENSIVE SCHOOL ASSESSMENT

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

#### **(A) COMPREHENSIVE ASSESSMENTS BASED ON STATEWIDE STANDARDS**

1. The state [Board of Education] shall adopt statewide academic standards embodied in curriculum frameworks in the areas of English, mathematics, science and technology, history and social science, foreign languages, and the arts. Such standards shall delineate essential knowledge and skills, that, taken as a whole will not require more than [one half/two-thirds] of typical instructional time to enable students to meet, thereby allowing time and opportunity for individual student interests and school or district standards designed to meet special interests (e.g., an arts school) or local interests (e.g., agricultural science). State standards and frameworks for each subject area shall be approved by the relevant professional body of educators.
2. Each school district shall develop and adopt a system for assessing on an annual basis the extent to which the district, and every public school within the district, succeeded in improving or failed to improve student performance. Student performance shall be measured as the acquisition of the skills, competencies and knowledge called for by the statewide academic standards and curriculum frameworks, as well as local school and district standards and expectations, and the assessment of student progress toward areas of their own particular interest.

3. Each assessment system shall be designed to fairly and comprehensively measure outcomes and results regarding student performance, including complex and higher order thinking and application, and extended student work, and to improve the effectiveness of curriculum and instruction. In its design and application, each assessment system shall employ a variety of assessment instruments, including classroom-based and teacher-made assessments, using either comprehensive or statistically valid sampling. Each school or district shall include in its plan a description of how it will use assessment information to improve teaching and guide professional development, and how information will be summarized for public reporting purposes.
4. Instruments used as part of the assessment system shall be criterion referenced, assessing whether students are meeting the statewide academic standards. Such instruments shall include work samples, projects, and portfolios based on regular student classroom work to facilitate authentic and direct gauges of student performance.
5. The state [Board of Education] shall provide technical assistance to schools and school districts to design and implement the evaluation systems required by this section, including the development of models for local evaluation systems.

#### **(B) STATE APPROVAL OF ASSESSMENT SYSTEMS**

Every school district shall submit a written description of its proposed assessment system to the state [Board of Education] for review and approval prior to implementation. Each assessment system shall include data on student achievement based on state standards that can be compared from district to district and reported in a uniform manner on forms designed by the state [Board of Education]. The state [Board of Education] shall not approve an assessment system unless it meets or exceeds the requirements of Section 1111(a)(3) of the federal No Child Left Behind Act of 2001, 20 U.S.C. Sec. 6311(a)(3).

#### **(C) PUBLIC REPORTING OF ASSESSMENT RESULTS**

Each school district shall annually report to the public how its students performed under the assessment system established by the district. The report shall be in a format approved by the state [Board of Education], and shall break down the data by school, race, gender, special education, or transitional bilingual education status and such other categories as are required by the state [Board of Education], provided that data will not allow identification of individual students.

#### **SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

# MANDATORY TESTING

## School Testing Right to Know Act

*Summary: The School Testing Right to Know Act requires that the release of any school test scores must be accompanied by other relevant information.*

### SECTION 1. SHORT TITLE

This Act shall be called the “School Testing Right to Know Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. The federal No Child Left Behind Act aims to dramatically increase the use and importance of primary and secondary school standardized tests.
2. However, standardized test scores do not accurately assess the causes of low student achievement. Instead, they distract attention from the major causes of low academic performance: poverty and the lack of resources available to meet low-income students’ needs.
3. When standardized test scores are released to the public, policymakers, parents and taxpayers have the right to know all relevant data relating to these scores.

**(B) PURPOSE**—This law is enacted to provide policymakers and the public with accurate information with which to make future decisions about the direction of education policy in this state.

### SECTION 3. SCHOOL TESTING RIGHT TO KNOW

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

No agency of the state, or any governmental entity within the state, shall release any school-by-school or district-by-district listing of primary or secondary school standardized test scores to the public without simultaneously listing the following information for the same schools or districts:

1. Percentage of students who qualify for free or reduced-price meals.
2. Student mobility rate—that is, a measure of students who enter or leave a school during the school year.
3. Per-student expenditure by school, not including district-wide administrative costs.
4. Average class size.
5. For students who enter a school after grade three, the percentage whose skills are assessed at below basic upon entering the school.
6. Percentage of students who qualify for special education services.

### SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2008.

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# Teachers for At-Risk Schools

- ✱ Millions of schoolchildren in at-risk schools are taught by less-qualified, less-experienced teachers.
- ✱ At-risk schools have a hard time attracting and retaining well-qualified teachers.
- ✱ The No Child Left Behind Act does not solve the problem.
- ✱ Without effective teachers, the 13 million children who grow up in poverty will be left behind.
- ✱ Financial incentives can help attract well-qualified teachers to at-risk schools.
- ✱ Americans strongly support financial incentives to bring well-qualified teachers to at-risk schools.
- ✱ States are using financial incentives to attract and retain well-qualified teachers.

## **Millions of schoolchildren in at-risk schools are taught by less-qualified, less-experienced teachers.**

By any measure, schools in high-poverty areas employ fewer well-qualified teachers than schools in more affluent areas.<sup>1</sup> For example, only 19 percent of National Board Certified Teachers (NBCT) work at schools in the bottom third of performance for their state and only 12 percent of NBCTs work in schools where more than 75 percent of students receive free or reduced-price lunches.<sup>2</sup> “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.<sup>3</sup>

## **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.<sup>4</sup> 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.<sup>5</sup>

## **The No Child Left Behind Act does not solve the problem.**

The federal No Child Left Behind Act (NCLB) declared that by the end of the 2005-06 school year, 100 percent of teachers of core academic classes must be “highly qualified” in their content area. Not a single state has accomplished that goal.<sup>6</sup> While the federal Department of Education is requiring each state to submit a plan that explains how it will someday supply “highly qualified” teachers to every classroom, it is largely an exercise in paper-pushing. Experts have roundly criticized NCLB’s definition of “highly qualified.” The major organizations that study teacher quality—including the Education Trust, Education Commission of the States, the Center on Education Policy and the National Center on Teacher Quality—report that state rules are so full of loopholes that the NCLB standard is meaningless.<sup>7</sup>

## **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.<sup>8</sup> NCLB cannot overcome—and does not attempt to address—the non-school factors that keep poor children from achieving academic success.<sup>9</sup> Yet there is no doubt that teachers can make an enormous difference in children’s lives, and that the best teachers are most needed to meet the enormous challenges in at-risk schools. If we don’t improve the quality of teaching in at-risk schools, few of those children will be able to escape a life of poverty.

### **Financial incentives can help attract well-qualified teachers to at-risk schools.**

While school districts in at-risk areas can improve recruitment, training and mentoring programs to attract and retain teachers, states can make the biggest difference in one area: funding. There is no doubt that financial incentives bring high-quality teachers to high-poverty areas—where they are most needed.<sup>10</sup>

### **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.<sup>11</sup>

### **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.<sup>12</sup>

### **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 Letter from U.S. Secretary of Education Margaret Spellings to Chief State School Officers, July 23, 2007.
- 7 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.”
- 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

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## 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, 2008.



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# Tutoring Services—Minimum Standards

- ✱ The No Child Left Behind Act (NCLB) compels struggling school systems to divert hundreds of millions of dollars to independent tutoring services.
- ✱ Private tutoring companies are draining Title I school funds.
- ✱ There is scant evidence that tutoring company services actually increase academic achievement.
- ✱ NCLB provides no minimum standards for tutoring company programs.
- ✱ Tutoring companies are not held accountable for their services.
- ✱ States can set their own minimum standards for tutoring services.
- ✱ States should require that tutoring companies coordinate with classroom teachers, employ well-qualified tutors, and demonstrate their effectiveness through state-approved tests.

## **The No Child Left Behind Act (NCLB) compels struggling school systems to divert millions of dollars to independent tutoring services.**

Under NCLB, schools that receive Title I funding and fail to achieve “adequate yearly progress” (AYP) for two consecutive years must allow students to transfer to other schools. Schools that fail to meet AYP targets for a third year must offer “supplemental services”—afterschool tutoring—to students from low-income families. School districts must set aside up to 20 percent of their Title I budgets to pay for transfers and tutoring.<sup>1</sup> During the 2005-06 school year, school districts around the country spent over a half-billion dollars to provide services to 515,500 students.<sup>2</sup>

## **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.<sup>3</sup> 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.<sup>4</sup> Because only about ten percent of students eligible for paid tutoring are actually enrolled, these companies’ potential profits are enormous.<sup>5</sup>

## **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.<sup>6</sup>

## **NCLB provides no minimum standards for tutoring company programs.**

Standards have been touted as a vital component of NCLB—but there are no meaningful federal standards for tutoring services. In fact, these programs are often inadequately staffed and poorly designed. NCLB required that all teachers be “highly qualified” by September 2006, but tutors need not be qualified at all.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

### **Tutoring companies are not held accountable for their services.**

A study by the U.S. Government Accountability Office (GAO) found that few school districts have evaluated the quality of the tutoring services they buy; those that have attempted evaluations generally relied on faulty information.<sup>10</sup> 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.<sup>11</sup> State education agencies have used this authority to mandate some minimum standards, but most states stand aside as hundreds of companies with questionable records take advantage of lucrative tutoring contracts at the expense of low-income at-risk children.

### **States should require that tutoring companies coordinate with classroom teachers, employ well-qualified tutors, and demonstrate their effectiveness through state-approved tests.**

Illinois has implemented strong standards for tutoring services. Other states should follow Illinois’ lead and require:

- ★ **Coordination**—Tutoring providers should clearly demonstrate that their programs are aligned with state learning standards and coordinated with classroom instruction.
- ★ **Qualifications**—At a minimum, tutors should meet NCLB requirements for paraprofessionals—that is, a high school diploma or equivalent and the completion of

two years of college-level study. In addition, tutors who teach more than five students at a time should have experience in classroom management.

- ★ **Effectiveness**—Tutoring companies should provide evidence that their students achieve significant improvements on the state tests used as assessments for NCLB, compared against an appropriate control group.

### **Endnotes**

- 1 No Child Left Behind Act, § 1116(e), enacted 2001.
- 2 David Hoff, “Provision on Tutoring Raises Renewal Issues,” *Education Week*, October 10, 2007.
- 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 Patricia Burch, “Supplemental Education Services Under NCLB: Emerging Evidence and Policy Issues,” The Great Lakes Center for Education Research & Practice, University of Wisconsin-Madison, May 2007.
- 7 Susan Saulny, “A Lucrative Brand of Tutoring Grows Unchecked,” *New York Times*, April 4, 2005.
- 8 “Increasing Bureaucracy or Increasing Opportunities?”
- 9 Anupreeta Das and Amanda Paulson, “Need a Tutor? Call India,” *Christian Science Monitor*, May 23, 2005; Greg Toppo, “Offshore learning online: Overseas tutors help students in USA,” *USA Today*, August 30, 2005.
- 10 “No Child Left Behind Act: Education Actions Needed to Improve Local Implementation and State Evaluation of Supplemental Education Services.”
- 11 No Child Left Behind Act, § 1116(e)(4), enacted 2001.

# Tutoring Services—Minimum Standards

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## Minimum Standards for Tutoring Services Act

*Summary: The Minimum Standards for Tutoring Services Act ensures that tutoring services required by the No Child Left Behind Act be high-quality and cost-effective.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Minimum Standards for Tutoring Services Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Because of the federal No Child Left Behind Act, school systems are compelled to spend millions of dollars on independent tutoring services.
2. In many cases, tutoring services are paid millions of dollars with little or no accountability.
3. The No Child Left Behind Act empowers states to apply their own minimum standards for tutoring services.

**(B) PURPOSE**—This law is enacted to improve public education by placing minimum standards on for-profit and nonprofit entities that provide supplemental educational services pursuant to Section 1116(e) of the federal No Child Left Behind Act.

### SECTION 3. MINIMUM STANDARDS FOR TUTORING SERVICES

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

**(A) DEFINITIONS**—In this section:

1. “Department” means the state Department of [Education].
2. “Provider” means a for-profit or nonprofit entity that provides or seeks to provide supplemental educational services pursuant to Section 1116(e) of the federal No Child Left Behind Act.

#### **(B) COORDINATION STANDARDS**

1. To qualify for state approval, providers must clearly demonstrate how their programs are aligned with state learning standards and local curricula, how they will communicate and coordinate with students’ teachers, and how they will link tutoring content to the academic programs their students experience in school.
2. Any contract for supplemental educational services shall be revoked if a provider fails, in practice, to meet the coordination standards in paragraph (B)(1).

#### **(C) QUALIFICATION STANDARDS**

1. To qualify for state approval, providers must clearly demonstrate that each tutor meets the minimum requirements for paraprofessionals under the federal No Child Left Behind Act, and that each tutor who teaches more than five students at a time has prior experience in managing a classroom of primary or secondary school students.

2. Any contract for supplemental educational services shall be revoked if a provider fails, in practice, to meet the qualification standards in paragraph (C)(1).

**(D) EFFECTIVENESS STANDARDS**

1. To qualify for state approval, providers must clearly demonstrate that their program has improved student achievement for students previously served, by providing evidence that those students achieved significant improvements, compared to an appropriate control group, on the [specify the state tests used as assessments for NCLB].
2. Any contract for supplemental educational services shall be revoked if a provider fails, in practice, to meet the effectiveness standards in paragraph (D)(1), as measured each year.

**(E) INTERNET TUTORING PROHIBITED**

1. Providers must provide their tutoring services in-person. Providers shall not be paid for electronic tutoring via the Internet, an intranet or other electronic network, or educational software run on individual computers.
2. Paragraph (E)(1) does not prohibit providers from offering electronic tutoring as an additional resource for students.

**(F) ENFORCEMENT**

1. The Department shall promulgate regulations to enforce this section.
2. The Department shall create a complaint process for parents, students, teachers, local school boards, and others to determine whether providers are in compliance with this section.
3. The Department shall investigate the allegations set forth in any complaint and make an independent determination as to whether the allegations warrant further action.
4. The Department may conduct on-site visits to ensure compliance with this section or to investigate any issues raised by a complaint. The on-site investigation team may examine any provider's records and conduct interviews to determine whether there has been a violation.

**SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

## EDUCATION RESOURCES

### Mandatory Testing

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American Federation of Teachers  
National Center for Fair & Open Testing  
National Education Association  
Public Education Network

### Teacher for At-Risk Schools

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Learning Point Associates  
National Education Association

### Tutoring Services—Minimum Standards

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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 297.**

# Elections

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# Election Day Registration

- ★ Hundreds of thousands of Americans could not exercise their right to vote in the last presidential election due to inefficient or discriminatory voter registration systems.
- ★ Voter registration deadlines limit voter participation.
- ★ Nine 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.

## **Hundreds of thousands of Americans could not exercise their right to vote in the last presidential election 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, and in many cases provisional ballots cast were not counted.<sup>1</sup>

## **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 34 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.<sup>2</sup> The 14 percent who became more interested during the final month of the campaign generally could not vote unless they were already registered.

## **Nine 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.<sup>3</sup> In 2005, Montana adopted a law that permits Election Day registration and voting at county election administrators' offices. Iowa and North Carolina adopted Election Day registration in 2007.

## **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 Election Day registration states had a combined turnout of almost 74 percent.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>



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

Officials in the Election Day registration states report minimal incidence of fraud and no unusual administrative problems. 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 and have enough materials.

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

The major 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, Election Day registration lowers other costs of processing provisional ballots and handling the onslaught of forms turned in just before the voter registration deadline.

### **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 greatly reduces the need for provisional ballots. Most importantly, while provisional ballots often go uncounted, Election Day registration provides certainty to citizens that their votes will count.

### **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.<sup>7</sup> Research has found that Election Day registration could increase youth turnout in presidential elections by as much as 14 percent.<sup>8</sup>

*This policy summary relies in large part on information from Dēmos.*

### **Endnotes**

- 1 Election Incident Reporting System, “Nationwide Election Incidents,” 2004.
- 2 CNN/*USA Today*/Gallup polls conducted September 11-14, 2004 and October 15-18, 2004.
- 3 An additional state, North Dakota, does not require voter registration.
- 4 Dēmos, “High 2004 Turnout for States with Election Day Registration,” January 10, 2005.
- 5 Craig Leonard Brians and Bernard Grofman, “Election Day Registration’s Effect on U.S. Voter Turnout,” *Social Science Quarterly*, March 2001.
- 6 Medill School of Journalism and Medill News Service, “America’s No-Shows,” Northwestern University, May 2001.
- 7 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.
- 8 Mary Fitzgerald, “Easier Voting Methods Boost Youth Turnout,” CIRCLE Working Paper, February 2003.

# Election Day Registration

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## 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, 2008.

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

**[www.stateaction.org](http://www.stateaction.org)**

# Voter Identification and Integrity

- ★ The 2000 election severely damaged public confidence in the integrity of our voting systems.
- ★ A failure in voter identification, however, was not part of the problem in the 2000 election.
- ★ Voter fraud is exceptionally rare.
- ★ Existing criminal penalties successfully deter voter fraud.
- ★ Restrictive voter identification requirements don't solve voter fraud.
- ★ Restrictive voter identification requirements make election officials' jobs harder.
- ★ Restrictive voter identification requirements disfranchise millions of legitimate voters.
- ★ Restrictive voter identification requirements disproportionately impact seniors.
- ★ Some voter identification requirements have been found unconstitutional.
- ★ The real electoral integrity issue in America is mismanagement of voter registration lists.

## **The 2000 election severely damaged public confidence in the integrity of our voting systems.**

A healthy democracy relies upon citizens' confidence that elections are fair and untainted by fraud, misconduct or mistake. The fiasco in November 2000 rightly pushed election reform to the top of the public policy agenda.

## **A failure in voter identification, however, was not part of the problem in the 2000 election.**

Voter fraud—the casting of ballots in the names of deceased or fictitious people, the casting of multiple ballots, or the casting of ballots by persons ineligible to vote—was simply not a problem in 2000 or any election since.<sup>1</sup>

## **Voter fraud is exceptionally rare.**

There is no evidence of widespread identity fraud among voters at the polls. Indeed, an extensive inquiry into election fraud from 1992 to 2002 found that it is extremely rare.<sup>2</sup> An exhaustive hunt in 2004 for “thousands” of fraudulent voters in Washington state succeeded in uncovering only six instances of double voting.<sup>3</sup> 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.<sup>4</sup> From October 2002 to January 2005 only 52 individuals were convicted of any type of federal election fraud, while 196,139,871 ballots were cast in federal general elections.<sup>5</sup>

## **Existing criminal penalties successfully deter voter fraud.**

Voter fraud is rare because the risk of criminal penalties—which often include both hefty fines and prison—far outweighs the benefit of voting twice.

## **Restrictive voter identification requirements don't solve voter fraud.**

If there are anecdotal incidences of voter fraud, additional voter identification requirements don't address them. Identity cards don't prevent felons from voting. They don't prevent individuals from voting twice. They don't ensure that the address that appears on the card is accurate and up to date.

## **Restrictive voter identification requirements make election officials' jobs harder.**

Such requirements create additional administrative burdens for poll workers: they are forced to interpret the accuracy and authenticity of each identity card and determine whether individuals lacking required identification fall into an area of exemption or if their ballots should be marked and treated as provisional. As a result, voters wait in longer lines at polling places.

## **Restrictive voter identification requirements disfranchise millions of legitimate voters.**

Approximately eight percent of the voting population—15 million Americans—do not have a driver's license or other state-issued identi-

cation.<sup>6</sup> 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.<sup>7</sup> According to disability advocates, nearly ten percent of the 40 million Americans with disabilities do not have any form of state-issued photo identification.

### **Restrictive voter identification requirements disproportionately impact seniors.**

In Georgia, AARP reports that 36 percent of seniors over age 75 do not have a driver's license.<sup>8</sup> In Wisconsin, 23 percent of seniors aged 65 and older do not have a driver's license.<sup>9</sup> The governor of Wisconsin vetoed a 2005 photo identification bill because it would have disfranchised nearly 100,000 elderly citizens.<sup>10</sup>

### **Some voter identification requirements have been found unconstitutional.**

In both 2005 and 2006, a United States District Court barred Georgia from enforcing laws that would require voters to display government-issued photo identification.<sup>11</sup> The court's 2005 ruling, which was upheld by the 11th Circuit Court of Appeals, declared that the law violates the U.S. Constitution's Equal Protection Clause. The photo identification requirement is both discriminatory and unnecessary, the court found. The Missouri Supreme Court issued a similar ruling.

### **The real electoral integrity issue in America is mismanagement of voter registration lists.**

In November 2000, between 1.5 and three million votes were lost or not cast because of problems with registration processes and voter lists.<sup>12</sup> Eligible voters in at least 25 states arrived at the polls and were unable to vote because their names had been illegally purged from the voter rolls or had not been added in time for Election Day.<sup>13</sup>

## **Endnotes**

- 1 Dēmos, "Securing the Vote: An Analysis of Election Fraud," 2003.
- 2 Ibid.
- 3 Oral decision of Judge John E. Bridges in *Borders v. King County*, Case No. 05-2-00027-3, June 6, 2005.
- 4 League of Women Voters and Coalition on Homelessness and Housing in Ohio, "Let the People Vote—A Joint Report on Election Reform Activities in Ohio," June 14, 2005.
- 5 Office of the Clerk, U.S. House of Representatives, "Election Statistics," 2005.
- 6 U.S. Department of Transportation Federal Highway Administration, "Highway Statistics 2003, Section III: Driver Licensing, Table DL-20," November 2004. The Department of Transportation previously estimated that four percent of Americans have a state identification card for non-drivers.
- 7 Alan Elsner, "Millions Blocked from Voting in U.S. Election," *Reuters*, Sept. 27, 2004.
- 8 Deanna Wrenn, "Three States Debate Requiring Voters to Show ID," *Ventura County Star*, March 31, 2005.
- 9 John Pawasarat, "The Driver License Status of the Voting Age Population in Wisconsin," Employment and Training Institute, University of Wisconsin-Milwaukee, June 2005.
- 10 Governor Jim Doyle, Message Vetoing SB 63, April 29, 2005.
- 11 *Common Cause/Georgia v. Billups*, U.S. Dist. Ct., Northern Dist. of Georgia (Rome), Case 4:05-CV-201-HLM.
- 12 Caltech-MIT Voting Technology Project, "Voting—What Is, What Could Be," July 2001.
- 13 Democratic Investigative Staff, U.S. House Committee on the Judiciary, "How to Make a Million Votes Disappear: Electoral Sleight of Hand in the 2000 Presidential Election," August 20, 2001.

# Voter Identification and Integrity

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## Voter Integrity Act

*Summary: The Voter Integrity Act creates a uniform, accurate list of registered voters.*

### SECTION 1. SHORT TITLE

The Act shall be called the “Voter Integrity Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. To preserve the integrity of the voting process, the state must guarantee to its citizens that their right to cast a ballot in local, state and national elections is unfettered by administrative errors.
2. Accurate record keeping by election administrators is essential to ensure electoral integrity, eliminate duplicate registrations, and to ensure that address information is up to date.
3. The National Voter Registration Act (NVRA) of 1993 declared that unfair or discriminatory registration rules and procedures have a damaging effect on voter participation.
4. The Help America Vote Act (HAVA) of 2002 requires states to implement interactive computerized statewide registration lists that are accessible to state and local election officials.

**(B) PURPOSE**—This law is enacted to guarantee citizens’ right to vote by making this state’s voter registration lists more technologically sophisticated and accurate.

### SECTION 3. ACCURATE VOTER ROLLS

**(A) STATEWIDE VOTER REGISTRATION SYSTEM**—The system for recording and managing the rolls of qualified voters shall:

1. Be uniform throughout the state.
2. Use information gathered by executive departments, state agencies, and county, city, township and village clerks to ensure that records are current.
3. Electronically connect between the office of the [State Board of Elections] and the offices of each [local election supervisor] in real time.
4. Electronically connect with the [Department of Corrections] to send and receive information regarding the eligibility to vote of persons with felony convictions; and the [Department of Motor Vehicles] and social service and disability agencies to send and receive voter registration applications electronically in compliance with the National Voter Registration Act of 1993.

**(B) STANDARDS FOR PURGING VOTERS**—The [State Board of Elections] shall create and implement a system to:

1. Use change of address information supplied by the United States Postal Service or other reliable sources to identify registered voters whose addresses change.
2. Cross-check names on the voter registration database with death records to verify voter eligibility.

3. Ensure that no individual shall be removed from the voter registration list unless such individual is provided with a notice consistent with the requirements of the National Voter Registration Act of 1993.
  4. Use a codified, non-discriminatory minimum set of standards in the matching process before purging voter rolls. This process shall include an exact match of: first, last and middle names; the social security number or other unique identification number; date of birth; and gender.
- (C) COMPLIANCE WITH NVRA—**Notwithstanding another provision of law to the contrary, a person who is qualified to vote and who registers in a manner consistent with the National Voter Registration Act of 1993 shall be considered a registered voter.

#### **SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

# Voter Protection

- ★ Millions of Americans are prevented from exercising their right to vote because of voter intimidation or suppression, or because of mistakes by election officials.
- ★ Voter intimidation tactics are employed across the nation.
- ★ Voter suppression through lies and deception is even more common.
- ★ Americans are also denied the right to vote by preventable mistakes on the part of election officials.
- ★ The federal Voting Rights Act does not adequately protect voters.
- ★ States can adopt the Voter Protection Act.

## **Millions of Americans are prevented from exercising their right to vote because of voter intimidation or suppression, or because of mistakes by election officials.**

The 2000 presidential race exposed serious flaws in our nation's election system. In the aftermath of that election, studies found that as many as four million registered voters who wanted to vote were turned away or discouraged from voting.<sup>1</sup> 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.<sup>2</sup>

## **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.<sup>3</sup>
- ★ 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.<sup>4</sup>

★ 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.<sup>5</sup>

## **Voter suppression through lies and deception is even more common.**

The use of tricks designed to fool Americans into staying home on Election Day is even more widespread than outright intimidation. For example:

- ★ In Orange County, California, 14,000 registered voters received a letter in Spanish that warned that it was illegal for immigrants to vote. The letter also stated that immigrants who voted could go to prison.<sup>6</sup>
- ★ 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.<sup>7</sup>
- ★ In Orlando, Florida, a first-time voter was visited by a woman with a clipboard who asked how she was going to vote. When the voter replied that she preferred Kerry, the visitor told the voter that she needn't go to the polls because her vote had been recorded on the clipboard. This same tactic was repeated throughout Florida.<sup>8</sup>
- ★ In Allegheny County, Pennsylvania, a flyer designed to look like an official announcement from McCandless Township claimed that,



because of expected “immense voter turnout,” the 2004 election would be conducted over two days. The flyer requested that Republicans vote on November 2, while Democrats should vote on November 3.<sup>9</sup>

**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.<sup>10</sup> Mistakes about voters’ rights continued in 2004. For example:

★ In Ames, Iowa, an election official prevented nearly 100 university students from voting by instructing polling places to close at the scheduled time despite the fact that people were still waiting in line.<sup>11</sup>

★ In south Florida, eligible voters were turned away because election officials misinterpreted the laws governing photo identification.<sup>12</sup>

**The federal Voting Rights Act does not adequately protect voters.**

Voter intimidation is a federal crime under the Voting Rights Act of 1965. But most violators are never punished because federal prosecutors are unable or unwilling to pursue these cases. Further, while federal law applies to intimidation, it does not prohibit willfully fraudulent voter suppression tactics. Federal law also does nothing to prevent mistakes by election officials.

**States can adopt the Voter Protection Act.**

The Voter Protection Act combines the best practices of laws in California, Connecticut and Illinois. It employs three avenues to ensure that every eligible voter is allowed to vote:

★ **Penalties for intimidation and suppression—** Heavy penalties would be imposed for both voter intimidation and suppression. Most

states currently prohibit voter intimidation but not fraudulent suppression. Many state voter intimidation laws also have inadequate penalties.

★ **Voter’s Bill of Rights—**Every polling place would be required to post a Voter’s Bill of Rights. Seven states (CA, CT, FL, IN, MN, NV, NJ) currently have a Voter’s Bill of Rights.

★ **Election Day Manual of Procedures—**A book that clearly sets out election rules would be available to both voters and officials at the polls. In 2005, New Jersey and Washington enacted laws requiring an election manual.

**Endnotes**

- 1 Caltech/MIT Voting Technology Project, “Voting: What Is, What Could Be,” July 2001.
- 2 People for the American Way, “Election Protection Had Powerful Impact, But Election System Still Fails Voters,” November 5, 2004.
- 3 People For the American Way, “Run-Up to Election Exposes Widespread Barriers to Voting,” November 2004.
- 4 Associated Press, “Bogus Letter Circulating in South Carolina Warns of Arrests of Deadbeat Voters,” October 30, 2004.
- 5 People For the American Way Foundation and NAACP, “The Long Shadow of Jim Crow: Voter Intimidation and Suppression in America Today,” 2004.
- 6 Aurelio Rojas, “Officials probe mailer that warns Latino voters,” *The Sacramento Bee*, October 18, 2006.
- 7 Jay Maynor, “Phony letters tell people they cannot vote,” WKYC-TV, October 28, 2004.
- 8 David Karp, Michael Sandler and Tamara Luch, “Dirty tricks litter path to election,” *St. Petersburg Times*, October 29, 2004.
- 9 “Run-Up to Election Exposes Widespread Barriers to Voting.”
- 10 “Voting: What Is, What Could Be.”
- 11 “Voters Turned Away in Ames,” *Des Moines Register*, October 22, 2004.
- 12 “Voter ID Problems in Florida,” *New York Times*, October 7, 2004.

# Voter Protection

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## 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:

## **VOTER PROTECTION**

- a. Regulations governing solicitation by individuals and groups at the polling place.
- b. Procedures to be followed with respect to voters whose names are not on the precinct register.
- c. Proper operation of the voting system.
- d. Ballot handling procedures.
- e. Procedures governing spoiled ballots.
- f. Procedures to be followed after the polls close.
- g. Rights of voters at the polls.
- h. Procedures for handling emergency situations.
- i. Procedures for handling and processing provisional ballots.
- j. Security procedures.

### **(E) ENFORCEMENT**

1. Whoever commits voter intimidation or conspires to commit voter intimidation will be guilty of a felony, punishable by up to three years in prison and a fine of up to \$100,000.
2. Whoever commits voter suppression or conspires to commit voter suppression will be guilty of a felony, punishable by up to two years in prison and a fine of up to \$50,000.
3. Any person who willfully violates any other part of this section will be guilty of a misdemeanor, punishable by up to one year in prison, a fine of up to \$10,000, or both.
4. The Board will promulgate regulations necessary to enforce this section.
5. In addition to criminal and regulatory sanctions, this section may be enforced by a private cause of action under [appropriate section of state statutes]. In a successful action, the court shall award the plaintiff costs and attorney's fees.

### **SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

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# Voting Machine Security

- \* There is widespread distrust of the accuracy of voting machines.
- \* Encouraged by the Help America Vote Act (HAVA), states dramatically changed voting technology between 2000 and 2006.
- \* Modern voting systems remain vulnerable to election fraud.
- \* Modern voting systems remain vulnerable to error.
- \* It is crucial for all states to mandate that voting systems include a voter-verified paper trail and that elections officials conduct regular audits of these paper ballots.
- \* States are adopting voter-verified paper records and audit requirements.

## **There is widespread distrust of the accuracy of voting machines.**

In November 2000, about 1.5 million Americans' votes for president were not counted because of hanging chads, misaligned machines, or other flaws in voting technologies.<sup>1</sup> Billions of dollars have been spent since then to ensure that every vote cast is counted. Still, an October 2006 survey by the Pew Research Center found that one in eight American voters—and three in ten African American voters—were not confident that their ballots would be counted in the November election.<sup>2</sup> Even then-Maryland Governor Robert Ehrlich suggested that voters should cast absentee ballots to ensure they were counted—and Marylanders responded by voting absentee in record numbers.<sup>3</sup>

## **Encouraged by the Help America Vote Act (HAVA), states dramatically changed voting technology between 2000 and 2006.**

In 2000, about 36 percent of Americans voted with punchcards, 18 percent used mechanical lever machines, 35 percent used optical scan technology, and 14 percent used direct recording electric (DRE) machines. HAVA, enacted by Congress in 2002, provided grants to help states switch to modern voting equipment—optical scanners and DRE machines. That law was very effective. By the 2006 election, about 90 percent of Americans voted with those two types of equipment.<sup>4</sup>

## **Modern voting systems remain vulnerable to election fraud.**

The Brennan Center for Justice issued a comprehensive report which detailed 120 possible ways to tamper with DRE and optical scanner systems.<sup>5</sup> A Johns Hopkins University study also revealed numerous techniques that could be used to change votes.<sup>6</sup> The easiest and most successful schemes would alter the software of DREs or scanners. An employee of the voting machine manufacturer, an employee of the board of elections, a computer hacker armed with a specially-designed virus, or any person who could get their hands on a voting machine for one minute or less could carry out an attack on the integrity of a voting machine. Such a vote-switching scheme would also modify records, audit logs and counters inside the machines, making even a careful forensic examination of records futile.

## **Modern voting systems remain vulnerable to error.**

Mistakes are all too common. According to the Brennan Center, “votes have been miscounted or lost as a result of defective firmware (coded instructions in a computer system’s hardware), faulty machine software, defective tally server software, election programming errors, machine breakdowns, malfunctioning input devices, and pollworker error.”<sup>7</sup> For example:

- \* Diebold Election Systems discovered a screen-freeze problem in several Maryland voting machines, yet the company did not fully inform the state and took three years to replace the flawed machines.<sup>8</sup>

★ The California Secretary of State banned one model of Diebold machines after finding that the machine disenfranchised voters during the 2004 presidential primary. Diebold machines were recertified in California only after the firm paid a fine of \$2.6 million.<sup>9</sup>

★ In November 2006, iVotronic touchscreen machines in Sarasota County, Florida, registered 18,000 ballots cast without a vote for Congress in a hotly contested race. Sarasota's undervote was far higher than in neighboring counties—raising the likelihood that an error caused the results.<sup>10</sup>

**It is crucial for all states to mandate that voting systems include a voter-verified paper trail and that elections officials conduct regular audits of these paper ballots.**

The Association of Computing Machinery surveyed its members and found that 95 percent expressed concern about the security of electronic voting systems and endorsed the use of voter-verified paper records.<sup>11</sup> Where there is a voter-verified system, each voter views and approves a paper copy of his or her ballot before leaving the polls. Afterwards, election officials audit the results by counting paper ballots in a small number of randomly-selected precincts and comparing them to the computer-generated totals. This procedure catches both fraud and mistakes, and if a recount is needed, the paper ballots are the final word.

**States are adopting voter-verified paper records and audit requirements.**

Currently, only 16 states (AK, AZ, CA, CO, CT, FL, HI, IL, MD, MN, NM, NY, NC, OR, WA, WV) require both voter-verified paper records and regular audits of the paper ballots. Twenty-two states (AL, ID, IA, ME, MA, MI, MS, MO, MT, NE, NV, NH, NJ, ND, OH, OK, RI, SD, UT, VT, WI, WY) use machines that leave a voter-verified paper trail but do not require regular audits. The remaining 12 states (AR, DE, GA, IN, KS, KY, LA, PA, SC, TN, TX, VA) do not require voter-verified paper records or audits.

## Endnotes

- 1 Caltech/MIT Voting Technology Project, "Voting—What Is, What Could Be," July 2001.
- 2 Pew Research Center for the People and the Press, "November Turnout May Be High," October 11, 2006.
- 3 Christian Davenport, "Democrats Blast Ehrlich's Absentee-Voting Initiative," *Washington Post*, September 22, 2006.
- 4 Michael Duffy, "Can This Machine Be Trusted?" *Time Magazine*, October 29, 2006.
- 5 Brennan Center for Justice, "The Machinery of Democracy: Protecting Elections in an Electronic World," 2006.
- 6 Tadayoshi Kohno et al., "Analysis of an Electronic Voting System," *IEEE Symposium on Security and Privacy*, 2004.
- 7 "The Machinery of Democracy."
- 8 Associated Press, "Diebold Makes Fixes on the QT," *Wired News*, October 27, 2006.
- 9 Associated Press, "Diebold to Settle E-Voting Suit," *Wired News*, November 10, 2004.
- 10 Marc Caputo, "18,000 votes in House race may be lost," *Sarasota Herald-Tribune*, November 9, 2006.
- 11 Association for Computing Machinery, "ACM Recommends Integrity, Security, Usability in E-voting," September 28, 2004.

# Voting Machine Security

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## Voting Systems Reform Act

*Summary: The Voting Systems Reform Act requires all jurisdictions in the state to use modern vote counting technology that produces voter-verified paper records. The Act also creates an Election Review Commission to study election procedures and recommend future reforms, sets forth rules for provisional ballots and voter purges, and requires a statewide voter registration system.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Voting Systems Reform Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. The 2000 and 2004 elections exposed serious flaws in our nation’s voting systems. In 2000, more than 1.5 million Americans cast ballots that went uncounted because of faulty or obsolete systems, and as many as four million registered voters were turned away or discouraged from voting.
2. In 2000 and 2004, [insert state data] voters’ ballots for president were invalidated because voting machines recorded overvotes or undervotes. Even more ballots were invalidated for lower offices.
3. To protect the right to vote for all citizens, the state must mandate that every jurisdiction in the state use modern, accurate and auditable vote counting technology and must create an Election Review Commission to study election procedures and recommend future reforms.

**(B) PURPOSE**—This law is enacted to protect and enhance the most basic right in a democracy—the right to vote for all qualified adults—and ensure that all legal votes are counted.

### SECTION 3. VOTING REFORM

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

**(A) DEFINITIONS**—in this section:

1. “Board” means the State [Board of Election Supervisors]. (NOTE: Where appropriate, the Secretary of State’s office can be designated as the administering agency.)
2. “Election” means any federal, state or local election held in the state.
3. “Local election supervisor” means a person or group of persons directing the conduct of elections for any city or county.
4. “Election official” means a person or group of persons directing the conduct of elections at the precinct, county or statewide level.
5. “Vote counting system” means the system used by a local election supervisor to examine and count election ballots, either by machine or by hand.



**(B) MODERN ELECTION TECHNOLOGY**

1. **Modern vote counting system required.** Local election supervisors must use a vote counting system approved by the Board. The Board will only approve the use of electronic devices that directly record voters' choices or optical scanning devices that scan marked paper ballots at each polling place. Such devices must also meet the following requirements:
  - a. The voting system will permit the voter to verify his or her selections and correct any errors before the ballot is counted.
  - b. If the voter selects more than one candidate for a single office, the voting system will notify the voter and permit the voter to correct his or her selections before the ballot is counted.
  - c. If the voter selects fewer than the number of candidates for which votes may be cast, the voting system will notify the voter and permit the voter to alter his or her selections before the ballot is counted.
  - d. The voting system will produce a record with an audit capacity for each ballot cast. Until the Board rules otherwise, for a direct recording electric voting system, an audit capacity requires that the system generate a paper record of each individual vote cast, which shall be maintained in a secure fashion and serve as a backup record for recounts. Such paper record must be viewable by the voter before the vote is cast electronically, and the system must allow the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast. Only after the Board rules that there is clear and convincing evidence that a secure and highly reliable audit and recount capacity can be achieved using a backup system other than paper records, the Board may promulgate rules that permit another audit system for direct recording electric voting systems.
  - e. The voting system will be accessible to individuals with disabilities and other special needs, and will be capable of providing ballots in languages other than English where required by federal or state law.
  - f. The voting system will provide accuracy, reliability, security from fraud, and ease of use.
2. **Exceptions.** For absentee ballots, provisional ballots, and for counties with fewer than 10,000 registered voters, the Board may approve the use of hand-counted or optical scan-counted paper ballots which do not comply with subsection (1).
3. **Audits.** For each election, the local election supervisor shall conduct a hand count of at least two percent of the precincts in that city or county, or two precincts, whichever is greater. The precincts shall be selected by lot without the use of a computer, and the order of selection by the county political party chairmen shall also be by lot. The unofficial vote totals from all precincts shall be made public before selecting the precincts to be hand counted.
4. **Uniform ballot designs.** The Board will designate and graphically depict uniform primary and general election ballot designs for each approved vote counting system. Local election supervisors must follow these uniform ballot designs.

# VOTING MACHINE SECURITY

## (C) PROVISIONAL BALLOTS

1. **Issuance.** Any person who claims to be registered to vote, but is not listed on the voter registration list on the day of the election, shall be issued a provisional ballot.
2. **Determination of eligibility.** The determination of eligibility to vote shall be made without regard to the location at which the voter cast the provisional ballot or any requirement to present identification.
3. **Use as a registration form.** The Board shall design the provisional ballot so that it conforms to the requirements of a voter registration application. If an individual who submits a provisional ballot is determined not to be a registered voter, the provisional ballot shall act as a voter registration application valid for future elections.

## (D) STANDARDS FOR PURGING VOTERS

1. **Public Notice.** Not later than 90 days prior to any federal or state election, the Board shall provide public notice of all names that have been removed from the voter registration list since the most recent election or the date of the most recent previous public notice provided under this section, and the criteria, processes, and procedures used to determine which names were removed.
2. **Individual Notice.** No individual shall be removed from the voter registration list unless such individual is provided with a notice consistent with the requirements of the National Voter Registration Act of 1993.
3. **Non-discriminatory standards.** The Board shall develop a codified, non-discriminatory minimum set of standards in the matching process before purging. This process shall include an exact match of:
  - a. First, last, middle names,
  - b. The social security number or other unique identification number,
  - c. Date of birth, and
  - d. Gender.

## (E) STATEWIDE VOTER REGISTRATION SYSTEM

1. **Minimum requirements regarding connectivity.** The state's voter registration systems shall be, at minimum:
  - a. Connected between the office of the Board and the offices of each local election supervisor, in real time,
  - b. Interoperable with the [Department of Corrections] to both send and receive information regarding the eligibility to vote of persons with felony convictions; and the [Department of Motor Vehicles] and social service and disability agencies to send and receive voter registration applications electronically in compliance with the National Voter Registration Act of 1993.
2. **Connectivity at the polls.** The Board shall research and implement a statewide voter registration system that can be accessed on Election Day at each polling place.

## (F) ENFORCEMENT

Any person who willfully violates this section will be guilty of a misdemeanor, punishable by up to one year in prison, a fine of up to \$10,000, or both.

**SECTION 4. ELECTION REVIEW COMMISSION**

- (A) Election review commission established.** There is established a permanent state commission known as the Election Review Commission.
- (B) Commission membership.** The Commission will be composed of nine members, including the Chair appointed by the governor, and two members recommended by each of the following: the Senate President, Senate Minority Leader, House Speaker, and House Minority Leader. Of the nine members, at least five will not be government officials or employees and will represent academia, nonprofit organizations, the faith community, labor unions, or industry.
- (C) Duties of the commission.** Following each general election, the Commission will conduct a study of the administration of elections to:
1. Determine if state election laws and regulations were followed in the prior election cycle, and if not, why they were not followed.
  2. Determine the number and percentage of overvotes and undervotes in the prior elections, along with the reasons for these overvotes and undervotes.
  3. Determine if precincts had adequate facilities for the number of voters served.
  4. Examine what election practices or proposals increase or diminish voter participation.
  5. Recommend how election procedures can and should be improved.
- (D) Report.** The Election Review Commission will report its findings and recommendations to the legislature on or before February 1 following each general election.

**SECTION 5. COMPLIANCE WITH EXISTING LAW**

Nothing in this Act may be construed to authorize or require conduct prohibited under the following laws:

- (A)** The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).
- (B)** The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).
- (C)** The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ff et seq.).
- (D)** The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).
- (E)** The Americans with Disabilities Act of 1990 (42 U.S.C. 1994 et seq.).

**SECTION 6. FUNDING**

The Board shall apply for all available federal grants to fund the requirements of this Act.

**SECTION 7. EFFECTIVE DATE**

Local election supervisors must use a vote counting system approved by the Board for all elections held after January 1, 2009. All other provisions shall take effect on July 1, 2008.

## ELECTIONS RESOURCES

### Election Day Registration

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Dēmos

Federal Election Commission

### Voter Identification and Integrity

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Common Cause

Dēmos

League of Women Voters

### Voter Protection

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Caltech-MIT Voting Technology Project

Common Cause

Election Protection Coalition

People for the American Way

### Voting Machine Security

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Brennan Center for Justice

Common Cause

Dēmos

League of Women Voters

**A full index of resources with contact information can be found on page 297.**

# Environment

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# Clean Cars

- \* 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.
- \* States can choose to adopt stricter vehicle emissions standards.
- \* California has adopted standards requiring auto manufacturers to reduce emissions of carbon dioxide and other greenhouse gasses.
- \* Thirteen states have adopted the California standards by legislation or regulation.

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

The exhaust from internal combustion engines contains many harmful by-products, including hydrocarbons, carbon monoxide, nitrogen oxides, and fine airborne particulate matter.<sup>1</sup> 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.<sup>2</sup> Hydrocarbons, nitrogen oxides, and fine airborne particulate matter aggravate 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.<sup>3</sup>

## **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.<sup>4</sup>

## **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.<sup>5</sup> 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.<sup>6</sup> This phenomenon became apparent in the U.S. in 2005, when severe storms devastated the Gulf region.

### States can choose to adopt stricter vehicle emissions standards.

The Clean Air Act limits the power of states to adopt motor vehicle emissions standards, that is, limits on the amount of gasses and fine airborne particulate matter that can come from a vehicle's tailpipe and leak from its fuel system. The Act permits only two standards: federal emission standards set by the Environmental Protection Agency (EPA), and stricter standards set by the state of California. So the only way for a state to adopt stronger anti-pollution rules is by adopting California standards. And according to the Clean Air Act, only states that do not meet National Ambient Air Quality Standards (NAAQS) are eligible to adopt California standards. By that measure, every state except HI, IA, KS, MS, NE, ND, OK and SD is eligible, and even these eight states may be eligible as a result of the EPA's 2005 Clean Air Mercury Rule and Clean Air Interstate Rule.<sup>7</sup>

### California has adopted standards requiring auto manufacturers to reduce emissions of carbon dioxide and other greenhouse gasses.

In 2004, the California Air Resources Board (CARB) adopted regulations phasing in the standards from 2009 to 2016. By 2012, emissions from cars and light trucks must be reduced by 25 percent from 2005 levels, and emissions from larger trucks and sport utility vehicles must be reduced by 18 percent from 2005 levels. The CARB regulations must be approved by the EPA before they can take effect; EPA has not yet acted on the matter and the state of California has threatened to file a lawsuit to force the federal government's hand.

### Thirteen states have adopted the California standards by legislation or regulation.

In 2007, Maryland became the latest state to adopt the California auto emissions standards. Altogether, thirteen states (AZ, CT, FL, ME, MD, MA, NJ, NM, NY, OR, RI, VT, WA) have adopted the California standards.

### 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 CO<sub>2</sub> 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 David Bookbinder, "Legal Issues Pertaining to the Adoption of California Auto Emission Standards (Including GHG Standards) by Other States," Sierra Club, September 14, 2007.

# Clean Cars

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## Low Emission Vehicle Act

*Summary: The Low Emission Vehicle Act adopts the California vehicle emission rules (commonly known as LEV II), which set a stricter standard than the U.S. Environmental Protection Agency's National Low Emission Vehicle (NLEV) standard.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Low Emission Vehicle Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Air pollution from cars and trucks is dangerous to the health of [State] residents.
2. Motor vehicles are a major source of pollution in [State], and contribute to greenhouse gases that cause worldwide climate change.
3. Technology can significantly reduce dangerous emissions from motor vehicles.

**(B) PURPOSE**—This law is enacted to protect the health and safety of [State] residents.

### SECTION 3. LOW EMISSION VEHICLES

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

**(A)** The Department of [Environmental Protection] shall implement Phase II of the California Low Emission Vehicle program in this State beginning in the 2010 automobile model year. “Phase II of the California Low Emission Vehicle program” means the second phase of the low emission vehicle program implemented in California, pursuant to the requirements of the federal Clean Air Act, 42 U.S.C. Section 7401 et seq.

**(B)** The Department of [Environmental Protection] shall promulgate such regulations as are necessary to implement this section.

### SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2008.



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# Clean Power Plants

- ✱ Electric power plants are the nation's number one air polluter.
- ✱ A loophole in the federal Clean Air Act allows utility companies to operate some of the oldest and dirtiest plants.
- ✱ Millions of families and their children experience health problems as a result of air pollution.
- ✱ Modernized plants increase fuel efficiency and save money for consumers.
- ✱ Modernized plants make power more reliable.
- ✱ Modernized power plants curtail acid rain, mercury poisoning and global warming.
- ✱ States can act to make power plants cleaner.

## **Electric power plants are the nation's number one air polluter.**

Most Americans think of electricity as clean energy, but power plants are actually the single worst industrial contributor to air pollution in the United States. The power plants that generate our electricity rely primarily on fossil fuel combustion and are responsible for 67 percent of total sulfur dioxide emissions, 22 percent of nitrogen oxide emissions, 37 percent of mercury emissions, and 40 percent of man-made carbon dioxide emissions.<sup>1</sup>

## **A loophole in the federal Clean Air Act allows utility companies to operate some of the oldest and dirtiest plants.**

When the Clean Air Act was passed in 1970, big utility companies successfully lobbied against stringent controls by claiming their oldest, dirtiest power plants would soon be replaced by new state-of-the-art facilities.<sup>2</sup> These old, unregulated power plants pollute up to ten times more than newer, regulated plants. Many aging facilities—which were already outdated in 1970—are still in use today. In some cases, power plants from 1922 are still in operation and do not come close to meeting the environmental requirements for new facilities.<sup>3</sup>

## **Millions of families and their children experience health problems as a result of air pollution.**

Nearly 19,000 premature deaths could be avoided if loophole power plants were made to conform with modern clean air laws. Pollutants from grandfathered power plants blow from state to state and cause asthma attacks and respiratory diseases.<sup>4</sup> Experts estimate 603,000 asthma attacks nationwide could be avoided if loophole power plants conformed with modern clean air laws.

## **Modernized plants increase fuel efficiency and save money for consumers.**

Recent data shows that a disproportionate share of emissions comes from a handful of older, inefficient plants. Loophole power plants waste as much as two-thirds of the energy in the fuel they burn.<sup>5</sup> The replacement of outdated equipment in power plants can nearly double their fuel efficiency. Just as new cars, furnaces, refrigerators, and all other power-consuming devices operate more efficiently than they did 50 years ago, power plants that modernize their equipment will dramatically increase their efficiency and pass savings onto consumers over time.

**Modernized plants make power more reliable.**

Modern power plants are less likely to break down than old loophole-protected plants. In fact, cutbacks in the efforts to modernize power plants directly contributed to power shortfalls experienced in California in 2000. With sufficient notice and lead time, power plant operators can schedule necessary retrofits without affecting the reliability of energy output.

**Modernized plants curtail acid rain, mercury poisoning and global warming.**

- \* By reducing sulfur dioxide emissions, modernized plants will reduce acid rain. Acid rain deposits cause acidification of lakes and streams and damage trees and sensitive forest soils. In addition, acid rain deposits accelerate the decay of building materials and paints—as well as the historic buildings, statues, and sculptures that are part of our nation’s cultural heritage.
- \* By reducing mercury pollution by 90 percent, modernized plants will curtail mercury poisoning. Airborne mercury enters streams and seas. It accumulates in fish and animal tissue in its most toxic form, and humans and other animals are poisoned when they eat these mercury-contaminated foods.
- \* By reducing carbon dioxide emissions, modernized plants curtail global warming. Carbon dioxide accumulation in the atmosphere leads to changes in our global climate. Rising global temperatures raise sea levels and change precipitation and other local climate conditions.

**States can act to make power plants cleaner.**

First signed in December 2005, ten northeastern states (CT, DE, ME, MD, MA, NH, NJ, NY, RI, VT) are now members of the Regional Greenhouse Gas Initiative, a cap-and-trade program aimed at reducing total carbon dioxide emissions from power plants by ten percent over 15 years. Through a system of credits and allowances, the ten states will freeze power plant emissions at current levels through 2015, then reduce them incrementally over the following four years. In 2007, New Mexico passed a law to provide tax credits for renewable energy production. In Virginia, an executive order requires state agencies to reduce spending on nonrenewable energy purchases by at least 20 percent by 2010. In 2006, Idaho adopted a two-year moratorium on the building or permitting of coal-fired power plants, and Maryland enacted the Healthy Air Act, requiring upgrades to outdated power plants.

**Endnotes**

- 1 U.S. Environmental Protection Agency, “Air Emissions,” March 18, 2006.
- 2 Environmental Integrity Project, “America’s Most Polluting Power Plants,” July 2007.
- 3 Representative Henry Waxman, “The Clean Smokestacks Act of 2001.”
- 4 Clean Air Task Force, “Death, Disease & Dirty Power: Mortality and Health Damage Due to Air Pollution from Power Plants,” October 2000.
- 5 Office of Industrial Technologies, Energy Efficiency and Renewable Energy, U.S. Department of Energy, “Combined Heat & Power—Cost Reduction Strategies,” January 2002.

# Clean Power Act

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## Clean Power Act

*Summary: The Clean Power Act amends state health and environmental law to reduce emissions of four major pollutants from electric generating power plants.*

### SECTION 1. SHORT TITLE

This Act shall be called the “[STATE] Clean Power Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Four pollutants—nitrogen oxide, sulfur dioxide, mercury, and carbon dioxide—are the major cause of some of the most serious environmental problems we face, including acid rain, smog, mercury poisoning, and global warming.
2. A high quality-of-life environment has been, and will continue to be, essential to our state’s economic well-being. Protecting our state’s high quality-of-life environment by reducing air pollutant emissions returns substantial benefit to the state through avoided health care costs, and healthier lakes, waterways, forests and farms.
3. Scientific advances have demonstrated that adequate protection of public health, environmental quality, and economic well-being—three cornerstones of our quality of life—requires additional, concerted reductions in air pollutant emissions.
4. Recent studies and scientific evidence indicate that significant negative human health and ecosystem impacts are caused by air pollution. The substantial quantities of several harmful air pollutants that continue to be emitted from existing fossil fuel burning power plants, despite recent reductions in the emission of certain air pollutants from some of these facilities, contribute to these harmful impacts, warranting additional emissions reductions from these sources.

**(B) PURPOSE**—This law is enacted to protect the health and safety of state residents and improve the quality of life and the economic vitality of the state.

### SECTION 3. CLEAN POWER

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

#### **(A) DEFINITIONS**

1. “Department” means the [Department of Natural Resources].
2. “Director” means the Director of the [Department of Natural Resources].
3. “Person” means any individual, partnership, association, corporation, or political subdivision of the state or agency of the United States.
4. “Power plant” means every stationary source using a combustion installation to generate electricity for sale or use and having a nameplate capacity of 15 megawatts or greater.

#### **(B) POWER PLANT EMISSIONS AND PERFORMANCE**

1. The Department shall promulgate regulations requiring all power plants to—

- a. Emit no more than 1.5 pounds per megawatt hour of total nitrogen oxide emissions by January 1, 2010, and reduce aggregate nitrogen oxide emissions by 75 percent from 1997 levels by January 1, 2014.
  - b. Emit no more than 6 pounds per megawatt hour of total sulfur dioxide emissions by January 1, 2010 and no more than 3 pounds per megawatt hour of total sulfur dioxide emissions by January 1, 2014.
  - c. Reduce aggregate mercury emissions by an amount equal to 90 percent from 1999 levels by January 1, 2014.
  - d. Reduce aggregate carbon dioxide emissions to 1990 levels by January 1, 2014. The Department may establish or employ an emissions credit trading mechanism to facilitate compliance with carbon dioxide requirements.
2. The Department must prepare and develop a general comprehensive plan for the control or abatement of existing air pollution, and for the control or prevention of any new air pollution, recognizing varying requirements for different areas of the state. The plan shall contain an assessment of mercury air emission sources in the state, establish standards to eliminate the threat to public health and the environment of such sources, and ensure that any captured or recovered mercury is not re-released into the environment.
  3. The regulations promulgated under this section shall include policies and incentives to increase energy efficiency of electricity and natural gas use, and efficiency in electricity production, to help achieve emissions reduction objectives. These policies and incentives shall, to the maximum extent practicable, be at least as effective as the advanced demand-side policies for end-use sectors and advanced supply-side policies for the electricity sector described in U.S. Department of Energy November 2000 report “Scenarios for a Clean Energy Future.”
  4. The emission rates, limitations and practices required by this section shall not be construed to supersede more stringent emission rates, limitations and practices that are applicable on the effective date of this section or may become applicable after such effective date.

### **(C) ENFORCEMENT**

1. A violation of this section, or regulations issued pursuant to this section, shall be subject to enforcement by injunction, upon application of the Attorney General. Any such violation shall also be subject to a civil forfeiture to the state of not more than \$25,000 for each violation, and for each day of a continuing violation.
2. Any person who willfully violates this section, or regulations issued pursuant to this section, shall be guilty of a misdemeanor if an individual, or guilty of a felony if other than an individual.
3. The Director, after notice and hearing, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this chapter or any rule adopted pursuant to this chapter. Any administrative fine imposed under this paragraph shall not preclude the imposition of further penalties under this chapter. Notice and hearing prior to the imposition of an administrative fine shall be in accordance with procedural rules adopted by the Department, and the Director may assess an additional fine for repeat violations.

### **SECTION 4. EFFECTIVE DATE**

This act shall take effect on July 1, 2008.

# Global Warming

- ✱ Global warming is bringing rising temperatures, a higher sea level, and more severe floods, droughts, hurricanes and wildfires.
- ✱ The evidence of global warming is overwhelming.
- ✱ The U.S. government acknowledges the warming trend.
- ✱ Global warming has already caused damage in many parts of the United States.
- ✱ Carbon dioxide and other air pollution that causes global warming is disproportionately generated by the United States.
- ✱ State laws can address global warming.

## **Global warming is bringing rising temperatures, a higher sea level, and more severe floods, droughts, hurricanes and wildfires.**

Scientists predict that unless dramatic changes are made, the average global surface temperature will rise one to 4.5 degrees over the next 50 years, and two to ten degrees by the year 2100.<sup>1</sup> As a result, sea level is likely to rise two feet, causing extensive flooding.<sup>2</sup> Both evaporation and rainfall will increase, bringing greater precipitation in some areas and spreading drought in others. Heat waves and major storms will be more frequent, more intense, and more deadly.

## **The evidence of global warming is overwhelming.**

Although local temperatures fluctuate naturally, during the past 50 years the average global temperature has increased at the fastest rate in recorded history. According to NASA scientists, 2005 was the warmest year in over a century, and 1998, 2002, 2003 and 2006 followed as the next four warmest years.<sup>3</sup> In fact, eleven of the twelve hottest years on record have all occurred since 1995.<sup>4</sup> And the polar icecaps are unquestionably melting. In 2006, researchers found that the Greenland ice sheet is not only disappearing, but it is doing so at a faster rate than expected.<sup>5</sup>

## **The U.S. government acknowledges the warming trend.**

The U.S. Environmental Protection Agency reports that “[s]cientists know for certain that human activities are changing the composition of

Earth’s atmosphere. Increasing levels of greenhouse gases, like carbon dioxide (CO<sub>2</sub>), in the atmosphere since pre-industrial times have been well documented. There is no doubt this atmospheric buildup of CO<sub>2</sub> and other greenhouse gases is largely the result of human activities. It’s well accepted by scientists that greenhouse gases trap heat in the Earth’s atmosphere and tend to warm the planet. By increasing the levels of greenhouse gases in the atmosphere, human activities are strengthening Earth’s natural greenhouse effect. The key greenhouse gases emitted by human activities remain in the atmosphere for periods ranging from decades to centuries. Warming has occurred in both the northern and southern hemispheres, and over the oceans. Confirmation of 20th century global warming is further substantiated by melting glaciers, decreased snow cover in the northern hemisphere and warming below ground.”<sup>6</sup>

## **Global warming has already caused damage in many parts of the United States.**

In recent years, western states have endured their worst wildfire seasons ever. Drought has created severe dust storms in the Great Plains, floods have caused billions of dollars in damage, and hurricanes have become more destructive. The World Health Organization estimates that climate change contributes to more than 150,000 deaths and five million illnesses each year.<sup>7</sup> Global warming has also caused widespread drying that has turned arid lands to desert, especially in Africa.<sup>8</sup>

**Carbon dioxide and other air pollution that causes global warming is disproportionately generated by the United States.**

Carbon dioxide and other pollutants collect in the atmosphere like a thickening blanket, trapping the sun's heat and causing the planet to warm. While the entire world contributes to this buildup, the United States is the largest source of global warming pollution. Americans make up just four percent of the world's population, but produce 25 percent of the carbon dioxide pollution from fossil-fuel burning. Coal-burning power plants are the largest U.S. source of CO<sub>2</sub> pollution—they produce 2.5 billion tons every year. Automobiles, the second largest source, create nearly 1.5 billion tons of CO<sub>2</sub> annually.<sup>9</sup>

**State laws can address global warming.**

In 2006, California enacted the Global Warming Solutions Act, a first-in-the-world program aimed at reducing greenhouse gas emissions to 1990 levels by 2020—a full 25 percent. California intends to meet this goal by promoting efficient energy usage, renewable power sources, and strict emissions standards for cars and trucks. Four states followed California's example in 2007, mandating long-term greenhouse gas reductions (HI, MN, NJ, OR). Other states have addressed global warming in the following ways:

★ **Clean Power Plants**—Power plants are responsible for 35 percent of man-made carbon dioxide emissions. Connecticut, Maryland, Minnesota, New Hampshire and Vermont have passed laws that restrict pollution from power plants, and Idaho implemented a two-year ban on the construction of coal-fired power plants.

★ **Clean Cars**—Automobiles account for 26 percent of CO<sub>2</sub> emissions in the U.S. Fourteen states (AZ, CA, CT, FL, ME, MD, MA, NJ, NM, NY, OR, RI, VT, WA) have adopted California's strict emission-control standards.

★ **Renewable Energy**—Renewable energy—generated by wind, sun, water, plant growth, and geothermal heat—can be cleanly converted into power. Twenty-eight states (AZ, CA, CO, CT, DE, HI, IL, IA, ME, MD, MA, MN, MO, MT, NV, NH, NJ, NM, NY, NC, OR, PA, RI, TX, VT, VA, WA, WI) and the District of Columbia have adopted “renewable portfolio standards” which require public utilities to increase their use of renewable energy sources over time.

★ **Impact Studies**—In 2007, West Virginia created a program to inventory emissions, reductions, and carbon sequestrations in preparation for future laws. In 2006, Alaska created a commission to study how the state should deal with erosion, floods and thawing permafrost brought by global warming.

*This policy brief relies in large part on information from the Natural Resources Defense Council.*

## Endnotes

- 1 U.S. Environmental Protection Agency, “Global Warming – Climate,” 2006.
- 2 Ibid.
- 3 National Aeronautics and Space Administration, “2006 Fifth-Warmest Year on Record,” February 8, 2007.
- 4 Intergovernmental Panel on Climate Change, “Observations: Surface and Atmospheric Climate Change,” September 2007.
- 5 John Roach, “Greenland's Ice Melt Grew by 250 percent, Satellites Show,” *National Geographic News*, September 20, 2006.
- 6 “Global Warming – Climate.”
- 7 Juliet Eilperin, “Climate Shift Tied to 150,000 Fatalities,” *Washington Post*, November 17, 2005.
- 8 National Center for Atmospheric Research & the UCAR Office of Programs, “Drought's Growing Reach: NCAR Study Points to Global Warming as Key Factor,” 2005.
- 9 Natural Resources Defense Council, “A Golden Opportunity: California's Solutions for Global Warming,” June 2007.



# Global Warming

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## Global Warming Impact Assessment Commission Act

*Summary: The Global Warming Impact Assessment Commission Act creates a commission to study the direct effects of global climate change on the state's economy and natural resources.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Global Warming Impact Assessment Commission Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Over the past 50 years, global temperatures have increased at the fastest rate in recorded history. It is well-accepted by scientists that human activities are responsible for this global warming.
2. Global warming causes damage of many kinds: wildfires, droughts, flooding and more destructive hurricanes.
3. If unchecked, global warming will create or worsen natural disasters within the state.
4. It is only prudent for the state to study and create a plan to mitigate negative effects of climate change, address economic impacts, and help save lives, protect public health, preserve natural resources, and protect valuable infrastructure.

**(B) PURPOSE**—This law is enacted to study the impact of global warming on the health, safety and welfare of state residents.

### SECTION 3. STUDY TO ASSESS THE IMPACT OF GLOBAL WARMING

#### **(A) ESTABLISHMENT OF COMMISSION**

1. There is established a [State] Global Warming Impact Assessment Commission.
2. The commission shall consist of 11 members as follows:
  - a. Two senators appointed by the President of the Senate.
  - b. Two representatives appointed by the Speaker of the House of Representatives.
  - c. Seven public members appointed jointly by the President of the Senate and the Speaker of the House of Representatives including at least one member with expertise in climatology, one member who is knowledgeable about [State's] economy, one member who is knowledgeable in the area of land management or maintenance of natural resources, and one member who represents tourism industries.
3. The public members of the commission may receive compensation for *per diem* or reimbursement for travel or other expenses incurred in serving on the commission.
4. The House and Senate [Environmental Resources] Committees shall assign committee staff to provide support services for the commission.
5. As part of its study, the commission shall conduct a series of hearings around the state.



**(B) NATURE OF THE STUDY**—The study shall include:

1. An assessment of the current and potential effects of global warming trends on the citizens, natural resources, public health, and economy of the state.
2. An estimate of the costs to the state and its citizens of adverse effects associated with global warming.
3. An examination of measures that might prevent or mitigate the effects of flooding, erosion, drought or wildfires that might be caused or worsened by global warming.
4. Recommendations for laws and regulations that may be warranted to minimize the adverse impacts of global warming.

**(C) REPORT**—The commission shall report the results of this study, including any legislative proposals, to the governor and the legislature on or before January 1, 2009.**SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

# Renewable Energy

- ★ Power plants are the nation's worst industrial air polluters.
- ★ Air pollution from burning fossil fuels is dangerous to America's health.
- ★ Air pollution from burning fossil fuels causes further harm to the environment.
- ★ Unless policymakers act, air pollution from fossil fuel burning power plants will get much worse.
- ★ Renewable energy sources are much cleaner than fossil fuels.
- ★ The energy market is stacked against renewable energy sources.
- ★ States can set "renewable portfolio standards" that require increased use of renewable energy sources.
- ★ A growing number of 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.<sup>1</sup> 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.<sup>2</sup> The production and use of energy causes almost 80 percent of air pollution.<sup>3</sup> A large coal-fired plant emits as much carbon dioxide in a single year as a million SUVs.<sup>4</sup>

## **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.<sup>5</sup> Smog triggers more than six million asthma attacks per year and results in 160,000 emergency room visits in the eastern United States alone.<sup>6</sup> 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.<sup>7</sup>

## **Air pollution from burning fossil fuels causes further harm to the environment.**

Air pollutants are returned to the Earth in the form of acid rain, which contaminates vegetation and kills aquatic life. Fossil fuels also produce greenhouse gases that are responsible for the erosion of the ozone layer and have triggered global warming.

## **Unless policymakers act, air pollution from fossil fuel burning power plants will get much worse.**

Total energy consumption in the U.S. is projected to increase more than 40 percent between 2002 and 2025.<sup>8</sup> To meet this demand, more than 150 conventional coal-burning power plants are being pushed for construction across the U.S. by advocates of fossil fuels.<sup>9</sup>

## **Renewable energy sources are much cleaner than fossil fuels.**

Renewable energy—generated by wind, sun, water, plant growth, and geothermal heat—can be cleanly converted into power for everyday use. If we invest in renewable energy, it can supply a significant portion of our energy needs without the negative effects on the environment that are produced by the extraction and burning of fossil fuels.

### The energy market is stacked against renewable energy sources.

Oil, gas and coal companies benefit from government policies that were crafted to promote their success and have led to a virtual monopoly on the market for energy sources. In the absence of counterbalancing government policies, companies that offer renewable energy are at a disadvantage.

### States can set “renewable portfolio standards” that require increased use of renewable energy sources.

Renewable portfolio standards (RPS) laws require public utilities to increase their use of renewable energy sources over time. Typically, RPS laws require that, over a period of 20 years, renewable energy be gradually increased until those sources account for ten to 20 percent of total energy production. In addition to reducing pollution, RPS laws decrease states’ dependence on potentially unreliable sources of fossil fuels. With current state RPS laws, it is projected that by 2017, carbon dioxide emissions (the gas most responsible for global warming) will be reduced by nearly 75 million metric tons—the equivalent of removing 11.1 million cars and planting trees in an area larger than West Virginia.<sup>10</sup>

### A growing number of states have enacted renewable portfolio standards.

Twenty-eight states and the District of Columbia have enacted RPS laws (AZ, CA, CO, CT, DE, HI, IL, IA, ME, MD, MA, MN, MO, MT, NV, NH, NJ, NM, NY, NC, OR, PA, RI, TX, VT, VA, WA, WI). Many states chose to augment existing standards in 2007. New Hampshire committed to 25 percent renewable energy by 2025, and Colorado passed a law that doubles its renewable portfolio to 20 percent by 2020. Due to the popularity of these laws, seven percent of all energy consumed nationwide was supplied by renewable sources in 2006.<sup>11</sup>

### Endnotes

- 1 U.S. Department of Energy, “Energy Sources: Fossil Fuels,” 2004.
- 2 Congressman Bernie Sanders, “Closing the Dirty Old Powerplant Loophole,” July 22, 2003.
- 3 State Environmental Resource Center, “RPS Renewable Energy Fact Pack,” 2006.
- 4 Jeff Goodell, “The Dirty Rock,” *The Nation*, May 7, 2007.
- 5 Therese Mar, Gary Norris, Jane Koenig, and Timothy Larson, “Associations Between Air Pollution and Mortality in Phoenix, 1995-97,” April 2000.
- 6 “Closing the Dirty Old Powerplant Loophole.”
- 7 Natural Resources Defense Council, “The Bush Administration’s Air Pollution Plan,” June 15, 2003.
- 8 Natural Resources Defense Council, “Why Choose 19th Century Pollution When We Have 21st Century Solutions,” 2006.
- 9 U.S. Department of Energy, “Annual Energy Outlook 2004 with Projections to 2025,” September 29, 2004.
- 10 Union of Concerned Scientists, “Renewable Electricity Standards at Work in the States,” 2006.
- 11 Energy Information Administration, “Renewable Energy Consumption and Electricity: Preliminary 2006 Statistics,” August 2007.

# Renewable Energy

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## 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 2010 and 2011, 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 2012 and 2013, 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 2014 and 2015, 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 2016 and 2017, 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 2018 and 2019, 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 2020 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.

## **RENEWABLE ENERGY**

### **(C) ENFORCEMENT**

1. The Commission shall adopt regulations to carry out and enforce the provisions of this Act. The regulations adopted by the Commission may include any enforcement mechanisms which are necessary and reasonable to ensure that each provider of electric service complies with its portfolio standard. Such enforcement mechanisms may include, without limitation, the imposition of administrative fines.
2. In the aggregate, the administrative fines imposed against a provider for all violations of its portfolio standard for a single calendar year must not exceed the amount which is necessary and reasonable to ensure that the provider complies with its portfolio standard, as determined by the Commission.

### **SECTION 3. SEVERABILITY**

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

### **SECTION 4. EFFECTIVE DATE.**

This Act shall take effect on July 1, 2008.

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

**[www.stateaction.org](http://www.stateaction.org)**

## ENVIRONMENT RESOURCES

### Clean Cars

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California Air Resources Board  
Natural Resources Defense Council

### Clean Power Plants

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Natural Resources Defense Council

### Global Warming

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Defenders of Wildlife  
Natural Resources Defense Council  
Sierra Club

### Renewable Energy

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Database of State Incentives for Renewable Energy  
Renewable Energy Policy Project  
Union of Concerned Scientists

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# Fire-Safe Cigarettes

- ★ Cigarettes are the leading cause of fatal home fires in the United States.
- ★ Fires caused by cigarettes disproportionately affect the elderly, poor and disabled.
- ★ One-quarter of these victims did not cause the fires themselves.
- ★ There is a much safer alternative.
- ★ The New York Fire Safety Standards for Cigarettes have saved lives.
- ★ States have acted on fire-safe cigarettes because the federal government has not.
- ★ Twenty-two states have enacted laws mandating fire-safe cigarettes.
- ★ Fire-safe cigarette legislation has not affected revenues from state tobacco taxes.

## **Cigarettes are the leading cause of fatal home fires in the United States.**

Every year there are approximately 130,000 smoking-related fires which kill nearly 900 Americans. These fires also injure thousands more and cause billions of dollars in property damage. About one-fourth of all fire deaths can be traced to smoking materials.<sup>1</sup>

## **Fires caused by cigarettes disproportionately affect the elderly, poor and disabled.**

Senior citizens are slower than others to identify smoke alarms and evacuate their homes, making them almost forty percent of smoking fire fatalities. For similar reasons, 30 percent of those who die from smoking-material fires have physical limitations or disabilities.<sup>2</sup> Furthermore, individuals living below the poverty line are 50 percent more likely than others to smoke, making them especially prone to harm.<sup>3</sup>

## **One-quarter of these victims did not cause the fires themselves.**

Of the approximately 900 who die each year, more than 200 are innocent bystanders. Many victims are children or other nonsmokers put in the line of fire by parents, spouses and neighbors.<sup>4</sup>

## **There is a much safer alternative.**

Cigarette-makers currently manufacture “fire-safe” or “fire-retardant” cigarettes for sale in New York and other states. Fire-safe cigarettes are designed to be much less likely to ignite furniture or mattresses when carelessly discarded. Such cigarettes have a number of very small and inexpensive improvements, most notably thin bands of less-porous paper at strategic junctures. These bands tend to extinguish the cigarette if it is left unpuffed. A 2005 study by the Harvard University School of Public Health showed that fire-safe cigarettes were 90 percent less likely than traditional cigarettes to burn their full lengths when left unattended.<sup>5</sup>

## **The New York Fire Safety Standards for Cigarettes have saved lives.**

Authorities in New York worked with both manufacturers and consumer product safety experts over a period of years to design their standards for fire-safe cigarettes. The standards went into effect on June 28, 2004 and quickly proved their effectiveness. While deaths in New York from cigarette-related fires averaged 42 per year between 2000 and 2002, such deaths quickly declined to 28 in 2005.<sup>6</sup>

### **States have acted on fire-safe cigarettes because the federal government has not.**

Although the technology to produce fire-safe cigarettes has been available for more than a decade, the tobacco industry has refused to utilize it. Fire-safe cigarette legislation has been introduced in every Congress since 1999, but tobacco industry lobbying has blocked its passage. The federal Consumer Product Safety Commission, which would have mandated fire-safe cigarettes years ago, is forbidden by law from regulating tobacco products.

### **Twenty-two states have enacted laws mandating fire-safe cigarettes.**

New York enacted its law in 2000 and it took effect in 2004. California and Vermont passed their statutes in 2005, and Illinois, Massachusetts and New Hampshire enacted similar legislation in 2006. Sixteen states (AK, CT, DE, IA, KY, LA, ME, MD, MN, MT, NJ, NC, OR, RI, TX, UT) passed laws requiring the sale of fire-safe cigarettes in 2007. Over 50 percent of Americans live in states that mandate fire-safe cigarettes.

### **Fire-safe cigarette legislation has not affected revenues from state tobacco taxes.**

The average monthly New York cigarette and tobacco products tax revenue from July 2004 through November 2004 was virtually unchanged. So too were tobacco sales.<sup>7</sup>

### **Endnotes**

- 1 John Hall, "The Smoking-Material Fire Problem," Coalition for Fire Safe Cigarettes, 2006.
- 2 John Hall et. al, "Behavioral Mitigation of Smoking Fires Through Strategies Based on Statistical Analysis," United States Fire Administration, 2003.
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- 4 Coalition for Fire Safe Cigarettes, "What is a fire-safe cigarette?" 2006.
- 5 Hillel Alpert et al., "The Effect of the New York State Cigarette Fire Safety Standard on Ignition Propensity. Smoke Toxicity and the Consumer Market," Harvard University School of Public Health, January 2005.
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# Fire-Safe Cigarettes

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## Fire-Safe Cigarettes Act

*Summary: The Fire-Safe Cigarettes Act adopts the New York Fire Safety Standards for Cigarettes.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Fire-Safe Cigarettes Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Cigarettes are the leading cause of fatal home fires in the United States.
2. New York was the first state to require that cigarettes be substantially less likely to ignite furniture or mattresses when carelessly discarded. The New York standards are widely recognized as successful and have been adopted in several other states.
3. By adopting the New York standards, the legislature intends that only reduced ignition propensity cigarettes be sold in our state, but the legislature recognizes that these cigarettes are not guaranteed to self-extinguish. The legislation is expected to reduce fires and related personal injury and property damage caused by cigarette smoking, but not to end such injury and damage.
4. By adopting standards already in effect in New York and other states, the legislature intends to minimize the administrative burdens of compliance on manufacturers.

**(B) PURPOSE**—This law is enacted to protect the health and safety of [State] residents by reducing the number and severity of accidental fires caused by cigarettes.

### SECTION 3. FIRE SAFE CIGARETTES

**(A) DEFINITIONS**—In this section, the terms “cigarette,” “manufacturer,” “wholesale dealer,” and “retailer” have the same meanings as in [cite tobacco tax statute].

#### **(B) FIRE SAFE STANDARD**

1. No cigarettes may be sold or offered for sale to any person in this state unless the cigarettes comply with the New York Fire Safety Standards for Cigarettes in effect on January 1, 2008.
2. Packages of cigarettes that comply with this provision shall be marked in accordance with the New York Fire Safety Standards for Cigarettes in effect on January 1, 2008. If these New York standards for marking packages of cigarettes change significantly, the [Secretary of Health] shall determine whether packages must be marked in accordance with the new standards or the pre-existing standards.

#### **(C) ENFORCEMENT**

1. The [Secretary of Health] shall adopt rules necessary to implement and administer this section.
2. Civil penalties may be assessed against a manufacturer, wholesale dealer, retailer, or any other person that knowingly sells cigarettes that violate this section. Such a civil penalty shall not exceed \$10,000 for each sale.

3. In addition to any other remedy provided by law, the [Attorney General] may file an action for a violation of this section, including petitioning for injunctive relief, recovery of costs or damages suffered by the state as the result of a violation of this section, including enforcement costs relating to the specific violation and attorney's fees.
4. Any cigarettes that have been offered for sale, possessed for sale, or sold in violation of this section shall be deemed contraband and subject to seizure by the [Tobacco Tax Division], or by any peace officer of this state when directed to do so by the [Tobacco Tax Division]. All seized cigarettes shall be destroyed.

**SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

# Freedom of Choice

- ★ With two new justices on the U.S. Supreme Court, *Roe v. Wade* is in jeopardy.
- ★ If *Roe* is overturned, abortion may be criminalized without any legislative action in as many as 19 states.
- ★ Without access to safe, legal abortions, women will die.
- ★ Without *Roe*, women and their doctors will be sent to prison.
- ★ Without the right to choose, a woman would be forced to bear her rapist's child.
- ★ If *Roe* is overturned, every woman who miscarries is at risk of becoming the target of a criminal investigation.
- ★ Reproductive health decisions should be made by patients and their doctors, not by politicians.
- ★ Americans overwhelmingly support the protections of *Roe v. Wade*.
- ★ States can adopt the Freedom of Choice Act to protect women's rights regardless of what happens in the Supreme Court.

## With two new justices on the U.S. Supreme Court, *Roe v. Wade* is in jeopardy.

The 1973 ruling that decriminalized abortion is now seriously threatened by conservative forces that have been steadily dismantling freedom of choice at the federal and state levels. In the 1992 *Casey* decision, the Rehnquist court upheld a woman's right to choose by a slim one-vote majority.<sup>1</sup> Now that Justice Sandra Day O'Connor has retired and two new conservative justices have been appointed, it is possible that *Roe* will be reversed and nearly certain that it will be drastically limited. In the 2007 case of *Gonzalez v. Carhart*, the court upheld the federal ban on so-called partial birth abortions.<sup>2</sup> The decision marks the first time the Court has allowed a restriction on abortion with no exception to protect a woman's health, leaving the door open for state legislators to test other restrictions to abortion access. If *Roe* is overturned, individual states will decide whether abortion is legal.

## If *Roe* is overturned, abortion may be criminalized without any legislative action in as many as 19 states.

Fifteen states (AL, AZ, AR, CO, DE, LA, MA, MI, NM, OK, RI, UT, VT, WV, WI) have abortion bans on the books that could quickly take effect. Four states (LA, MS, ND, SD) have "bans in waiting" which would ban abortion immediately if *Roe* is overturned.<sup>3</sup> In any of these

19 states, women who seek safe abortions, and the doctors who provide them, may soon be treated as criminals—perhaps as murderers. In 2006, South Dakota became the third state since *Roe* to adopt an abortion ban with no exception except to prevent a woman's death—a law that was subsequently overturned by statewide referendum.

## 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.<sup>4</sup> Before *Roe*, an estimated 5,000 women died every year from complications of illegal abortion.<sup>5</sup> 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, all of the "bans in waiting" will punish doctors who perform abortions with jail time, fines or both. Under Alabama law, a person who "aids, abets or prescribes for" 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.<sup>6</sup> Before *Roe*, police raided the offices of doctors and arrested 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.<sup>7</sup> Denying abortion to thousands of rape victims is inexcusable.

**If *Roe* is overturned, every woman who miscarries is at risk of becoming the target of a criminal investigation.**

The results of a miscarriage and an abortion are the same. In order to enforce an abortion ban, police and prosecutors will require the involuntary participation of healthcare professionals. Doctors and nurses will be called before grand juries. Medical records will be subpoenaed or seized by police. Every woman who suffers a miscarriage could be investigated by police for the possibility of an abortion—and all of her doctors could be investigated for their possible participation.

**Reproductive health decisions should be made by patients and their doctors, not by politicians.**

Reproductive rights are human rights. For 34 years, reproductive rights have been guaranteed by the U.S. 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 ten percent of Americans believe abortion should be illegal in all cases.<sup>8</sup> Sixty-two percent of Americans agree with *Roe*.<sup>9</sup>

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.<sup>10</sup>

**States can adopt the Freedom of Choice Act to protect women's rights regardless of what happens in the Supreme Court.**

Ten state constitutions (AK, CA, FL, MA, MN, MT, NJ, NM, TN, WV) and statutes in six other states (CT, HI, ME, MD, NV, WA) affirmatively guarantee the right to an abortion. Hawaii enacted its law in 2006. The remaining 34 states should enact a Freedom of Choice Act before *Roe* is overturned to keep abortion safe and legal.

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

## Endnotes

- 1 *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).
- 2 *Gonzalez v. Carhart*, 127 S. Ct. 1610 (2007).
- 3 Center for Reproductive Rights, “What if *Roe* Fell? The Laws in Your State the Day After,” November 2007.
- 4 Leslie J. Reagan, “When Abortion Was a Crime: Women, Medicine, and the Law in the United States, 1867-1973,” 1997.
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- 6 “What if *Roe* Fell?”
- 7 Felicia Stewart and James Trussell, “Prevention of Pregnancy Resulting from Rape: A Neglected Preventive Health Measure,” *American Journal of Preventive Medicine*, November 2000.
- 8 *Los Angeles Times*/Bloomberg Poll, conducted October 19-22, 2007.
- 9 Quinnipiac University Poll, conducted August 7-13, 2007.
- 10 NARAL Pro-Choice America, “Leading Medical Groups Oppose Obstacles to Abortion,” July 10, 2002.

# Freedom of Choice

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## 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, 2008.



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# Health and Sexuality Education

- \* Millions of sexually active teenagers receive inadequate sexuality education.
- \* Young Americans—particularly minority youth—are at high risk of contracting sexually transmitted diseases, including HIV/AIDS.
- \* Comprehensive sexuality education is critical to the health and well-being of America's teenagers.
- \* Comprehensive sexuality education successfully delays sexual activity among students and reduces teen pregnancy rates.
- \* Since 1996, Congress has committed more than a half-billion dollars to fund abstinence-only education.
- \* There is no credible evidence that abstinence-only education is effective.
- \* American parents overwhelmingly favor comprehensive sexuality education programs.
- \* Only 20 states require schools to provide sexuality education.

## **Millions of sexually active teenagers receive inadequate sexuality education.**

Over 46 percent of all high school students have engaged in sexual intercourse, but 37 percent of sexually active students did not use a condom when they last had sexual intercourse.<sup>1</sup> More than one-third of young women become pregnant at least once before age 20.<sup>2</sup> Despite the clear need for information to help teens abstain from sex and protect themselves if they become sexually active, many local school boards and curriculum committees across the country are moving in the opposite direction—toward abstinence-only education.

## **Young Americans—particularly minority youth—are at high risk of contracting sexually transmitted diseases (STDs), including HIV/AIDS.**

Teenagers continue to be at high risk for acquiring and transmitting STDs. Two-thirds of all STDs occur in people 25 years of age or younger, and one in four new STD cases occur in adolescents.<sup>3</sup> Young women of color are particularly at risk. Latina, African American, Asian American, and Native American women have substantially higher rates of chlamydia than white women. And although African American women and Latinas together represent about one-fourth of the female population, they account for over three-fourths of all reported female cases of AIDS.<sup>4</sup>

## **Comprehensive sexuality education is critical to the health and well-being of America's teenagers.**

Comprehensive sexuality education addresses the full range of issues that arise during adolescence, including sexual development, reproductive health, interpersonal relationships, body image, decision-making, and gender roles. In a society where teens are constantly exposed to sexual overtones and innuendo—in the media, in popular culture, and in everyday life—comprehensive and medically-accurate sexuality education can help children and teenagers process what they see and hear about sex, deal effectively with societal and peer pressure, and make responsible decisions regarding their own sexuality. In fact, former Surgeon General David Satcher declared that comprehensive sex education in schools is “vital,” noting that “the gap between what we know and what we do is lethal.”<sup>5</sup>

## **Comprehensive sexuality education successfully delays sexual activity among students and reduces teen pregnancy rates.**

A statewide comprehensive sexuality education program run by a Maine community group contributed to a 35 percent decline in the teen pregnancy rate since the program began. Because of its success, the Maine legislature expanded the program in 2002 to cover every school in the state. A 2001 report noted that many compre-

hensive sexuality education programs successfully delayed the initiation and decreased the frequency of sexual activity among students.<sup>6</sup>

**Since 1996, Congress has committed more than a half-billion dollars to fund abstinence-only education programs.**

These programs teach abstinence from sexual activity as the only acceptable form of behavior outside of marriage for people of any age. Programs that receive these federal funds are prohibited from discussing contraceptives—unless they portray them as ineffective.

**There is no credible evidence that abstinence-only education is effective.**

In 2007, a federally funded study of abstinence-only programs found that they just don't work—students in the programs had a similar age of first sex and number of partners as their peers who did not participate in abstinence-only programs.<sup>7</sup> In fact, recent research shows that abstinence-only strategies may deter contraceptive use among sexually active teenagers, increasing their risk of unintended pregnancy and STDs.<sup>8</sup> A 2002 Human Rights Watch report found that some abstinence-only education programs falsely claimed that condoms are ineffective in preventing HIV transmission, and that “condoms don't work.”<sup>9</sup>

**American parents overwhelmingly favor comprehensive sexuality education programs.**

Nearly nine in ten American parents believe that sexuality education programs should cover all aspects of sexuality, including contraception, safe sex, and abstinence.<sup>10</sup> Major medical, public health, and research institutions support comprehensive sexuality education, including the American Medical Association, the American Academy of Pediatrics, the American Nurses Association, the American College of Obstetricians and Gynecologists and the American Public Health Association.

**Only 20 states require schools to provide sexuality education.**

Education on HIV/AIDS and other STDs is mandated in 35 states and the District of Columbia, but only 20 states (DE, FL, GA, HI, IA, KS, KY, ME, MD, MN, MT, NV, NJ, NC, OR, RI, SC, TN, UT, VT) and the District of Columbia require a broader sexuality education curriculum. In 2007, legislators in Colorado, Iowa, and Washington passed laws improving sexuality education programs in their states.

*This policy summary relies in large part on information from the Alan Guttmacher Institute, Planned Parenthood Federation of America and NARAL Pro-Choice America.*

## Endnotes

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- Deborah Weiss, “Pregnancy & Childbearing Among U.S. Teens,” Planned Parenthood, January 2006.
- American Social Health Association, “STD Statistics,” 2001.
- AIDS Action, “What Works in HIV Prevention for Women of Color,” 2001.
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- Douglas Kirby, “Emerging Answers: Research Findings on Programs to Reduce Teen Pregnancy,” National Campaign to Prevent Teen Pregnancy, 2001.
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- Martha Kempner, “Toward a Sexually Healthy America: Abstinence-Only-Until-Marriage Programs that Try to Keep Our Youth ‘Scared Chaste,’” Sexuality Information and Education Council of the United States, 2001.
- Human Rights Watch, “Ignorance Only: HIV/AIDS, Human Rights and Federally Funded Abstinence-Only Programs in the United States,” 2002.
- Henry J. Kaiser Family Foundation, “Sex Education in America: A View from Inside the Nation's Classrooms,” 2000.

# Health and Sexuality Education

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## Responsible Sexuality Education in Schools Act

### SECTION 1. SHORT TITLE

This Act shall be called “The Responsible Sexuality Education in Schools Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Effective sexuality education programs discussing condoms and contraception help delay the onset of sexual activity, reduce the frequency of underage sex, and reduce the number of sex partners.
2. Abstinence-only programs in schools do not delay the initiation of teen sex or reduce its frequency.
3. It is essential for the health and safety of young people that they receive medically and factually accurate and objective information about sexuality, pregnancy and sexually transmitted diseases.

**(B) PURPOSE**—This law is enacted to protect the health and safety of young people and reduce the incidence of sexually transmitted disease in the state.

### SECTION 3. RESPONSIBLE SEXUALITY EDUCATION IN SCHOOLS

**(A) DEFINITION**—In this section, “medically accurate” means information:

1. Supported by the weight of research conducted in compliance with accepted scientific methods.
2. Recognized as accurate and objective by leading professional organizations and agencies with relevant expertise in the field, such as the American College of Obstetricians and Gynecologists or the Centers for Disease Control.

### **(B) RESPONSIBLE SEXUALITY EDUCATION REQUIRED**

1. The [Board of Education] shall adopt rules requiring all [high schools and middle schools] to teach age-appropriate, comprehensive and religiously neutral sexuality education, including education on both abstinence and contraception for the prevention of pregnancy and sexually transmitted diseases, including HIV.
2. All sexuality education courses taught in schools must provide medically accurate information.

### SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2008.

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# Health Care for All

- \* About 47 million Americans lack health insurance and about 42 million more are underinsured.
- \* Employers deny healthcare coverage to millions of their employees.
- \* Uninsured Americans often die prematurely because they don't receive timely medical treatment.
- \* Medical care for the uninsured drives up healthcare costs for everyone.
- \* In 2003, Maine enacted an innovative plan to encourage employers to expand health coverage.
- \* In 2006, Massachusetts and Vermont took unprecedented steps towards health care for all.
- \* Several states have moved toward universal coverage of children.
- \* Americans strongly favor health care for all.

## **About 47 million Americans lack health insurance and about 42 million more are underinsured.<sup>1</sup>**

The increasing financial instability of the managed care industry and the rising cost of premiums and prescriptions have cast doubt on whether any American's health care is secure. Despite the nation's massive healthcare spending, more than one-fourth of Americans are uninsured or underinsured. And even Americans who have health insurance are paying a greater share of its cost. Nationwide, average employment-based health insurance premiums increased 87 percent from 2000 to 2006, almost five times faster than inflation.<sup>2</sup> According to a Harvard University study, medical bills are now the primary cause of half of all personal bankruptcies.<sup>3</sup>

## **Employers deny healthcare coverage to millions of their employees.**

The American healthcare system is based on the assumption that employers will provide health insurance coverage to employees—but more than a third do not. In fact, 80 percent of the uninsured come from working families.<sup>4</sup> Seventy percent are not even offered health coverage by their employers. Of the rest, 84 percent cite the high cost of health insurance as their reason for declining coverage. Only 55 percent of low-wage workers—those who earn less than \$7 per hour—have access to job-based health insurance.<sup>5</sup>

## **Uninsured Americans often die prematurely because they don't receive timely medical treatment.**

Annually, 18,000 Americans die prematurely because they do not have health insurance to pay for preventive care and early treatment of disease, according to a comprehensive report by the National Academy of Sciences' Institute of Medicine. Since they receive inadequate health care and are diagnosed later, the uninsured become sicker and die sooner. One study conducted over a period of 17 years found that the uninsured were 25 percent more likely to die early than those with private insurance.<sup>6</sup>

## **Medical care for the uninsured drives up healthcare costs for everyone.**

Hospital emergency rooms and urgent care clinics are costly and inefficient sources of primary care. Yet the uninsured are often forced to use them for even basic health problems. Facilities that treat the uninsured provide nearly \$100 billion in healthcare services each year.<sup>7</sup> To pay for unreimbursed costs, these facilities must increase costs to public and private insurance programs, which drives up rates for everyone. A Georgia study found that the cost of private health insurance premiums would be nearly ten percent lower if every citizen in the state were insured.<sup>8</sup>

**In 2003, Maine enacted an innovative plan to encourage employers to expand health coverage.**

Maine's "Dirigo" plan allows enrollees—mostly individuals and smaller companies—to participate in a buying pool. By lowering and stabilizing insurance rates, participation in the pool offers the benefits of a larger group. The Dirigo plan also expands Medicaid to cover more low-income residents and provides subsidies to middle-income families, using a sliding scale based on ability to pay.

**In 2006, Massachusetts and Vermont took unprecedented steps towards health care for all.**

★ In April 2006, Massachusetts enacted a law that requires all residents to obtain health insurance. The Massachusetts plan uses state-funded healthcare expansions, a modest tax on companies that fail to insure their employees, and a self-insurance requirement in order to cover 550,000 uninsured residents.<sup>9</sup>

★ In May 2006, Vermont enacted a health care for all statute almost as sweeping as the Massachusetts law. It will cover as many as 96 percent of residents by 2010.

**The Maryland Health Care for All campaign provides a strong organizing model.**

For six years, the Maryland Citizens' Health Initiative has built support for the concept of universal coverage, reaching out to thousands of community groups, holding dozens of town meetings, and convening a task force of health policy experts. Over 1,000 health care, business, labor and civic organizations have endorsed the Health Care for All plan.<sup>10</sup>

**Several states have moved toward universal coverage of children.**

In 2006, Illinois and Pennsylvania became the first states to enact "All Kids Coverage" plans by maximizing SCHIP benefits and using the

negotiating and purchasing power of Medicaid programs. Hawaii, Oklahoma and Washington enacted similar legislation in 2007.

**Americans strongly favor health care for all.**

A May 2007 CNN poll found that, by a margin of nearly two to one, Americans favor guaranteeing health insurance for all, "even if it means raising taxes."<sup>11</sup> In spite of the public's clear commitment to universal health care, it remains one of the most woefully neglected policy priorities of our time.

*This policy summary relies in large part on information from Families USA and the Maryland Citizens' Health Initiative.*

## Endnotes

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- 3 Elizabeth Warren, "Sick and Broke," *Washington Post*, February 9, 2005.
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- 9 For an excellent short explanation, see Community Catalyst, "Massachusetts Health Care Reform: What it Does: How it Was Done; Challenges Ahead," April 2006.
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- 11 CNN/Opinion Research Corp. poll, May 4-6, 2007.

# Health Care for All

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## Covering All Kids Health Insurance Act

*Summary: The Covering All Kids Health Insurance Act provides health insurance to children who are not otherwise covered by public programs or private policies.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Covering All Kids Health Insurance Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Many children in working families, including many families whose family income ranges between \$40,000 and \$80,000, are uninsured.
2. Numerous studies, including the Institute of Medicine’s report, “Health Insurance Matters,” demonstrate that lack of insurance negatively affects health status.
3. Access to health care is a key component for children’s healthy development and successful education.
4. It is, therefore, the intent of this legislation to provide access to affordable health insurance to all uninsured children in the state.

**(B) PURPOSE**—This law is enacted to protect the health and welfare of all the children in [State].

### SECTION 3. COVERING ALL KIDS HEALTH INSURANCE

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

**(A) DEFINITIONS**—In this section:

1. “Application agent” means an organization or individual, such as a licensed healthcare provider, school, youth service agency, employer, labor union, local chamber of commerce, community-based organization, or other organization, approved by the Department to assist in enrolling children in the Program.
2. “Child” means a person under the age of 19.
3. “Department” means the Department of [Health].
4. “Program” means the Covering All Kids Health Insurance Program.
5. “Resident” means an individual who is in the state for other than a temporary or transitory purpose during the taxable year, or who is domiciled in this state but is absent from the state for a temporary or transitory purpose during the taxable year.
6. “State medical assistance” means healthcare benefits provided under [the state Medicaid or the SCHIP programs], or under another government program.



**(B) ESTABLISHMENT OF THE PROGRAM**

1. There is established a Covering All Kids Health Insurance Program. The Program shall be administered by the Department of [Health]. The Department shall have the same powers and authority to administer the Program as are provided to the Department in connection with the Department's administration of [the state Medicaid program] and the [SCHIP program]. The Department shall coordinate the Program with the existing health programs operated by the Department and other State agencies.
2. To be eligible for the Program, a person must be a child who is a resident of the state, and who is ineligible for state medical assistance, and:
  - a. Who has been without health insurance coverage for a period set forth by the Department in rules, but not less than six months or more than 12 months;
  - b. Whose parent lost employment that made available affordable dependent health insurance coverage, until such time as affordable employer-sponsored dependent health insurance coverage is again available for the child as set forth by the Department in rules;
  - c. Who is a newborn whose responsible relative does not have available affordable private or employer-sponsored health insurance; or
  - d. Who, within one year of applying for coverage under this Act, lost state medical assistance benefits.
3. An entity that provides health insurance coverage to state residents shall provide health insurance data to the Department for the purpose of determining eligibility for the Program. The rules for obtaining this information shall be consistent with all laws relating to the confidentiality or privacy of personal information or medical records, including provisions under the federal Health Insurance Portability and Accountability Act (HIPAA).
4. The Department, at its discretion, may take into account the affordability of dependent health insurance when determining whether employer-sponsored dependent health insurance coverage is available upon reemployment of a child's parent.
5. The Department shall adopt eligibility rules, including, but not limited to rules regarding annual renewals of eligibility for the Program; rules providing for re-enrollment, grace periods, notice requirements, and hearing procedures; and rules regarding what constitutes availability and affordability of private or employer-sponsored health insurance, with consideration of such factors as the percentage of income needed to purchase child or family health insurance, the availability of employer subsidies, and other relevant factors.
6. The Department shall develop procedures to allow application agents to assist in enrolling children in the Program or other children's health programs operated by the Department. At the Department's discretion, technical assistance payments may be made available for approved applications facilitated by an application agent.
7. The Department may provide grants to application agents and other community-based organizations to educate the public about the availability of the Program. The Department shall adopt rules regarding performance standards and outcomes measures expected of organizations that are awarded grants under this Section, including penalties for nonperformance of contract standards.

## HEALTH CARE FOR ALL

8. The Department shall request any necessary state plan amendments or waivers of federal requirements in order to allow receipt of federal funds for implementing any or all of the provisions of the Program. The failure of the responsible federal agency to approve a waiver or other state plan amendment shall not prevent the implementation of any provision of this Act.

### **(C) OPERATION OF THE PROGRAM**

1. The Department shall purchase or provide healthcare benefits for eligible children that are identical to the benefits provided for children under the [SCHIP] program.
2. As an alternative to [SCHIP] program benefits, when cost-effective, the Department may offer families:
  - a. Subsidies toward the cost of private health insurance, including employer-sponsored health insurance.
  - b. Partial coverage to children who are enrolled in a high-deductible private health insurance plan.
  - c. A limited package of benefits to children in families who have private or employer-sponsored health insurance that does not cover certain benefits such as dental or vision benefits.
3. The content, availability, and terms of eligibility of any alternatives to [SCHIP] program benefits shall be at the Department's discretion and the Department's determination of efficacy and cost-effectiveness.
4. Children enrolled in the Program are subject to the following cost-sharing requirements:
  - a. The Department, by rule, shall set forth requirements concerning copayments and coinsurance for healthcare services and monthly premiums. This cost-sharing shall be on a sliding scale based on family income. The Department may periodically modify such cost-sharing. However, there shall be no copayment required for well-baby or well-child health care, including, but not limited to, age-appropriate immunizations as required under state or federal law.
  - b. Children enrolled in a private health insurance plan are subject to the cost-sharing provisions stated in the private health insurance plan.

### **(D) CLAIMS FOR REIMBURSEMENT**

1. To the extent of the amount of healthcare benefits provided for a child under the Program, the Department shall be subrogated to any right of recovery such recipient may have under the terms of any private or public healthcare coverage or casualty coverage, without the necessity of assignment of claim or other authorization to secure the right of recovery to the Department.
2. When benefits are provided or will be provided to a beneficiary under the Program because of an injury for which another person is liable, or for which a carrier is liable in accordance with the provisions of any policy of insurance, the Department shall have a right to recover from such person or carrier the reasonable value of benefits so provided. To enforce such right, the Department may institute and prosecute legal proceedings against the third person or carrier who may be liable for the injury in an appropriate court, either in the name of the Department or in the name of the injured person, his guardian, personal representative, estate or survivors.

**(E) STUDY OF THE PROGRAM**—The Department shall conduct a study that includes, but is not limited to, the following:

1. Establishing estimates, broken down by regions of the state, of the number of children with and without health insurance coverage; the number of children who are eligible for Medicaid or the state Children's Health Insurance Program, and, of that number, the number who are enrolled in Medicaid or the state Children's Health Insurance Program; and the number of children with access to dependent coverage through an employer, and, of that number, the number who are enrolled in dependent coverage through an employer.
2. Surveying those families whose children have access to employer-sponsored dependent coverage but who decline such coverage as to the reasons for declining coverage.
3. Ascertaining, for the population of children accessing employer-sponsored dependent coverage or who have access to such coverage, the comprehensiveness of dependent coverage available, the amount of cost-sharing currently paid by the employees, and the cost-sharing associated with such coverage.
4. Measuring the health outcomes or other benefits for children enrolled in the Covering All Kids Health Insurance Program and analyzing the effects on utilization of healthcare services for children after enrollment in the Program compared to the preceding period of uninsured status.
5. These studies shall be conducted in a manner that compares a time period preceding or at the initiation of the program with a later period.
6. The Department shall submit the preliminary results of the study to the governor and the legislature no later than July 1, 2010 and shall submit the final results to the governor and the legislature no later than July 1, 2012.

#### **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, 2008.

# Prescription Drug Marketing

- \* Prescription drug prices are skyrocketing.
- \* Drug manufacturers market directly to doctors—a practice called “detailing”—to encourage them to prescribe the most expensive medicines.
- \* Detailing by drug manufacturers has rapidly escalated.
- \* The influence of detailers puts patients at risk.
- \* Because of detailers, government programs, private employers, and individual patients pay too much for prescription drugs.
- \* Gifts to doctors give detailers undue influence.
- \* Prescriber reports give detailers undue influence.
- \* The drug industry’s voluntary code of ethics for marketing isn’t working.
- \* Vermont, Maine and New Hampshire have enacted laws that control drug marketing practices.

## **Prescription drug prices are skyrocketing.**

Prescription drug prices increased an average of 7.5 percent per year from 1994 to 2006, almost three times faster than the rate of inflation.<sup>1</sup> 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.<sup>2</sup> That amounts to about \$25,000 per physician per year.<sup>3</sup> This money is largely spent on visits to doctors by sales representatives, called “detailers.” Detailers promote the newest and most expensive brand name drugs. Studies have consistently proven that the practice of detailing causes doctors to prescribe the latest drugs—even when overwhelming medical evidence shows that less expensive, tried and true remedies would be significantly cheaper, equally effective, and in many cases, safer.<sup>4</sup>

## **Detailing by drug manufacturers has rapidly escalated.**

Spending on marketing to doctors increased by 275 percent between 1996 and 2004.<sup>5</sup> The drug industry employed 87,892 detailers in 2001—a 110 percent increase from the 41,855 employed in 1996.<sup>6</sup> 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.<sup>7</sup> For example, by the time Merck withdrew the anti-inflammatory drug Vioxx from the market, more than 100 million prescriptions had been dispensed in the United States—the vast majority written after evidence of cardiovascular risks was known. Internal company documents prove that Merck trained its detailers to mislead doctors about the dangers of Vioxx.<sup>8</sup>

## **Because of detailers, government programs, private employers, and individual patients pay too much for prescription drugs.**

The job of drug detailers is to promote the newest and most expensive drugs, regardless of what is best for each patient. This drives up the cost of medicine for individuals, businesses, insurance programs, and state governments. For the 50 million Americans who do not have prescription drug insurance coverage, these prescriptions are virtually unaffordable.

## **Gifts to doctors give detailers undue influence.**

Nearly all physicians accept gifts from drug detailers.<sup>9</sup> Those gifts, worth billions of dollars, run the gamut from free pens and drug samples to high-priced meals, trips and honoraria. Doctors concede that gifts are one of the main reasons they meet with drug detailers. As a result, the average

doctor meets with detailers several times every month.<sup>10</sup> Many doctors see drug detailers in their offices every day.

### **Prescriber reports give detailers undue influence.**

Unbeknownst to most doctors, drug detailers have access to prescriber reports that let them know—right down to the pill—if their sales pitches are successful. Prescriber reports are weekly lists of every prescription written by every physician, excluding patients' names.<sup>11</sup> Data mining companies like Dendrite International, Verispan and IMS Health buy this information from pharmacies, pharmacy benefits managers, and insurance companies. Dendrite, for example, purchases information on 150 million prescriptions every month and currently has a database of five billion prescriptions. This data is sold to pharmaceutical manufacturers, who distribute doctor-by-doctor prescriber reports to their detailers. Prescriber reports allow detailers to target doctors and adjust sales pitches until they find the one that works best.<sup>12</sup> This invasion of privacy provides no benefit to doctors or patients—it serves only to enrich drug companies and detailers.

### **The drug industry's voluntary code of ethics for marketing isn't working.**

Lavish drug company gifts to doctors led the Pharmaceutical Research and Manufacturers of America (PhRMA) to adopt voluntary ethical guidelines in 1990. Those guidelines prohibited gifts worth over \$100. In recent years, PhRMA has recognized the continuing problem of unethical marketing practices and issued a slightly revised voluntary ethical code in 2002, again with a \$100 limit. But industry self-regulation has failed.

### **Vermont, Maine and New Hampshire have enacted laws that control drug marketing practices.**

In 2002, Vermont enacted legislation that requires drug companies to file annual reports that disclose the value, nature and purpose of any gift, payment or subsidy worth over \$25. The law applies to marketing activities to any physician, hospital, nursing home, pharmacist, or health

plan administrator. Maine and the District of Columbia have adopted similar measures. New Hampshire and Maine became the first states to block prescriber reports by restricting the sale of prescription data.

*This policy summary relies in large part on information from the National Legislative Association on Prescription Drug Prices.*

### **Endnotes**

- 1 Kaiser Family Foundation, "Prescription Drug Trends," May 2007.
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- 4 Dana Katz, Arthur Caplan, and Jon Merz, "All Gifts Large and Small: Toward an Understanding of the Ethics of Pharmaceutical Industry Gift-Giving," *American Journal of Bioethics*, Summer 2003; Ashley Wazana, "Physicians and the Pharmaceutical Industry: Is a Gift Ever Just a Gift?" *Journal of the American Medical Association*, January 19, 2000.
- 5 "Trends and Indicators in the Changing Health Care Marketplace."
- 6 Tyler Chin, "Drug firms score by paying doctors for time," *American Medical News*, May 6, 2002.
- 7 "All Gifts Large and Small" and "Physicians and the Pharmaceutical Industry."
- 8 Rep. Henry Waxman, "The Marketing of Vioxx to Physicians," based on documents received by the U.S. House of Representatives' Committee on Government Reform, May 5, 2005.
- 9 "All Gifts Large and Small" and "Physicians and the Pharmaceutical Industry."
- 10 Ibid.
- 11 Shannon Brownlee and Jeanne Lenzer, "Spin Doctored: How drug companies keep tabs on physicians," *Slate*, May 31, 2005; Liz Kowalczyk, "Drug Companies' Secret Reports Outrage Doctors," *Boston Globe*, May 25, 2003.
- 12 For a sample "Physician Targeting Report," see Paul Kallukaran and Jerry Kagan, "Data Mining at IMS Health: How we turned a mountain of data into a few information-rich molehills," 1999.

# Prescription Drug Marketing

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## Prescription Drug Ethical Marketing Act

*Summary: The Prescription Drug Ethical Marketing Act requires drug manufacturers to disclose the value, nature and purpose of gifts to doctors.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Prescription Drug Ethical Marketing Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Prescription drugs are the fastest growing component of health care spending in the United States.
2. Drug manufacturers’ marketing to doctors, or “detailing,” causes doctors to prescribe the most expensive medicines, even when less expensive drugs are as effective or safer.
3. Gifts from prescription drug detailers to doctors play a major role in persuading doctors to change which drugs they prescribe.

**(B) PURPOSE**—This law is enacted to lower prescription drug costs for individuals, businesses and the state—and to protect the health of residents—by deterring the practice of unethical gift-giving by drug manufacturers.

### SECTION 3. PRESCRIPTION DRUG ETHICAL MARKETING

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

**(A) DEFINITIONS**—in this section:

1. “Pharmaceutical marketer” means a person who, while employed by or under contract to represent a manufacturer or labeler, engages in pharmaceutical detailing, promotional activities, or other marketing of prescription drugs in this state to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person authorized to prescribe or dispense prescription drugs.
2. “Secretary” means the Secretary of the Department of [Health], or the Secretary’s designee.
3. “Manufacturer” means a manufacturer of prescription drugs as defined in 42 U.S.C. Section 1396r-8 (k)(5), including a subsidiary or affiliate of a manufacturer.
4. “Labeler” means an entity or person that receives prescription drugs from a manufacturer or wholesaler to repackage for retail sale, and that has a labeler code from the Food and Drug Administration under 21 C.F.R. Section 207.20.

### **(B) DISCLOSURE OF MARKETING PRACTICES**

1. On or before January 1 of each year, every manufacturer and labeler that sells prescription drugs in the state shall disclose to the Secretary the name and address of the individual responsible for the company’s compliance with the provisions of this section.

2. On or before February 1 of each year, every manufacturer and labeler that sells prescription drugs in the state shall file a marketing disclosure report with the Secretary listing the value, nature and purpose of any gift, fee, payment, subsidy or other economic benefit provided in connection with detailing, promotion or other marketing activities by the company, directly or through its pharmaceutical marketers, to any physician, hospital, nursing home, pharmacist, health benefit plan administrator, or any other person in [State] authorized to prescribe or dispense prescription drugs. Each gift recipient shall be clearly identified by full name and address. The marketing disclosure report shall cover the prior year and be submitted on paper and in a standardized electronic database format prescribed by the Secretary.
3. On or before February 15 of each year, the Secretary shall make the marketing disclosure reports available to the public on paper and through the Internet.
4. The following shall be exempt from disclosure:
  - a. Any gift, fee, payment, subsidy or other economic benefit worth less than 25 dollars.
  - b. Free samples of prescription drugs to be distributed to patients.
  - c. The payment of reasonable compensation and reimbursement of expenses in connection with a *bona fide* clinical trial conducted in connection with a research study designed to answer specific questions about vaccines, new therapies, or new uses of known treatments.
  - d. Scholarship or other support for medical students, residents and fellows to attend a *bona fide* educational, scientific or policy-making conference of an established professional association, if the recipient of the scholarship or other support is selected by the association.

#### **(C) ADMINISTRATION AND ENFORCEMENT**

1. This section shall be enforced by the Secretary, who shall promulgate such regulations as needed to implement and administer compliance, including regulations describing *bona fide* clinical trials in section (B)4c and *bona fide* conferences in section (B)(4)(d).
2. If a manufacturer or labeler violates this section, the Secretary may bring an action in court for injunctive relief, costs, attorneys' fees, and a civil penalty of up to \$10,000 per violation. Each unlawful failure to disclose shall constitute a separate violation.

#### **SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008. Initial disclosure shall be made on or before February 1, 2009 for the six-month period July 1, 2008 to December 31, 2008.



# PRESCRIPTION DRUG MARKETING

## Prescription Privacy Act

*Summary: The Prescription Privacy Act prohibits the sale of information listed on prescriptions that identifies specific prescribers or patients.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Prescription Privacy Act.”

### SECTION 2. PRESCRIPTION PRIVACY

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

**(A) PRESCRIPTION PRIVACY**—Information that identifies a specific prescriber or patient on a prescription shall not be transferred by any pharmacy, pharmacy benefits manager, insurance provider, data transfer intermediary, or their agents.

**(B) EXCEPTIONS**—If no payment is received for the disclosure, information that identifies a specific prescriber or patient on a prescription may be released to:

1. The patient for whom the original prescription was issued.
2. A licensed prescriber who issued the prescription or who treats the patient.
3. An officer, inspector or investigator for a government health, licensing or law enforcement agency.
4. A person authorized by a court order to receive the information.
5. A pharmacy or medical researcher who has written authorization signed by the patient or the patient’s legal guardian to receive such information.
6. Another pharmacy, for the limited purpose of preventing individuals from misusing or falsifying prescription forms to illegally obtain excessive or unauthorized drugs.
7. The patient’s insurance provider or the provider’s agent, for the limited purpose of reimbursing the pharmacy.

#### **(C) ENFORCEMENT**

1. This section shall be enforced by the [Secretary of Health], who shall promulgate such regulations as are necessary to implement and administer compliance.
2. If any person violates this section, the [Secretary of Health] may bring an action in court for injunctive relief, costs, attorneys’ fees, and a civil penalty of up to \$1,000 per violation. Each unlawful disclosure shall constitute a separate violation.

### SECTION 3. EFFECTIVE DATE

This Act shall take effect on July 1, 2008.



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# Smoke-Free Workplaces

- ✱ Exposure to secondhand smoke is common in workplaces.
- ✱ Exposure to secondhand smoke is extremely dangerous to nonsmokers.
- ✱ People of color are exposed to higher levels of secondhand smoke on the job.
- ✱ Smoke-free workplace laws help smokers quit.
- ✱ Smoke-free workplaces save employers money.
- ✱ Fears in the hospitality industry that smoking bans may damage business are unfounded.
- ✱ Ventilation is not a solution to secondhand smoke.
- ✱ Twenty states have banned smoking in nearly all workplaces.

## **Exposure to secondhand smoke is common in workplaces.**

Millions of Americans are exposed to secondhand smoke (also called involuntary smoking, environmental tobacco smoke and passive smoking) while at work. It is still commonplace for offices to be filled with tobacco smoke. Only 42 percent of workers are protected by 100 percent smoke-free workplace policies.<sup>1</sup> Additionally, just 28 percent of restaurant waitstaff and 13 percent of bartenders are covered by such policies.<sup>2</sup>

## **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.<sup>3</sup> Every year in this country, secondhand smoke kills about 53,000 nonsmokers from heart disease or lung cancer.<sup>4</sup> 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.<sup>5</sup> Latinos and Native Americans have the highest rates of occupational exposure to secondhand smoke.<sup>6</sup>

## **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.<sup>7</sup> 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.”<sup>8</sup>

## **Smoke-free workplaces save employers money.**

Employers bear direct and indirect costs as a result of employees’ smoking, including absenteeism, decreased productivity, increased early retirement, higher healthcare costs, higher life insurance premiums, higher maintenance and cleaning costs, higher risk of fire damage, explosions and other accidents, and higher fire insurance premiums. A 1995 study estimated that when smokers quit, their employers save approximately \$3,191 per smoker per year.<sup>9</sup> Cigarette smoking and secondhand smoke result in \$92 billion in productivity losses each year.<sup>10</sup>

## **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 second-hand smoke confident in rejecting industry claims that there will be an adverse economic impact.”<sup>11</sup>

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.”<sup>12</sup>

### **Ventilation is not a solution to secondhand smoke.**

Even the newest ventilation technologies under ideal conditions cannot remove secondhand smoke and its toxic elements from the air. Studies show that the only way to eliminate the health risks associated with indoor smoking exposure is to ban smoking.<sup>13</sup>

### **Twenty states have banned smoking in nearly all workplaces.**

In 2007, Illinois, Maryland, Minnesota and Oregon enacted smoke-free workplace laws. Nineteen states (AZ, CA, CO, CT, DE, HI, IL, ME, MD, MA, MN, NH, NJ, NM, NY, OH, RI, VT, WA) and the District of Columbia now ban smoking in nearly all indoor workplaces, including restaurants and bars. Oregon’s law takes effect in 2009. Eleven states (AR, FL, GA, ID, LA, MT, NV, ND, SD, TN, UT) now ban workplace smoking in restaurants, but not in bars. Montana’s and Utah’s laws will cover bars in 2009. Hundreds of cities and counties have their own smoke-free workplace laws. In all, more than 100 million Americans live in jurisdictions that require smoke-free workplaces.

*This policy brief relies in large part on information from Americans for Nonsmokers’ Rights and the Campaign for Tobacco-Free Kids.*

### **Endnotes**

- 1 Americans for Nonsmokers’ Rights, “Percent of U.S. State Populations Covered by 100% Smokefree Air Laws,” October 1, 2007.
- 2 U.S. Department of Health and Human Services, “The Health Consequences of Involuntary Exposure to Tobacco Smoke,” June 27, 2006.
- 3 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; Americans for Nonsmokers’ Rights, “Secondhand Smoke: The Science,” November 2006.
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- 11 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.
- 12 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.
- 13 American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., “Environmental Tobacco Smoke,” June 2005.

# Smoke-Free Workplaces

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## 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.

## SMOKE-FREE WORKPLACES

### (D) ENFORCEMENT

1. The Department of [Health] shall promulgate regulations to implement this section.
2. A person or entity that owns, manages, operates or otherwise controls a place of employment who fails to make and enforce workplace rules to ensure compliance with this section shall be guilty of a misdemeanor punishable by a fine of \$500 for the first violation, \$5,000 for a second violation, and \$10,000 for a third and each subsequent violation.
3. If a person or entity that owns, manages, operates or otherwise controls a place of employment demonstrates egregious noncompliance with this section, all applicable state and local licensing boards will be directed to suspend or revoke that person's or entity's license(s) to operate.
4. A person who violates this section by smoking in a place where smoking is prohibited shall be subject to a civil penalty of \$100 for each violation.
5. Any person may register a complaint with the Department of [Health] to initiate an investigation and enforcement action.
6. Any person or entity subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation.

### SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2008.

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# Unsafe Cosmetics

- ✱ Many cosmetics contain carcinogens and toxic chemicals.
- ✱ Ninety-eight percent of all cosmetic products contain ingredients that have never been publicly assessed for safety.
- ✱ The federal Food and Drug Administration (FDA) does not test cosmetics before they go on the market, and has no power to recall cosmetics that are found to be dangerous.
- ✱ Cosmetics are most heavily used by women of childbearing age, increasing the likelihood of exposing mothers, fetuses, and nursing children to carcinogenic and toxic substances.
- ✱ Beauty care workers, including cosmetologists and manicurists, are most exposed to the harmful effects of carcinogens and toxins in cosmetics.
- ✱ Americans cannot protect themselves from dangerous products because federal law does not even require disclosure of all the substances in cosmetics.
- ✱ Alternatives to substances that cause cancer or reproductive toxicity are readily available for use in cosmetic products.
- ✱ States can enact legislation to protect the consumers of cosmetics.

## **Many cosmetics contain carcinogens and toxic chemicals.**

Cosmetic products—creams, lotions, powders, perfumes, deodorants, colorings, and the like—sold in the United States frequently contain substances that are known or suspected to cause cancer or are toxic to an expectant or nursing mother, a fetus, or a nursing child. A 2007 investigation of 23,000 cosmetic products by the Environmental Working Group found that nearly one of every 30 cosmetics sold in the U.S. violates at least one industry or governmental safety standard.<sup>1</sup> A third of all products contain one or more ingredients that are suspected to cause cancer in humans.

## **Ninety-eight percent of all cosmetic products contain ingredients that have never been publicly assessed for safety.**

While hundreds of products are proven unsafe, the safety of other cosmetic products is simply unknown. More than 22,000 products contain ingredients which have never been tested for safe use as cosmetics by the federal Food and Drug Administration, the cosmetics industry's Cosmetic Ingredient Review panel, or any other publicly accountable U.S. institution.<sup>2</sup>

## **The federal Food and Drug Administration (FDA) does not test cosmetics before they go on the market, and has no power to recall cosmetics that are found to be dangerous.**

The FDA does not regulate cosmetics the way it regulates drugs. There is no testing, review, or approval of cosmetic products before they go on the market. The FDA does not require manufacturers to register cosmetic products, file data on ingredients, or report cosmetic-related health problems. And the FDA does not have the authority to order a recall of cosmetics that are proven to be dangerous.

## **Cosmetics are most heavily used by women of childbearing age, increasing the likelihood of exposing mothers, fetuses, and nursing children to carcinogenic and toxic substances.**

According to industry surveys, some Americans use as many as 25 different cosmetic products per day, containing more than 200 different chemicals. Many chemicals applied to the skin are absorbed or inhaled into the body, and many of these substances are retained in human tissue.<sup>3</sup> Long-term exposure to these chemicals—because cosmetics may be used for years—increases the likelihood of harm to mothers and children.



**Beauty care workers, including cosmetologists and manicurists, are most exposed to the harmful effects of carcinogens and toxins in cosmetics.**

Workers in nail and beauty salons are most exposed to the hazardous chemicals in cosmetics. The vast majority of these workers are women, and most tend to be among racial or ethnic minorities. Several studies have found that beauty care workers are substantially more at risk of cancer than others, even after adjusting for smoking, socioeconomic status, and other factors.<sup>4</sup>

**Americans cannot protect themselves from dangerous products because federal law does not even require disclosure of all the substances in cosmetics.**

Federal law requires that cosmetics packages list their ingredients, “excepting that fragrance, flavoring, and coloring may be declared as such” instead of being listed by chemical. Moreover, manufacturers can apply to have their ingredients considered a “trade secret” and therefore exempt from disclosure. When a cosmetics label reads “and other ingredients,” it contains chemicals that are exempt from disclosure to the public.

**Alternatives to substances that cause cancer or reproductive toxicity are readily available for use in cosmetic products.**

A number of manufacturers, including both small domestic producers and large multinational corporations, have eliminated substances that cause cancer or reproductive toxicity from their products either because they want to appeal to health-conscious customers or because they already manufacture safer versions of their products that are required by regulations of the European Union.

**States can enact legislation to protect the consumers of cosmetics.**

California enacted the Safe Cosmetics Act in 2005, and that law took effect on January 1, 2007. It requires the manufacturer of any cosmetics subject to FDA regulation to provide to the state a list of its products that, as of the date of submission, are sold in the state and contain any ingredient that has been identified as causing cancer or reproductive toxicity. A state agency is charged with the task of investigating the safety of cosmetic product ingredients and reporting to the state occupational safety and health agency when unsafe chemicals may put beauty care workers at risk.

*This policy summary relies in large part on information from Breast Cancer Action.*

## Endnotes

- 1 Environmental Working Group, Letter to Andrew C. von Eschenbach, Commissioner of the U.S. Food and Drug Administration, September 26, 2007.
- 2 Ibid.
- 3 “California Enacts Safe Cosmetics Act,” *Environmental Health Perspectives*, July 2006.
- 4 California Department of Health Services, Health Data and Statistics Branch, “California Occupational Mortality Study 1979-1981 (COMS II): Adjusted for Smoking, Alcohol, and Socioeconomic Status,” December 21, 1989; Manuela Gago-Dominguez et. al., “Permanent hair dyes and bladder cancer: Risk modification by Cytochrome P4501A2 and N-acetyltransferases 1 and 2,” American Association for Cancer Research’s 93rd Annual Meeting, April 6-10, 2002; Koenig et. al. “Hair dye use and breast cancer,” *AMJ Epidemiol*, 1991.

# Unsafe Cosmetics

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## Safe Cosmetics Act

*Summary: The Safe Cosmetics Act would require the manufacturers of cosmetic products to disclose lists of ingredients to the department of health, and would authorize the department to investigate and publicize the safety of such products and ingredients.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Safe Cosmetics Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Independent testing in the United States and the European Union has determined that many cosmetic products contain substances known or suspected to be carcinogens or toxic to humans.
2. The federal Food and Drug Administration (FDA) does not require pre-market safety testing, review, or approval of cosmetic products.
3. Cosmetic products are most heavily used by women of childbearing age, increasing the likelihood of exposing mothers, fetuses, and nursing children to substances that can cause cancer and reproductive toxicity.
4. Beauty care workers, including cosmetologists and manicurists, are most exposed to the harmful effects of carcinogens and reproductive toxins in cosmetics. Cosmetologists and manicurists are overwhelmingly women and minorities.
5. Alternatives to carcinogenic and toxic substances are readily available for use in cosmetic products. A number of manufacturers, including both small domestic producers and large multinational corporations, have eliminated such substances from their products.

**(B) PURPOSE**—This law is enacted to protect the health of residents who use cosmetics, their children, and workers in the beauty care industry.

### SECTION 3. SAFE COSMETICS

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

**(A) DEFINITIONS**—In this section:

1. “Authoritative body” means any agency or formally organized program or group recognized by the [State Department of Health] as being authoritative for the purpose of identifying chemicals that cause cancer or reproductive toxicity.
2. “Chemical identified as causing cancer or reproductive toxicity” means a chemical identified by an authoritative body as any of the following:
  - a. A substance listed as known or reasonably anticipated to be a human carcinogen in a National Toxicology Report on carcinogens;
  - b. A substance given an overall carcinogenicity evaluation of Group 1, Group 2A, or Group 2B by the International Agency for Research on Cancer;

- c. A substance identified as a Group A, Group B1, or Group B2 carcinogen, or as a known or likely carcinogen by the United States Environmental Protection Agency; or
  - d. A substance identified as having some or clear evidence of adverse developmental, male reproductive, or female reproductive toxicity effects in a report by an expert panel of the National Toxicology Program's Center for the Evaluation of Risks to Human Reproduction.
3. "Division" means the Division of [Environmental Safety] within the State Department of [Health].
  4. "Ingredient" has the same meaning as that term is defined in subdivision (e) of Section 700.3 of Part 700 of Chapter 1 of Title 21 of the Code of Federal Regulations and does not include any incidental ingredient as defined in subdivision (l) of Section 701.3 of Part 701 of Chapter 1 of Title 21 of the Code of Federal Regulations.
  5. "Manufacturer" means any person whose name appears on the label of a cosmetic product pursuant to the requirements of Section 701.12 of Title 21 of the Code of Federal Regulations.
  6. "Secretary" means the Secretary of the Department of [Health], or the Secretary's designee.

#### **(B) ESTABLISHMENT OF THE PROGRAM**

1. Commencing January 1, 2009, the manufacturer of any cosmetic product subject to regulation by the federal Food and Drug Administration that is sold in this state shall, on a schedule and in electronic or other format, as determined by the Secretary, provide the Division with a complete and accurate list of its cosmetic products that, as of the date of submission, are sold in the state and that contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity, including any chemical that meets either of the following conditions:
  - a. A chemical contained in the product for purposes of fragrance or flavoring; or
  - b. A chemical identified by the phrase "and other ingredients" and determined to be a trade secret pursuant to the procedure established in Part 20 and Section 720.8 of Part 720 of Title 21 of the Code of Federal Regulations. Any ingredient identified pursuant to this paragraph shall be considered to be a trade secret and shall be treated by the division in a manner consistent with the requirements of Part 20 and Part 720 of Title 21 of the Code of Federal Regulations. Any ingredients considered to be a trade secret shall not be subject to the [state Public Records Act] for the purposes of this section.
2. Any information submitted pursuant to paragraph (1) shall identify each chemical both by name and Chemical Abstract Service number and shall specify the product or products in which the chemical is contained.
3. If an ingredient identified pursuant to this section subsequently is removed from the product in which it was contained or is no longer a chemical identified as causing cancer or reproductive toxicity by an authoritative body, the manufacturer of the product containing the ingredient shall submit the new information to the division. Upon receipt of new information, the division, after verifying the accuracy of that information, shall revise the manufacturer's information on record with the division to reflect the new information. The manufacturer shall not be under obligation to submit subsequent information on the presence of the ingredient in the product unless subsequent changes require submittal of the information.
4. This section shall apply to cosmetic products that may also be regulated as a drug by the federal Food and Drug Administration.

# UNSAFE COSMETICS

## (C) ADMINISTRATION OF THE PROGRAM

1. In order to determine potential health effects of exposure to ingredients in cosmetics sold in the state, the division may conduct an investigation of one or more cosmetic products that contain chemicals identified as causing cancer or reproductive toxicity or other ingredients of concern to the division.
2. An investigation conducted pursuant to paragraph (1) may include, but not be limited to, a review of available health effects data and studies, worksite health hazard evaluations, epidemiological studies to determine the health effects of exposures to chemicals in various subpopulations, and exposure assessments to determine total exposures to individuals in various settings.
3. If an investigation is conducted pursuant to paragraph (1), the manufacturer of any product subject to the investigation may submit relevant health effects data and studies to the division.
4. In order to further the purposes of an investigation, the division may require manufacturers of products subject to the investigation to submit to the division relevant health effects data and studies available to the manufacturer and other available information as requested by the division, including, but not limited to, the concentration of the chemical in the product, the amount by volume or weight of the product that comprises the average daily application or use, and sales and use data necessary to determine where the product is used in the occupational setting.
5. The division shall establish reasonable deadlines for the submittal of information required pursuant to paragraph (4). Failure by a manufacturer to submit the information in compliance with the requirements of the division shall constitute a violation of this part.
6. If the division determines that an ingredient in a cosmetic product is potentially toxic at the concentrations present in the product or under the conditions used, the division shall make a report to the legislature, make its findings available to the general public, and refer the results to the [Office of Occupational Safety and Health].
7. Within 180 days after it receives the results of an investigation pursuant to paragraph (2), the [Office of Occupational Safety and Health] shall develop and present one or more proposed occupational health standards to the [Occupational Safety and Health Standards Board].

## SECTION 4. EFFECTIVE DATE

This Act shall take effect on July 1, 2008.

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state issues, visit our website:

**[www.stateaction.org](http://www.stateaction.org)**

## HEALTH RESOURCES

### Fire-Safe Cigarettes

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Center for Tobacco-Free Kids  
Coalition for Fire-Safe Cigarettes

### Freedom of Choice

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

### Health and Sexuality Education

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Planned Parenthood Federation of America  
NARAL Pro-Choice America

### Health Care for All

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Families USA  
Maryland Citizens' Health Initiative

### Prescription Drug Marketing

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AARP  
Alliance for Retired Americans  
National Legislative Association on Prescription Drug Prices  
USAction

### Smoke-Free Workplaces

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

### Unsafe Cosmetics

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Breast Cancer Action

**A full index of resources with contact information can be found on page 297.**

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# Mobile Home Park Tenant Rights

- ✱ Millions of American families are at risk of unfair eviction because they are tenants in mobile home parks.
- ✱ Mobile homes are not particularly mobile.
- ✱ The immobility makes eviction from a mobile home park devastating to tenants.
- ✱ Mobile home park owners often sell their land to developers, forcing all tenants to leave.
- ✱ The elderly and poor are particularly vulnerable to eviction or closure.
- ✱ States have stepped in to provide legal rights to mobile home park tenants.
- ✱ The National Consumer Law Center and AARP have developed a model state statute covering a range of mobile home issues.

## **Millions of American families are at risk of unfair eviction because they are tenants in mobile home parks.**

About 19 million Americans live in more than seven million mobile homes as primary residences. An additional million mobile homes are owned for seasonal or recreational use. In the 1990s, about one-sixth of all new homeowners bought mobile homes—they now comprise 7.6 percent of the housing stock in America.<sup>1</sup> About 32 percent of mobile homes are located in mobile home parks where customers own the homes but rent the land.<sup>2</sup> Renters in a mobile home park are placed in a precarious position. Like apartment renters, they may be subjected to unaffordable rent hikes or unreasonable landlord-imposed rules, or can even be evicted without cause. But unlike apartment renters, mobile home park tenants have their biggest investment—their homes—at stake.

## **Mobile homes are not particularly mobile.**

Federal law refers to mobile homes as “manufactured housing units,” in part because once affixed to a concrete slab foundation they are hardly mobile, and because housing advocates prefer to use that term. These homes are produced in factories in accordance with a set of construction standards administered by the federal Department of Housing and Urban Development. Some are “single-wide” and look like trailers, while others are multi-section units that are designed to look

more like traditional houses with pitched roofs and covered porches. Although mobile homes are built on permanent chassis and attached to axles and wheels, they are rarely moved after they are placed on a foundation. Any mobile home can be damaged when it is moved off its original foundation, but older mobile homes are often destroyed by the process. In any case, moving a mobile home to another site can cost \$5,000 to \$10,000.<sup>3</sup>

## **The immobility makes eviction from a mobile home park devastating to tenants.**

In most states, mobile home park tenants are “tenants at will” and can be thrown out for any reason. Because it can be tremendously difficult or impossible for tenants to relocate their homes, landlords wield extraordinary power over their renters. Tenants often have to tolerate rents, fees and living conditions that average apartment dwellers wouldn’t abide—substantially increased costs, arbitrary rules, restrictions on visitors, and even kickback arrangements. A tenant whose home is too old to move is at the mercy of his or her landlord.

## **Mobile home park owners often sell their land to developers, forcing all tenants to leave.**

Parks that opened decades ago on the outskirts of urban areas have now become valuable real estate. Speculators are snapping up the land for condominiums, shopping centers, and housing



developments. Only six states (CT, FL, MA, MN, NJ, RI) give tenants any right of first refusal before a mobile home park is converted to a different use. Five states (CA, NH, NV, OR, VT) require the park to give tenants advance notice and to negotiate in good faith with them if they make a purchase offer. Even many of these laws have major loopholes.<sup>4</sup>

## **The elderly and poor are particularly vulnerable to eviction or closure.**

The elderly and poor, often unable to afford traditional housing, comprise a disproportionate share of mobile home residents. The cost of a mobile home is about one-third less per square foot than a conventional home.<sup>5</sup> In 2001, the average price of a new conventional home was \$164,217 not counting the land—the average mobile home cost \$48,800.<sup>6</sup> That same year, the median household income of mobile home park tenants was only \$25,000. About 43 percent of mobile homes that are used as primary residences are occupied by people who are at least 50 years old.<sup>7</sup>

## **States have stepped in to provide legal rights to mobile home park tenants.**

Twenty-one states (AZ, CA, CO, CT, DE, ID, MD, MA, MN, NV, NH, NJ, NM, ND, SC, UT, VT, VA, WA, WV, WI) require a written lease between mobile home park landlords and tenants. Thirty-two states (AK, AZ, CA, CO, CT, DE, FL, ID, IL, ME, MD, MA, MI, MN, MT, NE, NV, NH, NJ, NM, NY, ND, OH, PA, RI, SC, UT, VT, VA, WA, WV, WI) prohibit evictions unless good cause is shown. But many of these laws could be substantially strengthened. And unfortunately, 40 percent of all the mobile homes in the United States are located in the 14 states (AL, AK, GA, HI, KY, LA, MS, MO, NC, OK, SD, TN, TX, WY) that do not offer these or any similar legal protections for mobile home park tenants.

## **The National Consumer Law Center and AARP have developed a model state statute covering a range of mobile home issues.<sup>8</sup>**

Part of the model legislation addressing tenant rights is presented as the Manufactured Housing Community Tenant Protection Act, which:

- ★ Prohibits evictions unless good cause is shown.
- ★ Provides that evictions must be accomplished by court order.
- ★ Creates a process for tenants to be notified if the mobile home park is to be sold or converted to another use.
- ★ Creates a process whereby a tenants association has a right of first refusal to buy the mobile home park rather than see it sold or converted to another use.

*This policy brief relies in large part on information from the National Consumer Law Center and AARP.*

## **Endnotes**

- 1 Kevin Krajick, "Home Sweet (Manufactured) Home," Ford Foundation Report, Spring 2003.
- 2 Carolyn Carter et al., "Manufactured Housing Community Tenants: Shifting the Balance of Power," National Consumer Law Center and AARP, 2004.
- 3 "Manufactured Housing Community Tenants."
- 4 David Buchholz, "'Mobile' Homes No More: Policy Innovations in Manufactured Housing," *Housing Facts and Findings*, Fannie Mae Foundation, Vol. 7, No. 4, 2005.
- 5 National Consumer Law Center, "Home on Wheels: Helping Mobile Home Owners Stay Put," 2003.
- 6 "Home Sweet (Manufactured) Home."
- 7 "Manufactured Housing Community Tenants."
- 8 Note that although AARP has a model bill, found in "Manufactured Housing Community Tenants," each state AARP chapter sets its own priorities.

# Mobile Home Park Tenant Rights

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## Manufactured Housing Community Tenant Protection Act

*Summary: The Manufactured Housing Community Tenant Protection Act protects tenants from unreasonable evictions in a variety of circumstances.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Manufactured Housing Community Tenant Protection Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. Tenants of mobile home parks—called manufactured housing communities herein—are at risk of unfair evictions.
2. Once a home is situated on a manufactured housing community site, the difficulty and cost of moving the home gives the community operator excessive power in establishing rent levels, fees, rules, and other terms of tenancy.
3. Because existing law is inadequate, evictions, sale of the manufactured home community, and changes in the land use of the manufactured housing community may result in serious economic harm to residents, including the loss of their homes.

**(B) PURPOSE**—This law is enacted to protect the rights of, and provide a minimum level of security to, tenants of manufactured housing communities.

### SECTION 3. MANUFACTURED HOUSING COMMUNITY TENANT PROTECTION

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

**(A) DEFINITIONS**—In this section:

1. “Manufactured home” means a residential structure, transportable in one or more sections, which is eight feet or more in width and 32 feet or more in length, built on an integral chassis, and designed to be used as a dwelling when connected to the required utilities. “Manufactured home” does not include travel trailers, camping trailers, truck campers, or motor homes which are primarily designed as temporary living quarters for recreational camping or travel use and which either have their own motor power or are mounted on or drawn by another vehicle.
2. “Manufactured housing community” or “community” means a use of land in which four or more lots or spaces are offered for rent or lease for the placement of manufactured housing and in which the primary use of the community or the manufactured home section thereof is residential.
3. “Community operator” or “operator” means an owner or manager of a manufactured housing community, including manufactured housing community employees and any subsequent purchaser of a manufactured housing community.
4. “Resident” means the owner of a manufactured home in a manufactured home community that rents the use of land from a community operator.

5. “Resident association” means any organization of residents representing at least 51 percent of the residents of the manufactured housing community, which is organized for the purpose of resolving matters relating to living conditions in the manufactured housing community.

## **(B) RENEWAL OF LEASE**

1. Six months prior to the end of a resident’s rental term, a community operator shall offer the resident a renewal rental agreement with a term of at least two years that specifies a proposed rental amount and any fee or other lease changes.
2. If the resident does not accept the new terms, the community operator may initiate a binding appraisal process whereby an appraiser agreed to by the resident and operator shall determine the fair market value of the lot rent and other fees over the next two years. The amount determined by the appraiser, including any built-in increases, shall be binding for the next two-year period.

## **(C) GROUNDS FOR EVICTION**

1. The community operator may terminate a rental agreement only for one or more of the following reasons:
  - a. Nonpayment of rent.
  - b. Violation of a community rule.
  - c. Disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, endangers other residents or community personnel, or causes substantial damage to the community premises.
  - d. The resident’s conviction of a crime, commission of which threatens the health, safety, or welfare of the other residents or the community operator.
  - e. The resident’s refusal to enter into a renewal lease.
  - f. Changes in the use of the land so that it will no longer be a manufactured housing community, if the requirements of subsections (E) and (F) are met.
2. Violation of a community rule or regulation shall only be grounds for eviction if all the following conditions are met: the rule has been properly promulgated; the rule is not unfair, unreasonable, or unconscionable; the resident had at least 60 days’ notice of the rule before the violation took place; the rule violation is likely to continue or recur; and continuing violation would have a significant adverse impact on the community or its residents. A rule violation may not be determined likely to recur unless the community operator gave the resident written notice of the violation, specifying the persons involved and its date, approximate time, and nature, and the resident failed to correct the violation or, in the case of a periodic rather than continuous violation, the violation recurred with such a frequency as to indicate that it is likely to have a significant adverse impact on the community or its residents. Violation of a rule is not a ground for eviction if the resident shows that it was not enforced uniformly within the community.

## **(D) PROCEDURES FOR EVICTION**

1. The community operator may evict a resident only by court process. The grounds for eviction must be alleged in detail in the complaint, including the date, time, persons involved, and nature of any rule violation or disorderly conduct, and the date, person involved, case number, court, and offense for any criminal conviction.

## MOBILE HOME PARK TENANT RIGHTS

2. No community operator may file a complaint for eviction for nonpayment of rent until 45 days have elapsed from the date the resident receives notice that rent is delinquent, and only if the resident has not tendered that delinquent payment during that 45-day period.
3. In any eviction action for nonpayment of rent, the resident shall be entitled to raise, by defense or counterclaim, any claim against the community operator relating to or arising out of such tenancy for breach of warranty, breach of the rental agreement, or violation of any law. The amounts which the resident may claim hereunder shall include, but shall not be limited to, the difference between the agreed-upon rent and the fair value of the use and occupancy of the manufactured home lot, and any amounts reasonably spent by the resident to repair defects in the manufactured housing community. The court, after hearing the case, may require the resident claiming under this section to deposit with the clerk of the court the fair value of the use and occupation of the premises less the amount awarded the resident for any claim under this section, or such installments thereof from time to time as the court may direct. Such funds may be expended as the court may direct.
4. Any court order for eviction based on the resident's nonpayment of rent shall specify that the sheriff shall not execute the eviction for at least 30 days. If the order is based on nonpayment of rent, it shall specify that the resident can cure the eviction order by paying the full amount due up until the time the resident is actually evicted by the sheriff. If based on rule violations that are amendable to correction by the resident, the order shall specify conditions whereby the resident can cure the violation and remain in the tenancy.
5. Notwithstanding [Uniform Commercial Code Sec. 9-609], a secured party, in taking possession of a manufactured home, must proceed through judicial process.

### (E) SALE OR LEASE OF COMMUNITY

1. If a community operator receives a bona fide offer to purchase or lease the manufactured housing community that the operator intends to consider or to which the operator intends to make a counter-offer, or if an operator offers the manufactured housing community for sale or lease (other than leases for individual lots to individual residents), the operator must send a letter, by registered or certified mail, to every resident, notifying them of the terms of the offer or intended offer (the "Sale Notice"). The Sale Notice must include the following:
  - a. The offered purchase price or lease payment;
  - b. The terms of any seller or lessor financing (including the amount, the interest rate, and the amortization rate of the financing);
  - c. The terms of any assumable financing (including the amount, the interest rate, and the amortization rate of the financing);
  - d. A legal description and a statement of the appraised or assessed value of property included in the sale or lease;
  - e. Any proposed improvements or economic concessions to be made by the operator in connection with the sale or lease;
  - f. A statement of the right of a resident association to purchase the community;
  - g. A statement that neither the operator nor any purchaser or lessee of the community may terminate a rental agreement by reason of the sale or lease of the community for two years from the date of the Sale Notice.

2. Any resident association shall have the right to purchase or lease the community, provided that the association meets the essential provisions of any bona fide offer of which the residents are entitled to a Sale Notice. The association shall exercise its right by notifying the community operator of the association's interest in purchasing the community in writing by submitting a proposed purchase and sale agreement or lease agreement with terms substantially equivalent to those of the bona fide offer (the "Purchase Notice"). The association must deliver the Purchase Notice to the community operator within 90 days of receipt of the operator's Sale Notice. The association shall have 180 days in addition to the 90-day period in which to obtain any necessary financing or guarantees and to close on the purchase or lease. If no resident association exists at the time the operator gives its Sale Notice, the residents may form one for the purpose of considering whether to exercise the right of first refusal, provided that the association represents at least 51 percent of the households of the manufactured housing community.
3. The community operator may not enter into an agreement to sell or lease the community for 90 days following the Sale Notice, unless the agreement expressly provides that it is contingent upon the failure of the resident association to exercise its right of first refusal. If the community operator receives a Purchase Notice from a resident association within those 90 days, the operator may not enter into an agreement to sell or lease the community for an additional 180 days after the initial 90-day period expires unless the agreement expressly provides that it is contingent upon the failure of the resident association to complete its purchase or lease of the community.
4. Within 30 days of the community operator's receipt of a Purchase Notice, the community operator must provide the resident association with the following:
  - a. A survey and legal description of the community, plus an itemized list of monthly operating expenses, utility consumption rates, taxes, insurance, and capital expenditures for each of the preceding three years;
  - b. The most recent rent roll, a list of residents, a list of vacant units, and a statement of the community's vacancy rate for each of the preceding three years;
  - c. Any available data relating to the past or present existence of hazardous waste either on the community property or in close proximity;
  - d. Any available data relating to the water, sewer, and electrical systems of the community; and
  - e. All income and operating expenses relating to the community for the three preceding calendar years. The community operator shall also provide any additional information that a prospective lender requires.
5. The resident association shall have a total of 270 days from the receipt of the Sale Notice to complete a transaction under the right of first refusal provided by this section. The length of any delays by the community operator in supplying information to be provided to the association as stated in this legislation, or any delay resulting from litigation involving the sale of and/or litigation affecting the marketability of the title of the manufactured housing community shall be added to the 270 days available to the association.
6. If the purchaser of a manufactured housing community decides to convert the community to another use within one year after the purchase of the community, the purchaser must offer the community for purchase by the resident association for a cash price equal to the original purchase price paid by the purchaser plus any documented expenses relating to the acquisition and improvement of the community property, together with any increase in value due to appreciation of the community. The availability of this right does not impact the community operator's obligation to comply with the provisions of section (F) regarding notice in advance of change of land use.

## **MOBILE HOME PARK TENANT RIGHTS**

### **(F) CHANGED USE OF THE LAND**

If a community operator intends to discontinue any substantial portion of the manufactured housing community as a manufactured housing community, a resident association shall have the right to purchase the community, in accordance with the procedure set forth in section (E) above, except that the purchase price shall be determined by a binding appraisal process whereby an appraiser agreed to by the resident association and community operator shall determine the fair market value of the land. For purposes of the right of first refusal, a termination notice shall serve the function of the Sale Notice.

### **(G) ENFORCEMENT**

1. The [Attorney General] shall enforce this section, and shall promulgate such rules as are necessary. The [Attorney General] may seek temporary and permanent injunctions for any violation of this statute, civil penalties in the amount of \$10,000 per violation, and restitution on behalf of all residents or resident associations injured by such violation. In any such successful action, the court shall award costs and attorney's fees. Where the community operator does not have the financial capacity to operate the manufactured housing community or where it is the most effective means of ensuring compliance with court orders, the court may order a receiver to operate the community.
2. A community operator that sells, leases, or transfers a community and fails to comply with the terms of this section shall be liable to the residents as a group in the amount of \$50,000 or 50 percent of the gain realized by the community operator from the sale, whichever is greater, in addition to any other remedies available to residents.
3. Upon the request of a resident association, the [Department of Housing] shall assist the association in acquiring financing for the purchase of a manufactured housing community.

## **SECTION 4. SEVERABILITY**

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

## **SECTION 5. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

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# Mortgage Rescue Fraud Protection

- ★ The rate of mortgage foreclosures is skyrocketing.
- ★ Foreclosure rates will increase as the real estate bubble bursts.
- ★ The growing foreclosure rate has led to a wave of equity stripping and mortgage rescue scams.
- ★ Existing state laws are generally insufficient to protect consumers from mortgage rescue scams.
- ★ States are enacting statutes to prevent mortgage rescue scams.
- ★ The Mortgage Rescue Fraud Protection Act would protect homeowners from rescue scams.

## The rate of mortgage foreclosures is skyrocketing.

The number of homes entering foreclosure increased by more than 100 percent from August 2006 to August 2007.<sup>1</sup> Foreclosures increased by more than 50 percent the previous year.<sup>2</sup> Each month, foreclosure proceedings begin on about one house in every 500 nationwide. The highest foreclosure rates were reported in AZ, CA, CO, FL, GA, IN, MI, NV, OH and TX.

## Foreclosure rates will increase as the real estate bubble bursts.

The real estate bubble tempted new buyers into the market for residences, second homes and investment properties. Many of these purchases were financed with high-interest “subprime” mortgages and high-risk “exotic” mortgages, such as loans with teaser interest rates that increase over time, interest-only loans, no-down-payment loans, and option loans. “Option” loans permit homeowners to pay less than the monthly principal and interest, which increases overall debt—sometimes allowing debt to expand so much that it exceeds the value of the home. Prior to 2000, fewer than two percent of home loans were exotic. By 2006, Nearly 40 percent of mortgage loans were exotic—26 percent were interest-only loans; an additional 13 percent were option loans.<sup>3</sup> As homeowners with subprime and exotic mortgages fall deeper into debt, foreclosures will increase.

## The growing foreclosure rate has led to a wave of equity stripping and mortgage rescue scams.

Scam artists target vulnerable, usually low-income homeowners who face foreclosure on their homes. Foreclosure notices are public information that can be obtained from newspapers, reporting services, or directly from courts and other local government agencies. Scam artists contact the homeowners and promise to save the home from foreclosure. Mortgage rescue scams generally fall into three categories, according to the National Consumer Law Center:

★ **Phantom help**—The “rescuer” charges high fees either for a small number of phone calls and simple paperwork, or for the promise of active representation that never materializes. In either case, the homeowner receives no useful assistance and is left with little or no time to prevent the foreclosure.

★ **Bailout designed to fail**—The “rescuer” contracts to buy the home, promising a rent-to-own deal so that the homeowner can buy the property back. Homeowners are sometimes told that they must surrender title so that someone with better credit can secure the proper financing. But the terms of these rent-to-own contracts are so onerous that the buyback becomes impossible and the former homeowner is ultimately evicted.

★ **Bait-and-switch**—The “rescuer” gets the homeowner to surrender ownership under false pretenses. In this case, the homeowner does not realize that the papers he or she signed actually transferred ownership of the house. Many victims say they had made it clear that they had no intention of giving title of the house to anyone else.<sup>4</sup>



## Existing state laws are generally insufficient to protect consumers from mortgage rescue scams.

Mortgage rescue scams can sometimes be addressed through fraud claims or unfair and deceptive practices statutes, but such cases can be hard to prove. Existing laws do not clearly prohibit these transactions, and also do not give the homeowner a clear right to rescind an agreement and recover the home. Because they are, by definition, short of funds, victims can rarely afford to hire private counsel. State consumer protection agencies may also feel constrained without a clear set of legal violations to pursue.

## States are enacting statutes to prevent mortgage rescue scams.

California, Colorado, Illinois, Indiana, Maryland, Minnesota, New York, and Rhode Island have laws governing foreclosure purchasers. With the exception of California's law, all were enacted in the last three years. All specify requirements for certain foreclosure purchase contracts and give the homeowner the right to recover the home, and several specify minimum purchase prices and/or maximum repurchase prices. Most statutes also regulate foreclosure consultants, capping fees and giving the right to cancel the contract. Florida enacted a statute governing foreclosure surplus purchasers. States and localities have also developed a variety of policies to try to prevent foreclosure.<sup>5</sup>

## The Mortgage Rescue Fraud Protection Act would protect homeowners from rescue scams.<sup>5</sup>

The model legislation, based on legislation enacted in Maryland, would:

- ✱ Require persons initiating a foreclosure to notify homeowners that a state consumer protection office is available to help them.
- ✱ Guarantee that homeowners can rescind foreclosure consulting and reconveyance contracts.
- ✱ Limit what foreclosure consultants can do and how much they can charge.
- ✱ Limit the terms of any foreclosure reconveyance contract.
- ✱ Provide administrative, civil and criminal enforcement procedures.

*This policy summary relies in large part on information from the National Consumer Law Center.*

## Endnotes

- 1 RealtyTrac, "Foreclosure Activity Increases 36 Percent in August," September 18, 2007.
- 2 "National Foreclosures Increase 24 Percent in August According to RealtyTrac U.S. Foreclosure Market Report," *PR Newswire*, September 13, 2006.
- 3 Kirstin Downey, "Nontraditional Mortgages Don't Wane Under Warnings," *Washington Post*, October 24, 2006.
- 4 Steve Tripoli and Elizabeth Renuart, "Dreams Foreclosed: The Rampant Theft of Americans' Homes Through Equity-Stripping Foreclosure 'Rescue' Scams," National Consumer Law Center, June 2005.
- 5 J. Michael Collins, "Foreclosure Prevention: Preserving Affordable Homes and Vital Communities," *Housing Facts and Figures*, Fannie Mae Foundation, Vol. 8, No. 2, 2006.

# Mortgage Rescue Fraud Protection

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## Mortgage Rescue Fraud Protection Act

*Summary: The Mortgage Rescue Fraud Protection Act regulates foreclosure consulting and reconveyance contracts in order to protect homeowners from mortgage rescue scams.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Mortgage Rescue Fraud Protection Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. The increased use of non-traditional mortgages has led to an increase in mortgage foreclosures. This has created new opportunities for fraudulent schemes targeting vulnerable, usually low-income homeowners who face foreclosure.
2. Mortgage rescue scams most commonly involve foreclosure consultants who do very little for a fee or foreclosure reconveyance agreements which are designed to steal the equity that homeowners have built up in their properties.
3. Current state law is insufficient to protect homeowners from mortgage rescue scam artists.

**(B) PURPOSE**—This law is enacted to protect the property and security of homeowners who are subject to foreclosure proceedings.

### SECTION 3. MORTGAGE RESCUE FRAUD PROTECTION

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

**(A) DEFINITIONS**—In this section:

1. “Homeowner” means the person holding record title to residential real property as of the date on which an action to foreclose the mortgage or deed of trust is filed.
2. “Foreclosure consultant” means a person who directly or indirectly makes any solicitation, representation, or offer to a homeowner facing foreclosure to perform, with or without compensation, or who performs, with or without compensation, any service that the person represents will:
  - a. prevent, postpone or reverse the effect of a foreclosure sale;
  - b. allow the homeowner to become a lessee or renter entitled to continue to reside in the homeowner’s residence; or
  - c. allow the homeowner to have an option to repurchase the homeowner’s residence.
3. “Foreclosure reconveyance” means a transaction involving:
  - a. the transfer of title to real property by a homeowner during or incident to a proposed foreclosure proceeding, either by transfer of interest from the homeowner to another party or by creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain legal or equitable title to all or part of the property; and
  - b. the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the homeowner by the acquirer or a person acting in participation with the acquirer that allows the

homeowner to possess the real property following the completion of the foreclosure proceeding, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, lease, trust, or other contractual arrangement.

4. “Formal settlement” means an in-person, face-to-face meeting with the homeowner to complete final documents incident to the sale or transfer of real property, or the creation of a mortgage or equitable interest in real property, conducted by a settlement agent who is not employed by or an affiliate of the foreclosure purchaser, during which the homeowner must be presented with a completed copy of the HUD-1 settlement form.

## **(B) NOTICE OF FORECLOSURE**

1. In addition to any other required notice, the person authorized to make a sale in an action to foreclose a mortgage or deed of trust shall give written notice of the action to the record owner of the property to be sold, sent no later than two days after the action to foreclose is docketed, both by certified mail, postage prepaid, return receipt requested, and by first class mail.
2. The notice shall state that an action to foreclose the mortgage or deed of trust may be or has been docketed and that a foreclosure sale of the property will be held. The notice shall contain the following statement printed in at least 14 point boldface type:

### **“NOTICE REQUIRED BY STATE LAW**

Mortgage foreclosure is a complex process. Some people may approach you about “saving” your home. You should be careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the [State Attorney General’s office at 1-800-XXX-XXXX].”

## **(C) RESCISSION OF FORECLOSURE CONSULTING AND RECONVEYANCE CONTRACTS**

1. In addition to any other right under law to cancel or rescind a contract, a homeowner has the right to rescind a foreclosure consulting contract at any time, and rescind a foreclosure reconveyance at any time before midnight of the tenth business day after any conveyance or transfer.
2. Rescission occurs when the homeowner gives written notice of rescission to the foreclosure consultant at the address specified in the contract, or through any facsimile or electronic mail address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.
3. Notice of rescission, if given by mail, is effective when deposited in the U.S. mail, properly addressed, with postage prepaid. Notice of rescission need not be in any form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to rescind the foreclosure consulting contract or foreclosure reconveyance.
4. As part of the rescission of a foreclosure consulting contract or foreclosure reconveyance, the homeowner shall repay, within 60 days from the date of rescission, any funds paid or advanced by the foreclosure consultant or anyone working with the foreclosure consultant under the terms of the foreclosure consulting contract or foreclosure reconveyance, together with interest calculated at the rate of eight percent per year.

## **(D) LIMITS ON FORECLOSURE CONSULTANTS—A foreclosure consultant shall not:**

1. Demand or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

## MORTGAGE RESCUE FRAUD PROTECTION

2. Demand or receive any fee, interest, or any other compensation for any reason that exceeds eight percent per year of the amount of any loan that the foreclosure consultant makes to the homeowner;
3. Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation;
4. Receive any consideration from any third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;
5. Acquire any interest, directly or indirectly, in a residence in foreclosure from a homeowner with whom the foreclosure consultant has contracted; or
6. Take any power of attorney from a homeowner for any purpose, except to inspect documents as provided by law.

### (E) LIMITS ON FORECLOSURE RECONVEYANCE

1. A foreclosure purchaser may not enter into, or attempt to enter into, a foreclosure reconveyance with a homeowner unless:
  - a. The foreclosure purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of a foreclosure conveyance, or, if the foreclosure conveyance provides for a lease with an option to repurchase the property, the homeowner has or will have a reasonable ability to make the lease payments and repurchase the property within the term of the option to repurchase; and
  - b. The foreclosure purchaser and the homeowner complete a formal settlement before any transfer of an interest in the property is effected.
2. A foreclosure purchaser shall:
  - a. Ensure that title to the property has been reconveyed to the homeowner in a timely manner if the terms of a foreclosure reconveyance agreement require a reconveyance; or
  - b. Make payment to the homeowner within 90 days of any resale of the property so that the homeowner receives cash payments or consideration in an amount equal to at least 82 percent of the net proceeds from any resale of the property should a property subject to a foreclosure reconveyance be sold within 18 months after entering into a foreclosure reconveyance agreement.
3. A foreclosure purchaser shall not:
  - a. Enter into repurchase or lease terms as part of the foreclosure conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct;
  - b. Represent, directly or indirectly, that:
    - (i) the foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the homeowner;
    - (ii) the foreclosure purchaser is assisting the homeowner to “save the house” or use a substantially similar phrase; or
    - (iii) the foreclosure purchaser is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will not complete a redemption of the property;
  - c. Until the homeowner’s right to rescind or cancel the transaction has expired:
    - (i) record any document, including an instrument of conveyance, signed by the homeowner; or

- (ii) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party.
- 4. For purposes of this subsection, there is a rebuttable presumption that:
  - a. A homeowner has a reasonable ability to pay for a subsequent reconveyance of the property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60 percent of the homeowner's monthly gross income; and
  - b. The foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liabilities, and income.
- 5. The foreclosure purchaser shall make a detailed accounting of the basis for the amount of a payment made to the homeowner of a property resold within 18 months after entering into a foreclosure reconveyance agreement on a form prescribed by the [Attorney General].

#### **(F) ENFORCEMENT**

- 1. The [Attorney General] may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this subtitle from engaging or continuing to engage in the violation. The court may enter any order or judgment necessary to:
  - a. Prevent the use by a person of any prohibited practice;
  - b. Restore to a person any money or real or personal property acquired from the person by means of any prohibited practice; or
  - c. Appoint a receiver in case of willful violation of this title.
- 2. In any action brought under this section, the [Attorney General] is entitled to recover the costs of the action.
- 3. In addition to any action by the [Attorney General] under this section and any other action authorized by law, a homeowner may bring an action for damages incurred as the result of a practice prohibited by this subtitle. A homeowner who brings an action under this section and who is awarded damages may also seek, and the court may award, reasonable attorney's fees. If the court finds that the defendant willfully or knowingly violated this section, the court may award damages equal to three times the amount of actual damages.
- 4. A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding three years or a fine not exceeding \$10,000 or both.
- 5. The [Attorney General] shall maintain a list of nonprofit organizations that offer counseling or advice to homeowners in foreclosure or loan default and are not directly or indirectly related to and do not contract for services with for-profit lenders or foreclosure purchasers. The [Attorney General] shall provide names and telephone numbers of organizations on the list to homeowners who contact the [Attorney General].
- 6. The [Attorney General] shall promulgate such regulations as are necessary to implement and administer compliance.

#### **SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

# Predatory Mortgage Lending

- ★ A dramatic increase in the incidence of predatory mortgage lending practices has created a crisis for communities of color, elderly homeowners, and low-income Americans.
- ★ The practice of subprime lending increased ten-fold in less than ten years.
- ★ The increase in subprime lending has predominantly affected minorities, the elderly, and rural homeowners.
- ★ About half of subprime borrowers could qualify for a traditional mortgage.
- ★ The victims of predatory lending practices are compelled to accept unreasonable loan terms and abusively high fees.
- ★ There is a long history of states using usury laws to limit abusive lending practices, but financial industry deregulation and statutory loopholes have made those laws ineffective.
- ★ Fourteen 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.<sup>1</sup>

## **The practice of subprime lending increased ten-fold in less than ten years.**

In 1993, 100,000 home purchase or refinance loans were subprime; in 1999, that number had jumped to nearly one million.<sup>2</sup> During the same period, all other home purchase and refinance loans declined by ten percent.<sup>3</sup> In 2006, one in every five home loans was subprime.<sup>4</sup>

## **The increase in subprime lending has predominantly affected minorities, the elderly, and rural homeowners.**

According to statistics from the Federal Financial Institutions Examinations Council, minorities were significantly more likely to receive a sub-

prime mortgage than non-minorities with similar incomes. In 2006, subprime loans accounted for 54 percent of all home purchase loans made to African American families, compared to just 18 percent of the home purchase loans made to white families. Almost 47 percent of home purchase loans made to Latino families were subprime.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

## **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.<sup>8</sup>

## **The victims of predatory lending practices are compelled to accept unreasonable terms and abusively high fees.**

Borrowers who are not in a position to qualify for an “A” loan are too often required to pay unreasonable rates and fees in the subprime market. Incentive systems that reward brokers and loan officers for charging more contribute to the problem. Other abusive loan practices found in the subprime industry include saddling



credit-challenged borrowers with unwanted balloon payments and prepayment penalties, and “flipping”—encouraging repeated refinancing by existing customers, tacking on extra fees each time.

**There is a long history of states using usury laws to limit abusive lending practices, but financial industry deregulation and statutory loopholes have made those laws ineffective.**

Usury laws have been weakened so much over the past 20 years that predatory lending practices—modern day loan-sharking—are legal. Although federal law prohibits specific predatory practices, those provisions cover only certain types of loans, and the threshold for what is considered a high-cost loan is set so high that many homeowners are left unprotected.

**Fourteen 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.<sup>9</sup> Twelve other states (AR, CO, GA, IL, IN, ME, MN, NJ, NM, NY, SC, WV) have enacted moderate to strong laws against predatory lending. Massachusetts also has a series of strong regulations against predatory lending. Fifteen other states have enacted laws that purport to address the problem, but actually provide no substantive consumer protections.<sup>10</sup>

**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 Center for Responsible Lending, “A Snapshot of the Subprime Market,” October 2007.
- 5 Ibid.
- 6 Center for Responsible Lending, “Rural Borrowers More Likely To Be Penalized for Refinancing Subprime Home Loans,” September 2004.
- 7 AARP, “Subprime Mortgage Lending and Older Borrowers,” March 2001.
- 8 James Carr and Lopa Kolluri, “Predatory Lending: An Overview,” Fannie Mae Foundation, 2001.
- 9 Center for Responsible Lending, “North Carolina’s Predatory Mortgage Lending Law: Celebrating Over 5 Years of Success,” 2005.
- 10 Center for Responsible Lending, “CRL State Legislative Scorecard: Predatory Mortgage Lending,” 2006.

# Predatory Mortgage Lending

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## Predatory Lending Prevention Act

*Summary: The Predatory Lending Prevention Act prohibits specific unfair practices in the sale of residential home loans, and provides civil and administrative enforcement procedures.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Predatory Lending Prevention Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. A dramatic increase in the practice of subprime lending has occurred in the state. Nationally, subprime lending grew ten-fold in less than ten years, and a similar trend occurred in [State].
2. Subprime loans are intended for people who, because of blemished credit, are unable to obtain conventional prime loans at standard mortgage rates.
3. While subprime lending is a legitimate practice that expands access to credit for home ownership, most predatory practices occur in the subprime lending market.
4. Predatory lenders tend to target citizens who can least afford to be stripped of their assets—lower income families, minorities, and the elderly.
5. The state of [State] must act to protect its residents from abusive loan practices.

**(B) PURPOSE**—This law is enacted to protect the equity and property of homeowners, provide needed consumer protections, and safeguard the economic vitality of our state.

### SECTION 3. PREDATORY LENDING PREVENTION

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

**(A) DEFINITIONS**—In this section:

1. “Annual percentage rate” means the annual percentage rate for a loan, calculated according to the provisions of the federal Truth In Lending Act (15 U.S.C. 1601, et seq.), and the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System (as said Act and regulations are amended from time to time).
2. “Borrower” means any individual obligated to repay a loan, including a co-borrower, cosigner or guarantor.
3. “Flipping” means knowingly refinancing an existing home loan when any of the following occurs:
  - a. More than 50 percent of the prior debt refinanced bears a lower interest rate than the new loan.
  - b. It will take more than five years of reduced interest rate payments for the borrower to recoup the transaction’s prepaid finance charges and closing costs.



- c. Refinancing a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which bears a below-market interest rate or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income or are limited to a percentage of income, or for which no payments are required under specified conditions, and if, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage.
- 4. “High-cost home loan” means a home loan in which:
  - a. The total points and fees on the loan exceed five percent of the total loan amount, or
  - b. The annual percentage rate of interest of the home loan equals or exceeds eight percentage points over the yield on U.S. Treasury securities that have comparable periods of maturity, as of the 15th day of the month immediately preceding the month in which the application for credit is received by the lender.
- 5. “Home loan” means a loan, other than a reverse mortgage transaction, in which the principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, and is secured by a mortgage or deed of trust on real estate upon which there is located or is to be located a structure or structures, designed principally for occupancy for one to four families, which is or will be occupied by a borrower as the borrower’s principal dwelling. Home loan does not include an open-end line of credit as defined in Part 226 of Title 12 of the Code of Federal Regulations.
- 6. “Lender” means any entity that originated, or acted as a mortgage broker for, more than five home loans within the previous 12 months.
- 7. “Points and fees” means:
  - a. All items required to be disclosed as finance charges under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, including the Official Staff Commentary, as amended from time to time, except interest.
  - b. All compensation and fees paid to mortgage brokers in connection with the loan transaction.
  - c. All items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, only if the person originating the covered loan receives direct compensation in connection with the charge.
- 8. “Total loan amount” means the same as in section 226.32 of Title 12 of the Code of Federal Regulations.

## **(B) PROHIBITED PRACTICES FOR ALL HOME LOANS**

1. **Deceptive and unfair business practices.** No lender shall:
  - a. Recommend or encourage non-payment of an existing loan or other debt prior to, and in connection with, the closing or planned closing of a home loan that refinances all or any portion of such existing loan or debt.
  - b. Coerce, intimidate or directly or indirectly compensate an appraiser for the purpose of influencing his or her independent judgment concerning the value of real estate that is to be covered by a home loan or is offered as security according to an application for a home loan.
  - c. Leave blanks in any loan documents to be filled in after they are signed by the borrower.

## PREDATORY MORTGAGE LENDING

2. **Financing credit insurance.** No lender shall require or allow the advance collection of a premium, on a single premium basis, for any credit life, credit disability, credit unemployment, or credit property insurance, or the advance collection of a fee for any debt cancellation or suspension agreement or contract, in connection with any home loan, whether such premium or fee is paid directly by the consumer or is financed by the consumer through such loan. For purposes of this section, credit insurance does not include a contract issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a mortgagor's default.

### (C) PROHIBITED PRACTICES FOR HIGH-COST HOME LOANS

1. **Balloon payments.** No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments during the first seven years of the loan. This provision does not apply to a payment schedule that is adjusted to the seasonal or irregular income of the borrower, or a bridge loan with a maturity of less than 12 months that requires only payments of interest until the entire unpaid balance is due.
2. **Prepayment penalties.** No high-cost home loan shall contain a prepayment penalty of more than three percent of the original principal amount of the note in the first year, two percent in the second year, one percent in the third year, or any prepayment penalty beyond the third year.
3. **Negative amortization.** No high-cost home loan may include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due. This provision does not apply to a payment schedule that is adjusted to the seasonal or irregular income of the borrower.
4. **Increased interest rate.** No high-cost home loan may contain a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by a default or the acceleration of indebtedness.
5. **Advance payments.** No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.
6. **Call provisions.** No high-cost home loan may contain a provision that permits the lender, in its sole discretion, to accelerate indebtedness. This provision does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.
7. **Home improvement contracts.** A lender may not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan unless the instrument is payable to the borrower or jointly to the borrower and the contractor, or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to disbursement.
8. **Flipping.** A lender may not offer a high-cost home loan while engaged in the practice of flipping.
9. **Modification or deferral fees.** A lender may not charge a borrower fees or other charges to modify, renew, extend or amend a high-cost home loan, or to defer any payment due under the terms of a high-cost home loan, except when the borrower is in default of the loan.
10. **Homeownership counseling.** A lender may not originate a high-cost home loan without first receiving certification from a counselor approved by the U.S. Department of Housing and Urban Development, a state housing financing agency, or the regulatory agency that has jurisdiction over the lender, that the borrower has received counseling on the advisability of the loan transaction.

**(D) ENFORCEMENT**

1. **Civil remedies.** This Act may be enforced by a private cause of action under [appropriate section of state statutes].
2. **Administrative remedies.** This Act shall be enforced by [appropriate state oversight agency], which shall promulgate such rules and regulations as are necessary to implement and administer compliance with the Act.

**SECTION 4. SEVERABILITY**

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

**SECTION 5. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

## HOUSING RESOURCES

### Mobile Home Park Tenant Rights

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AARP

Fannie Mae Foundation

National Consumer Law Center

### Mortgage Rescue Fraud Protection

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Center for Responsible Lending

Fannie Mae Foundation

National Consumer Law Center

### Predatory Mortgage Lending

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Center for Responsible Lending

U.S. Department of Housing and Urban Development

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# Public Access to Broadband Internet

- ★ There is a digital divide between those with Internet access and those without.
- ★ The digital divide widens for high-speed Internet access.
- ★ Broadband Internet access has become a social and economic necessity.
- ★ Municipal wireless Internet (Wi-Fi) can close the digital divide.
- ★ Municipal Wi-Fi provides a range of benefits to cities and counties.
- ★ There are 160 public municipal Wi-Fi networks in operation.
- ★ Telecommunications companies widen the digital divide by fighting municipal Wi-Fi.
- ★ The Electronic Telecommunications Open Infrastructure Act (ETOPIA) would encourage municipalities to build technology infrastructure, especially Wi-Fi.

## **There is a digital divide between those with Internet access and those without.**

As of early 2007, 71 percent of American adults used the Internet. Older, less educated, and minority Americans disproportionately lack Internet access. Thirty-two percent of people aged 65 and older go online, compared to 65 percent of those aged 50 to 64, 83 percent of those aged 30 to 49, and 87 percent of those aged 19 to 29. Forty percent of Americans who have never graduated from high school have Internet access, compared to 91 percent of college graduates. And 62 percent of African Americans go online, compared to 73 percent of whites.<sup>1</sup>

## **The digital divide widens for high-speed Internet access.**

Forty-seven percent of home Internet users had high-speed connections in 2007. It is no surprise that the youngest, most educated and most affluent Americans are most likely to have broadband connections. College graduates are twice as likely to have broadband access as high school graduates; households that earn over \$75,000 are more than twice as likely to have broadband connections as households that earn under \$30,000.<sup>2</sup>

## **Broadband Internet access has become a social and economic necessity.**

Most downtown Philadelphia hotels only accept job applications online—for dishwashers and housekeepers.<sup>3</sup> As websites have become more sophisticated, a gap in usage between broadband and dial-up users has widened. Those with high-speed access are far more likely to use the Internet for even basic activities like email and news-reading.<sup>4</sup> Clearly, those without broadband Internet access are at a great disadvantage in today's society and economy.

## **Municipal wireless Internet (Wi-Fi) can close the digital divide.**

The Internet has become a standard medium for everyday communication and transactions, but many Americans can't get, or can't reasonably afford, access. Municipal wireless Internet easily solves that problem. For example, Scottsburg, Indiana—population 6,000—was in danger of losing at least two large employers due to its lack of broadband Internet infrastructure. When private companies refused to provide broadband services to the town, the public electric utility set up a town-wide wireless network that not only helped to retain the businesses and jobs, but made the city's schools, law enforcement agencies, healthcare providers, and individuals more effective and competitive.<sup>5</sup> Across the country, municipal Wi-Fi networks offer free or substantially discounted access to lower-income residents, and in many cases, to everyone.

### **Municipal Wi-Fi provides a range of benefits to cities and counties.**

Even large municipalities with existing broadband services can benefit by creating their own Wi-Fi system. Beginning in 2004, Philadelphia undertook an effort to provide broadband service to all city residents, reasoning that it would not only provide discount service to lower-income households, but would spur economic development, attract tourists, and save money for city agencies. Municipal Wi-Fi also enables police, firefighters and emergency medical technicians to obtain crucial information immediately from computers in their vehicles.

### **There are 160 public municipal Wi-Fi networks in operation.**

There are 160 municipal wireless Internet networks across the country. At least 215 more are planned.<sup>6</sup> 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.<sup>7</sup> In the 21st century, broadband access is essential to both economic growth and education—it is becoming a public utility. Corporate interests have succeeded in enacting a variety of limits on municipal broadband service in at least 16 states (AR, CO, FL, LA, MN, MO, NE, NV, PA, SC, TN, TX, UT, VA, WA, WI).

### **The Electronic Telecommunications Open Infrastructure Act (ETOPIA) would encourage municipalities to build technology infrastructure, especially Wi-Fi.**

Modeled after legislation in West Virginia, ETOPIA would:

- ★ Create a state Innovation Center to inventory the technology infrastructure of the state.
- ★ Encourage local governments to develop and strengthen telecommunications and data processing hardware, software and services for both government and private use.
- ★ Provide matching funds to help pay for the development of technology infrastructure, especially municipal Wi-Fi.

### **Endnotes**

- 1 Pew Internet & American Life Project, Tracking Survey, February 15-March 7, 2007.
- 2 John B. Horrigan, "Home Broadband Adoption 2007," Pew Internet & American Life Project, June 2007.
- 3 Ibid.
- 4 Greg Goldman, CEO of Wireless Philadelphia, speech at Internet Society event, Philadelphia, October 2007.
- 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, "August 2007 update of wireless cities and counties in the U.S.," August, 2007.
- 7 "Remarks before the National Association of Telecommunications Officers and Advisors."

# Public Access to Wireless Internet

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## Electronic Telecommunication Open Infrastructure Act

*Summary: The Electronic Telecommunication Open Infrastructure Act, known as ETOPIA, creates a state Innovation Center to inventory the technology infrastructure of the state, encourage local governments to develop and strengthen telecommunications and data processing hardware, software and services for both government and private use, and provides matching funds to help pay for technology infrastructure development.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Electronic Telecommunication Open Infrastructure Act” or “ETOPIA.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. The Internet revolution is driving today’s economy.
2. Information technology offers economic opportunities, higher living standards, more individual choices, and increased opportunities to participate in government and public life.
3. The past decade has brought considerable advancement in worldwide telecommunications. To remain competitive in the information-based global economy, the state, its people, and its institutions must fully utilize cutting-edge telecommunication and Internet strategies.
4. Broadband Internet access is essential to provide state residents with enhanced educational opportunities, better health care, more effective public safety and homeland security, and a stronger economy.

**(B) PURPOSE**—This law is enacted to support and improve education, health care, public safety and economic security by increasing access to the Internet and other new technologies.

### SECTION 3. ELECTRONIC TELECOMMUNICATION OPEN INFRASTRUCTURE

**(A) DEFINITIONS**—In this section:

1. “Information equipment” means central processing units, front-end processing units, miniprocessors, microprocessors, and related peripheral equipment such as data storage devices, networking equipment, routers, document scanners, data entry equipment, terminal controllers, data terminal equipment, and computer-based word processing systems other than memory typewriters.
2. “Information systems” means computer-based information equipment and related services designed for the automated transmission, storage, manipulation and retrieval of data by electronic or mechanical means.
3. “Information technology” means data processing and telecommunications hardware, software, services, supplies, personnel, maintenance and training, and includes the programs and routines used to employ and control the capabilities of data processing hardware.
4. “Local government” means any county or municipality, or any of their entities.



5. “Technology infrastructure” means information equipment, information systems, information technology and facilities, lines, and services designed for or used for the transmission, emission or reception of signs, signals, writings, images or sounds by wire, radio, microwave, or other electromagnetic or optical systems, related hardware, software, and programming, and specifically including, but not limited to, all features, facilities, equipment, systems, functions, programming, and capabilities, and technical support used in providing or related to:
  - a. Cable service as defined in 47 U.S.C. 522(6);
  - b. Telecommunications service as defined in 47 U.S.C. 153(46);
  - c. Information service as defined in 47 U.S.C. 153(20);
  - d. Advanced services as defined in 47 CFR 51.5;
  - e. Broadband Internet service; and
  - f. Internet protocol enabled services.

### **(B) INNOVATION CENTER**

1. There is created an office within the [Department of Economic Development] called the Innovation Center. The primary responsibility of the Innovation Center is to encourage the development and implementation of technology infrastructure for public and private uses throughout the state.
2. The Innovation Center may solicit and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this section. Any transfer of endowment or other assets to the Center shall be formalized in a memorandum of agreement to assure, at a minimum, that any restrictions governing the future disposition of funds are observed.
3. The [Department of Economic Development] shall promulgate rules to create the Innovation Center and fulfill the purposes of this section.

### **(C) TECHNOLOGY STUDY**

1. The Innovation Center shall conduct a study of technology infrastructure in the state and compare existing technology infrastructure to best practices in the United States.
2. In conducting its study, the Innovation Center shall consider resources and technical support available through other entities and agencies, both public and private, including the state college and university systems, regional planning organizations, state high technology associations, and the state Chamber of Commerce.
3. By July 1, 2007, the Innovation Center shall issue a public report on its study. The report shall include:
  - a. The current condition of technology infrastructure in the state;
  - b. Options and strategies for upgrading technology infrastructure in the state;
  - c. Options and strategies for encouraging technology cooperation and partnerships among state government, local government, private business, and institutions of higher education;
  - d. Expected condition of technology infrastructure if the state does nothing to encourage it; and
  - e. Recommendations for actions by the state to encourage improvements in technology infrastructure.

## **PUBLIC ACCESS TO WIRELESS INTERNET**

### **(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, 2008.

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# Self-Sufficiency Standard

- ✱ At \$20,650 for a family of four, the Federal Poverty Measure is the same for Sioux Falls, South Dakota as it is for New York City.
- ✱ The Federal Poverty Measure is based on outdated methodology and data.
- ✱ The one-size-fits-all approach to poverty measurement does not accurately assess the income needs of working families today.
- ✱ The Federal Poverty Measure is far below the income needed to survive.
- ✱ Americans understand that basic costs for families far exceed the Federal Poverty Measure.
- ✱ The Self-Sufficiency Standard provides an alternative to the Federal Poverty Measure, assessing a family's real cost of living, state by state.
- ✱ The Self-Sufficiency Standard has already been calculated for 35 states.
- ✱ States are adopting the Self-Sufficiency Standard as an official measure of the cost-of-living.

## **At \$20,650 for a family of four, the Federal Poverty Measure is the same for Sioux Falls, South Dakota as it is for New York City.<sup>1</sup>**

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 2007 poverty measure of \$20,650 for a family of four is essentially the 1963 measure adjusted for inflation.

## **The one-size-fits-all approach to poverty measurement does not accurately assess the income needs of working families today.**

The Federal Poverty Measure has never been updated to account for social and economic changes. For most families today, food costs constitute less than one-fifth of their budgets. Housing, transportation and health care are a much larger percentage of family costs today than they were 40 years ago. Moreover, the poverty measure was calculated based on a two-parent family model with one stay-at-home parent. That model doesn't accurately describe contemporary families, and is particularly off-base for low-income families with a single working parent. For today's families, there are costs associated with employment—transportation and child care—that the Federal Poverty Measure either underestimates or ignores entirely.

## **The Federal Poverty Measure is far below the income needed to survive.**

In almost any city, town or suburb, an annual income of \$20,650—the 2007 poverty measure for a family of four—is nowhere near enough to cover housing, food, health care, child care, transportation, and taxes. For example, in one of the least expensive areas of the nation, New Orleans (before Katrina), a family of four needed about \$28,000 a year to survive. In contrast, in a more expensive area such as Boston, the same family needs more than \$59,000.<sup>2</sup>

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

A Lake Snell Perry & Associates poll found that 69 percent of Americans believe it takes at least twice the Federal Poverty Measure to “make ends meet.”<sup>3</sup>

**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.<sup>4</sup> In a number of states, the process of calculating a Standard has convinced agencies to use it as a policy tool for making more effective program decisions for low-income families.

**States are adopting the Self-Sufficiency Standard as an official measure of the cost-of-living.**

The state of Connecticut first required the calculation of a self-sufficiency measurement in 1998, and in 2001 the state required this measurement to be recalculated biannually. Since then, the Self-Sufficiency Standard has been used to target job training opportunities to the low-income

and displaced workers who need them the most. Hawaii, Illinois and West Virginia have adopted the Self-Sufficiency Standard by state legislation. State agencies in other states have incorporated the Self-Sufficiency Standard into their direct service and program development and evaluation. In Pennsylvania, welfare and workforce development caseworkers use the Self-Sufficiency Standard and the Pennsylvania Online Self-Sufficiency Budget Worksheet to help clients understand what jobs or career paths will pay wages that will help them move toward self-sufficiency. In Virginia, the Department of Social Services uses the Self-Sufficiency Standard to evaluate outcomes for several programs. The Wyoming Governor’s Planning Office supported the development of the Standard for their state and subsequently created an online Self-Sufficiency Calculator. Workforce Investment Boards (WIBs) in AZ, CA, CT, IL, ME, MD, MA, MN, MT, OR, PA, VT, WA and WI have defined and implemented the concept of self-sufficiency in pursuit of an economically-sound community and thriving workforce.<sup>5</sup>

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

## Endnotes

- 1 U.S. Department of Health and Human Services, “2006 Federal Poverty Guidelines,” February 2006.
- 2 Wider Opportunities for Women, “Coming Up Short,” 2004.
- 3 Lake Snell Perry & Associates, “A National Survey of American Attitudes Towards Low-Wage Workers and Welfare Reform,” 2000.
- 4 To review any of the 37 Self-Sufficiency Standard reports, see [www.sixstrategies.org](http://www.sixstrategies.org).
- 5 Wider Opportunities for Women, “Reality Check: Promoting Self-Sufficiency in the Public Workforce System—A Promising Practices Guide to Workforce Boards,” February 2006.

# Self-Sufficiency Standard

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## 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, 2009. 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, 2009, 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, 2008.

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# Smart Start Child Care

- ★ There is a shortage of quality, affordable childcare options in communities across America.
- ★ Securing reliable child care is an everyday struggle for millions of American families.
- ★ Budget cuts are taking their toll on the well-being of thousands of children.
- ★ The Smart Start program pioneered in North Carolina is one viable solution.
- ★ Smart Start is a proven success.
- ★ Smart Start increases access to child care, improves its quality, and makes it more affordable.
- ★ Child care is a profitable investment for our communities.
- ★ Other states have adopted childcare programs modeled after Smart Start.

## **There is a shortage of quality, affordable childcare options in communities across America.**

The need for child care has never been greater. Today, mothers make up two-thirds of all women in the workforce—double their presence in 1960.<sup>1</sup> Sixty-four percent of mothers with children under six and 53.8 percent with infants less than one year old are now in the workforce.<sup>2</sup>

## **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.<sup>3</sup> 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.<sup>4</sup>

## **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.<sup>5</sup> By 2009, the President's budget would eliminate funding for about 365,000 childcare slots.<sup>6</sup>

## **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.<sup>7</sup> Smart Start programs tackle the key problem of recruiting and retaining childcare providers. The T.E.A.C.H. Early Childhood Project offers thousands of scholarships to childcare providers for professional training and development. The WAGE\$ program provides wage incentives to preschool teachers to advance their education. After just five years, 30 percent of preschool classes were classified as providing “good” or “excellent” care, up from 14 percent in 1994.<sup>8</sup> In 2003, 82 percent of childcare workers in North Carolina had college degrees.<sup>9</sup> Smart Start earmarks 30 percent of funding to help children who live in poverty. More than 93,000 receive subsidized services each month, up from 60,000 in 1995. Smart Start has also been able to lower overall costs to the government by at least ten percent by soliciting contributions from businesses and volunteers. Local partnerships are required to raise one dollar in cash for every ten dollars they receive from state funds. Corporate sponsors have contributed millions of dollars.

### **Child care is a profitable investment for our communities.**

There is a strong consensus among researchers that childcare programs provide a substantial payoff. Studies estimate that early childhood programs generate a return of at least three dollars for every dollar spent. Even economists who are skeptical about government programs note the benefits of high-quality early childhood development programs. Follow-up studies of poor children who have participated in these programs have found solid evidence of markedly improved academic performance, lower rates of criminal conduct, and higher adult earnings than their non-participating peers. If nationwide programs started next year, benefits would exceed costs by \$31 billion within 25 years.<sup>10</sup>

### **Other states have adopted childcare programs modeled after Smart Start.**

Early childhood initiatives modeled on Smart Start have been implemented in several other states, including AL, AK, AR, CO, GA, IA, KS, KY, MI, OK, SC, TX, VT and WY. Wyoming enacted its law in 2006. In addition, Maine recently doubled its state investment in child care by offering grants, a revolving loan fund, and tuition assistance for child care providers, as well as tax credits to businesses that assist with childcare expenses or offer on-site care. Also in 2006, Washington Governor Christine Gregoire announced a plan to work with the Gates Foundation to improve early education and child care.

### **Endnotes**

- 1 Children's Defense Fund, "Child Care Basics," 2001.
- 2 Bureau of Labor Statistics, "Employment Characteristics of Families in 2005," 2006.
- 3 Children's Defense Fund, "The State of America's Children 2004," 2004.
- 4 National Center for Children in Poverty, "Basic Facts About Low-Income Children: Birth to Age 18," September 2006.
- 5 Children's Defense Fund, "Low-income families' access to child care shrinks as states cut child care assistance programs," March 15, 2004.
- 6 Richard Kogen and David Kamin, "President's Budget Contains Large Cuts in Domestic Discretionary Programs," Center on Budget and Policy Priorities, June 7, 2004.
- 7 North Carolina Smart Start, "Smart Start's Impact on North Carolina's Children, Families, and Communities," 2002.
- 8 Carolyn Kroll and Michele Rivest, *Sharing the Stories: Lessons Learned from Five Years of Smart Start*, 2000.
- 9 "Smart Start's Annual Report to the Community," June 2003.
- 10 Louise Stoney and Mildred Warner, "Child Care as Economic Development: Theoretical and Empirical Challenges," presented to the Child Care Research Bureau, April 2003; Robert Lynch, "Exceptional Returns: Economic, Fiscal, and Social Benefits of Investment in Early Childhood Development," Economic Policy Institute, 2004.

# Smart Start Child Care

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## Smart Start Child Care Act

*Summary: The Smart Start Child Care Act creates public-private partnerships to provide high-quality child-care and early learning services throughout the state.*

### SECTION 1. SHORT TITLE

This Act shall be called the “Smart Start Child Care Act.”

### SECTION 2. FINDINGS AND PURPOSE

**(A) FINDINGS**—The legislature finds that:

1. The future well being of the state depends upon all of our children.
2. Every child can benefit from, and should have access to, high-quality childcare and early learning services.
3. The state can assist parents in their role as the primary caregivers and educators of preschool children.
4. There is a need to explore innovative approaches and strategies to aid parents and families in the education and development of preschool children.

**(B) PURPOSE**—This law is enacted by the legislature to support the education and welfare of preschool children by expanding the availability of high-quality, affordable child care in every county in the state.

### SECTION 3. SMART START CHILD CARE

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

#### **(A) SMART START COMMISSION**

1. The Smart Start Commission is established within the Department of [Health and Human Services].
2. The mission of the Commission is to expand the availability of high-quality, affordable child care in every county in the state. The Commission shall fulfill its mission by coordinating and funding Local Smart Start Partner organizations. Local Smart Start Partners shall develop and implement child care programs, and the Commission shall hold those partners accountable for the financial and programmatic integrity of the programs.
3. The Commission shall consist of the following members:
  - a. The Secretary of [Health and Human Services], or the Secretary’s designee.
  - b. The Superintendent of Public Schools, or the Superintendent’s designee.
  - c. The President of the state university system, or the President’s designee.

- d. Three members of the public appointed by the governor, three members appointed by the Speaker of the House, and three members appointed by the President of the Senate. Among these nine members, there must be at least one childcare provider, healthcare provider, early childhood educator, representative of the business community, representative of the philanthropic community, and a parent.
  - e. An additional member, who shall serve as the presiding officer, shall be appointed by the governor.
4. Public members of the Commission shall serve for two-year terms and may be reappointed.
  5. All members of the Commission shall avoid conflicts of interest and the appearance of impropriety. Should instances arise when a conflict may be perceived, any individual who might benefit directly or indirectly from the disbursement of funds shall abstain from participation in any decision or deliberations regarding the disbursement of funds.

## **(B) OPERATION OF SMART START COMMISSION**

1. The Commission shall develop a long-term plan for providing childcare and early learning services throughout the state, accept proposals from Local Smart Start Partners to deliver childcare and early learning services, and allocate funds to implement those proposals.
2. The Commission shall give Local Smart Start Partners the maximum flexibility and discretion practicable in developing their proposals.
3. The Commission shall develop a formula to allocate direct services funds appropriated for this purpose. However, the Commission may adjust its allocations by up to ten percent on the basis of assessments of the performance of Local Partners. The Commission may contract with outside firms to conduct performance assessments.
4. The Commission shall develop and implement a comprehensive standard fiscal accountability plan to ensure the fiscal integrity and accountability of state funds appropriated to it and granted to Local Partners. The standard fiscal accountability plan shall, at a minimum, include a uniform, standardized system of accounting, internal controls, payroll, fidelity bonding, chart of accounts, and contract management and monitoring. All Local Partners shall be required to participate in the standard fiscal accountability plan.
5. In the event that the Commission determines that a Local Partner is not fulfilling its responsibilities under the grant, the Commission may suspend all funds until the Local Partner demonstrates that these defects are corrected. At its discretion, the Commission may assume the managerial responsibilities for the Local Partner's programs and services until the Commission determines that it is appropriate to return the programs and services to the Local Partner.

## **(C) LOCAL SMART START PARTNERS**

1. In order to receive state funds, the following conditions shall be met:
  - a. The Local Partner is a nonprofit 501(c)(3) corporation that has as its mission the delivery of high-quality early childhood education and development services for children and families.
  - b. The Local Partner shall develop a comprehensive, collaborative, long-range plan of services to children and families for the service delivery area.
  - c. The Local Partner shall agree to adopt procedures for its operations that are comparable to [the state open meetings and open public records laws].

## SMART START CHILD CARE

- d. The Local Partner shall adopt procedures to ensure that all personnel who provide services to young children and their families know and understand their responsibility to report suspected child abuse or neglect, as defined in [cite state law].
- e. The Local Partner shall participate in the uniform, standard fiscal accountability plan adopted by the Commission, and shall be subject to audit and review by the State Auditor.

**(D) ANNUAL REPORT**—The Commission shall make a report no later than December 1 of each year to the legislature that shall include the following:

1. A description of the program and significant services and initiatives.
2. A history of Smart Start funding and the previous fiscal year's expenditures.
3. The number of children served by each type of service.
4. The type and quantity of services provided.
5. The results of the previous year's evaluations of the programs and services.
6. A description of significant policy and program changes.
7. Any recommendations for legislative action.

### **(E) FUNDING**

1. The Commission shall receive funds from the state and any other public or private source. With the approval of the Secretary of [Health and Human Services], these funding sources may include federal programs such as Head Start.
2. The Commission shall require Local Partners to match grants at a ratio of at least one dollar raised from private sources for every ten dollars granted from Commission funds. The Commission may require higher ratios of matching funds for all Local Partners, some Local Partners, or particular projects of Local Partners.
3. The Commission shall ensure that granted funds do not replace current county and municipal expenditures for childcare and early learning.
4. Not less than 30 percent of the funds spent in each year of each Local Partner's direct services allocation shall be used to expand childcare subsidies. The Commission may increase this percentage requirement up to a maximum of 50 percent when, based upon a significant local waiting list for subsidized child care, the Commission determines a higher percentage is justified.

## **SECTION 4. EFFECTIVE DATE**

This Act shall take effect on July 1, 2008.

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## WORKFORCE INVESTMENTS RESOURCES

### Public Access to Broadband Internet

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Baller Herbst Law Group

Pew Internet and American Life Project

### Self-Sufficiency Standard

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Economic Policy Institute

Wider Opportunities for Women

### Smart Start Child Care

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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 297.**

# Index of Resources

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**9to5, National Association of Working Women**

152 W. Wisconsin Avenue,  
Suite 408  
Milwaukee, WI 53203  
414-274-0925  
[www.9to5.org](http://www.9to5.org)

**AARP**

601 E Street NW  
Washington, DC 20049  
888-687-2277  
[www.aarp.org](http://www.aarp.org)

**Advancement Project**

1730 M Street NW, Suite 910  
Washington, DC 20036  
202-728-9557  
[www.advancementproject.org](http://www.advancementproject.org)

**AFL-CIO**

815 16th Street NW  
Washington, DC 20006  
202-637-5000  
[www.aflcio.org](http://www.aflcio.org)

**AFL-CIO Working for America Institute**

815 16th Street NW  
Washington, DC 20006  
202-974-8100  
[www.workingforamerica.org](http://www.workingforamerica.org)

**Alan Gutmacher Institute**

1301 Connecticut Avenue NW,  
Suite 700  
Washington, DC 20036  
877-823-0262  
[www.agi-usa.org](http://www.agi-usa.org)

**Alliance for Retired Americans**

888 16th Street NW  
Washington, DC 20006  
202-974-8222  
[www.retiredamericans.org](http://www.retiredamericans.org)

**American Bar Association**

321 N. Clark Street  
Chicago, IL 60610  
312-988-5000  
[www.abanet.org](http://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](http://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](http://www.cancer.org)

**American Civil Liberties Union**

125 Broad Street, 18th Floor  
New York, NY 10004  
212-344-3005  
[www.aclu.org](http://www.aclu.org)

**American Civil Liberties Union of Florida**

4500 Biscayne Boulevard,  
Suite 340  
Miami, FL 33137  
305-576-2336  
[www.aclufl.org](http://www.aclufl.org)

**American Federation of State, County and Municipal Employees**

1625 L Street NW  
Washington, DC 20036  
202-429-1000  
[www.afscme.org](http://www.afscme.org)

**American Federation of Teachers**

555 New Jersey Avenue NW  
Washington, DC 20001  
202-879-4400  
[www.aft.org](http://www.aft.org)

**American Heart Association National Center**

7272 Greenville Avenue  
Dallas, TX 75231  
800-242-8721  
[www.americanheart.org](http://www.americanheart.org)

**American Lung Association**

61 Broadway, 6th Floor  
New York, NY 10006  
212-315-8700  
[www.lungusa.org/tobacco](http://www.lungusa.org/tobacco)

**Americans for Gun Safety**

2000 L Street NW, Suite 702  
Washington, DC 20036  
202-775-0300  
[www.americansforgunsafety.com](http://www.americansforgunsafety.com)

**Americans for Nonsmokers' Rights**

2530 San Pablo Avenue, Suite J  
Berkeley, CA 94702  
510-841-3032  
[www.no-smoke.org](http://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](http://www.amnestyusa.org/abolish)

## INDEX OF RESOURCES

### **Annie E. Casey Foundation Juvenile Detention Alternatives Initiative**

701 St. Paul Street  
Baltimore, MD 21202  
410-547-6600  
[www.aecf.org](http://www.aecf.org)

### **Appleseed Foundation**

727 15th Street NW, 11th Floor  
Washington, DC 20005  
202-347-7960  
[www.appleseeds.net](http://www.appleseeds.net)

### **Association of Community Organizations for Reform Now**

739 8th Street SE  
Washington, DC 20003  
888-55-ACORN  
[www.acorn.org](http://www.acorn.org)

### **Aspen Institute**

One Dupont Circle NW, Suite 700  
Washington, DC 20036  
202-736-5800  
[www.aspeninstitute.org](http://www.aspeninstitute.org)

### **Baller Herbst Law Group**

2014 P Street NW, Suite 200  
Washington, DC 20036  
202-833-5300  
[www.baller.com](http://www.baller.com)

### **Ballot Initiative Strategy Center**

1825 K Street, Suite 411  
Washington, DC 20036  
202-223-2373  
[www.ballot.org](http://www.ballot.org)

### **Brady Campaign to Prevent Gun Violence**

1225 Eye Street NW, Suite 1100  
Washington, DC 20005  
202-898-0792  
[www.bradycampaign.org](http://www.bradycampaign.org)

### **Breast Cancer Action**

55 New Montgomery Street  
Suite 323  
San Francisco, CA 94105  
415-243-9301  
[www.bcaction.org](http://www.bcaction.org)

### **Brennan Center for Justice**

161 Avenue of the Americas,  
12th Floor  
New York, NY 10013  
212-998-6730  
[www.brennancenter.org](http://www.brennancenter.org)

### **Business and Professional Women**

1900 M Street NW, Suite 310  
Washington, DC 20036  
202-293-1100  
[www.bpwusa.org](http://www.bpwusa.org)

### **California Air Resources Board**

1001 "I" Street  
P.O. Box 2815  
Sacramento, CA 95812  
916-322-2990  
[www.arb.ca.gov](http://www.arb.ca.gov)

### **California Immigrant Welfare Collaborative**

926 J Street, Suite 701  
Sacramento, CA 95814  
916-448-6762  
[www.nilc.org/ciwc](http://www.nilc.org/ciwc)

### **Caltech-MIT Voting Technology Project**

California Institute of Technology  
1200 E. California Boulevard,  
MC 228-77  
Pasadena, CA 91125  
626-395-4089  
[www.vote.caltech.edu](http://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](http://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](http://www.cjreform.org)

### **Campaign for Tobacco-Free Kids**

1400 Eye Street, Suite 1200  
Washington, DC 20005  
202-296-5469  
[www.tobaccofreekids.org](http://www.tobaccofreekids.org)

### **Catholics for a Free Choice**

1436 U Street NW, Suite 301  
Washington, DC 20009  
202-986-6093  
[www.cath4choice.org](http://www.cath4choice.org)

### **Center for Community Action and Environmental Justice**

P.O. Box 33124  
Riverside, CA 92519  
951-360-8451  
[www.ccae.org](http://www.ccae.org)

### **Center for Law and Social Policy**

1015 15th Street NW, Suite 400  
Washington, DC 20005  
202-906-8000  
[www.clasp.org](http://www.clasp.org)



### **Center for Nonprofits and Voting**

30 Winter Street, 10th Floor  
Boston, MA 02108  
617-357-8683  
[www.massvote.org](http://www.massvote.org)

### **Center for Reproductive Rights**

120 Wall Street  
New York, NY 10005  
917-637-3600  
[www.crlp.org](http://www.crlp.org)

### **Center for Responsible Lending**

910 17th Street NW, Suite 500  
Washington, DC 20006  
202-349-1850  
[www.responsiblelending.org](http://www.responsiblelending.org)

### **Center for Women Policy Studies**

1776 Massachusetts Avenue NW,  
Suite 450  
Washington, DC 20036  
202-872-1770  
[www.centerwomenpolicy.org](http://www.centerwomenpolicy.org)

### **Center on Budget and Policy Priorities**

820 First Street NE, Suite 510  
Washington, DC 20002  
202-408-1080  
[www.cbpp.org](http://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](http://www.cows.org)

### **Children's Defense Fund**

25 E Street NW  
Washington, DC 20001  
202-628-8787  
[www.childrensdefense.org](http://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](http://www.cuadp.org)

### **Coalition for Fire-Safe Cigarettes**

1 Batterymarch Park  
Quincy, MA 02169  
617-984-7275  
[www.firesafecigarettes.org](http://www.firesafecigarettes.org)

### **Coalition for Juvenile Justice**

1710 Rhode Island Avenue NW,  
10th Floor  
Washington, DC 20036  
202-467-0864  
[www.juvjustice.org](http://www.juvjustice.org)

### **Coalition on Human Needs**

1120 Connecticut Avenue NW,  
Suite 910  
Washington, DC 20036  
202-223-2532  
[www.chn.org](http://www.chn.org)

### **Coalition to Stop Gun Violence**

1023 15th Street NW, Suite 301  
Washington, DC 20005  
202-408-0061  
[www.csgv.org](http://www.csgv.org)

### **Common Cause**

1250 Connecticut Avenue NW,  
Suite 600  
Washington, DC 20036  
202-833-1200  
[www.commoncause.org](http://www.commoncause.org)

### **Community Coalition for Environmental Justice**

2820 East Cherry  
Seattle, WA 98122  
206-720-0285  
[www.ccej.org](http://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](http://www.cra-nc.org)

### **Consumer Federation of America**

1620 Eye Street NW, Suite 200  
Washington, DC 20036  
202-387-6121  
[www.consumerfed.org](http://www.consumerfed.org)

### **Consumers Union**

1666 Connecticut Avenue NW,  
Suite 310  
Washington, DC 20009  
202-462-6262  
[www.consumersunion.org](http://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](http://www.cfed.org)

### **Database of State Incentives for Renewable Energy**

North Carolina State University  
Raleigh, NC 27695  
919-515-5666  
[www.dsireusa.org](http://www.dsireusa.org)

### **Death Penalty Focus**

870 Market Street, Suite 859  
San Francisco, CA 94102  
415-243-0143  
[www.deathpenalty.org](http://www.deathpenalty.org)

## INDEX OF RESOURCES

### **Death Penalty Information Center**

1101 Vermont Avenue NW,  
Suite 701  
Washington, DC 20005  
202-289-2275  
[www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)

### **Defenders of Wildlife**

1130 17th Street NW  
Washington, DC 20036  
800-989-8981  
[www.defenders.org](http://www.defenders.org)

### **Democracy 21**

1825 Eye Street NW, Suite 400  
Washington, DC 20006  
202-429-2008  
[www.democracy21.org](http://www.democracy21.org)

### **DemocracyWorks**

44 Capitol Avenue, Suite 102  
Hartford, CT 06106  
860-727-1157  
[www.democracyworksct.org](http://www.democracyworksct.org)

### **Democracy South**

304B 49th Street  
Virginia Beach, VA 23451  
757-428-0645  
[www.democracysouth.org](http://www.democracysouth.org)

### **Demos**

220 5th Avenue, 5th Floor  
New York, NY 10001  
212-633-1405  
[www.demos-usa.org](http://www.demos-usa.org)

### **Drug Policy Alliance**

70 West 36th Street, 16th Floor  
New York, NY 10018  
212-613-8020  
[www.drugpolicy.org](http://www.drugpolicy.org)

### **Economic Opportunity Institute**

1900 North Northlake Way,  
Suite 237  
Seattle, WA 98103  
206-633-6580  
[www.econop.org](http://www.econop.org)

### **Economic Policy Institute**

1660 L Street NW, Suite 1200  
Washington, DC 20036  
202-775-8810  
[www.epinet.org](http://www.epinet.org)

### **Education Commission of the States**

700 Broadway, Suite 1200  
Denver, CO 80203  
303-299-3600  
[www.ecs.org](http://www.ecs.org)

### **eHealth Initiative**

818 Connecticut Avenue NW,  
Suite 500  
Washington, DC 20006  
202-624-3270  
[www.ehealthinitiative.org](http://www.ehealthinitiative.org)

### **Election Protection Coalition**

People for the American Way  
2000 M Street NW, Suite 400  
Washington, DC 20036  
202-467-4999  
[www.electionprotection2004.org](http://www.electionprotection2004.org)

### **Electronic Privacy Information Center**

1718 Connecticut Avenue NW,  
Suite 200  
Washington, DC 20009  
202-483-1140  
[www.epic.org](http://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](http://www.ejrc.cau.edu)

### **Equal Justice USA/ Moratorium Now!**

P.O. Box 5206  
Hyattsville, MD 20782  
301-699-0042  
[www.quixote.org/ej](http://www.quixote.org/ej)

### **Equality Federation**

2370 Market Street, Suite 386  
San Francisco, CA 94114  
415-377-7771  
[www.equalityfederation.org](http://www.equalityfederation.org)

### **FairVote**

6930 Carroll Avenue, Suite 610  
Takoma Park, MD 20912  
310-270-4616  
[www.fairvote.org](http://www.fairvote.org)

### **Families Against Mandatory Minimums**

1612 K Street NW, Suite 700  
Washington, DC 20006  
202-822-6700  
[www.famm.org](http://www.famm.org)

### **Families USA**

1201 New York Avenue,  
Suite 1100  
Washington, DC 20005  
202-628-3030  
[www.familiesusa.org](http://www.familiesusa.org)

### **Fannie Mae Corporation**

3900 Wisconsin Avenue NW  
Washington, DC 20016  
202-752-7000  
[www.fanniemae.com](http://www.fanniemae.com)

## **Federal Election Commission**

999 E Street NW  
Washington, DC 20463  
800-424-9530  
[www.fec.gov](http://www.fec.gov)

## **Feminist Majority Foundation**

1600 Wilson Boulevard,  
Suite 801  
Arlington, VA 22209  
703-522-2214  
[www.feminist.org](http://www.feminist.org)

## **Freddie Mac Foundation**

8250 Jones Branch Drive  
McLean, VA 22102  
703-918-8888  
[www.freddiemacfoundation.org](http://www.freddiemacfoundation.org)

## **Gay, Lesbian, Straight Education Network**

90 Broad Street, 2nd Floor  
New York, NY 10004  
212-727-0135  
[www.glsen.org](http://www.glsen.org)

## **Good Jobs First**

1616 P Street NW  
Washington, DC 20036  
202-232-1616  
[www.goodjobsfirst.org](http://www.goodjobsfirst.org)

## **Hawaii Department of Education**

P.O. Box 2360  
Honolulu, HI 96804  
808-837-8012  
[reach.k12.hi.us](mailto:reach.k12.hi.us)

## **Henry J. Kaiser Family Foundation**

2400 Sand Hill Road  
Menlo Park, CA 94025  
650-854-9400  
[www.kff.org](http://www.kff.org)

## **Human Rights Campaign**

1640 Rhode Island Avenue NW  
Washington, DC 20036  
202-628-4160  
[www.hrc.org](http://www.hrc.org)

## **Human Rights Watch**

350 Fifth Avenue, 34th Floor  
New York, NY 10118  
212-290-4700  
[www.hrw.org](http://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](http://www.innocenceproject.org)

## **Institute for Women's Policy Research**

1707 L Street NW, Suite 750  
Washington, DC 20036  
202-785-5100  
[www.iwpr.org](http://www.iwpr.org)

## **Internal Revenue Service**

1111 Constitution Avenue NW  
Washington, DC 20224  
202-622-2000  
[www.irs.gov](http://www.irs.gov)

## **International Association of Chiefs of Police**

515 North Washington Street  
Alexandria, VA 22314  
703-836-6767  
[www.theiacp.org](http://www.theiacp.org)

## **Johns Hopkins Center for Gun Policy and Research**

624 N. Broadway  
Baltimore, MD 21205  
410-614-3243  
[www.jhsph.edu/gunpolicy](http://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](http://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](http://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](http://www.lawyerscomm.org)

## **Leadership Conference on Civil Rights**

1629 K Street NW, Suite 1000  
Washington, DC 20006  
202-466-3311  
[www.civilrights.org](http://www.civilrights.org)

## **League of United Latin American Citizens**

2000 L Street NW, Suite 610  
Washington, DC 20036  
202-833-6130  
[www.lulac.org](http://www.lulac.org)

## **League of Women Voters**

1730 M Street NW, Suite 1000  
Washington, DC 20036  
202-429-1965  
[www.lwv.org](http://www.lwv.org)

## **Learning Point Associates**

1825 Connecticut Avenue NW  
Washington, DC 20009  
800-252-0283  
[www.learningpt.org](http://www.learningpt.org)

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### **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](http://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](http://www.financeproject.org)

### **Marijuana Policy Project**

P.O. Box 77492  
Washington, DC 20013  
[www.mpp.org](http://www.mpp.org)

### **Maryland Citizen's Health Initiative**

2600 St. Paul Street  
Baltimore, MD 21218  
410-235-9000  
[www.healthcareforall.com](http://www.healthcareforall.com)

### **Merchants Payments Coalition**

325 7th Street NW, Suite 1100  
Washington, DC 20004  
202-955-1400  
[www.unfaircreditcardfees.org](http://www.unfaircreditcardfees.org)

### **Million Mom March**

1225 Eye Street NW, Suite 1100  
Washington, DC 20005  
202-898-0792  
[www.millionmommarch.org](http://www.millionmommarch.org)

### **Murder Victims' Families for Reconciliation**

6911 Richmond Highway,  
Suite 206  
Alexandria, VA 22306  
703-721-1888  
[www.mvfr.org](http://www.mvfr.org)

### **NAACP National Voter Fund**

2001 L Street NW, Suite 1050  
Washington, DC 20036  
202-898-0960  
[www.naacpnvf.org](http://www.naacpnvf.org)

### **NARAL Pro-Choice America**

1156 15th Street NW, Suite 700  
Washington, DC 20005  
202-973-3000  
[www.naral.org](http://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](http://www.naacp.org)

### **National Association of Criminal Defense Lawyers**

1150 18th Street NW, Suite 950  
Washington, DC 20036  
202-872-8600  
[www.nacdl.org](http://www.nacdl.org)

### **National Center for Lesbian Rights**

870 Market Street, Suite 570  
San Francisco, CA 94102  
415-392-6257  
[www.nclrights.org](http://www.nclrights.org)

### **National Coalition on Black Civic Participation**

1900 L Street NW, Suite 700  
Washington, DC 20036  
202-659-4929  
[www.bigvote.org](http://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](http://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](http://www.reformelections.org)

### **National Conference of State Legislatures**

7700 East First Place  
Denver, CO 80230  
303-364-7700  
[www.ncsl.org](http://www.ncsl.org)

### **National Consumer Law Center**

77 Summer Street, 10th Floor  
Boston, MA 02110  
617-542-8010  
[www.nclc.org](http://www.nclc.org)

### **National Council of La Raza**

1126 16th Street NW  
Washington, DC 20036  
202-785-1670  
[www.nclr.org](http://www.nclr.org)

### **National Disability Rights Network**

900 Second Street NE, Suite 211  
Washington, DC 20002  
202-408-9514  
[www.ndrn.org](http://www.ndrn.org)

### **National Education Association**

1201 16th Street NW  
Washington, DC 20036  
202-833-4000  
[www.nea.org](http://www.nea.org)

### **National Employment Law Project**

55 John Street, 7th Floor  
New York, NY 10038  
212-285-3025  
[www.nelp.org](http://www.nelp.org)

### **National Gay and Lesbian Task Force**

1325 Massachusetts Avenue NW,  
Suite 600  
Washington, DC 20005  
202-393-5177  
[www.thetaskforce.org](http://www.thetaskforce.org)

### **National Immigration Law Center**

3435 Wilshire Boulevard,  
Suite 2850  
Los Angeles, CA 90010  
213-639-3900  
[www.nilc.org](http://www.nilc.org)

### **National Juvenile Defender Center**

1350 Connecticut Avenue NW,  
Suite 304  
Washington, DC 20036  
202-452-0010  
[www.njdc.info](http://www.njdc.info)

### **National Juvenile Detention Association**

Eastern Kentucky University  
301 Perkins Building  
Richmond, KY 40475  
859-622-6259  
[www.njda.com](http://www.njda.com)

### **National Legislative Association on Prescription Drug Prices**

P.O. Box 492  
Hallowell, ME 04347  
207-662-5597  
[www.nlarx.org](http://www.nlarx.org)

### **National Low Income Housing Coalition**

757 15th Street NW, 6th Floor  
Washington, DC 20005  
202-662-1530  
[www.nlihc.org](http://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](http://www.norml.org)

### **National Parenting Association**

1841 Broadway, Room 808  
New York, NY 10023  
212-315-2333  
[www.parentsunite.org](http://www.parentsunite.org)

### **National Partnership for Women and Families**

1875 Connecticut Avenue NW,  
Suite 650  
Washington, DC 20009  
202-986-2600  
[www.nationalpartnership.org](http://www.nationalpartnership.org)

### **National Rural Housing Coalition**

1250 Eye Street NW, Suite 902  
Washington, DC 20005  
202-393-5229  
[www.nrhweb.org](http://www.nrhweb.org)

### **National Voting Rights Institute**

27 School Street, Suite 500  
Boston, MA 02108  
617-724-3900  
[www.nvri.org](http://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](http://www.nativevote.org)

### **Natural Resources Defense Council**

40 West 20th Street  
New York, NY 10011  
212-727-2700  
[www.nrdc.org](http://www.nrdc.org)

### **New Jersey Policy Perspective**

145 W. Hanover Street  
Trenton, NJ 08618  
609-393-1145  
[www.njpp.org](http://www.njpp.org)

### **New Mexico Council on Crime and Delinquency**

P.O. Box 1842  
Albuquerque, NM 87103  
505-242-2726  
[www.nmccd.org](http://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](http://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](http://www.smartstart-nc.org)

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### **North Dakota Association of Counties**

P.O. Box 877  
Bismarck, ND 58502  
701-328-9800  
[www.ndaco.org](http://www.ndaco.org)

### **Office of Juvenile Justice and Delinquency Prevention**

810 Seventh Street NW  
Washington, DC 20531  
202-307-5911  
[www.ojjdp.ncjrs.org](http://www.ojjdp.ncjrs.org)

### **People for the American Way**

2000 M Street NW, Suite 400  
Washington, DC 20036  
202-467-4999  
[www.pfaw.org](http://www.pfaw.org)

### **Pew Internet and American Life Project**

1615 L Street NW, Suite 700  
Washington, DC 20036  
202-419-4500  
[www.pewinternet.org](http://www.pewinternet.org)

### **Physicians for a National Health Program**

29 E Madison, Suite 602  
Chicago, IL 60604  
312-782-6006  
[www.pnhp.org](http://www.pnhp.org)

### **Planned Parenthood Federation of America**

434 West 33rd Street  
New York, NY 10001  
212-541-7800  
[www.plannedparenthood.org](http://www.plannedparenthood.org)

### **Policy Matters Ohio**

2912 Euclid Avenue  
Cleveland, OH 44115  
216-931-9922  
[www.policymattersohio.org](http://www.policymattersohio.org)

### **Prison Moratorium Project**

388 Atlantic Avenue, 3rd Floor  
Brooklyn, NY 11217  
718-260-8805  
[www.nomoreprisons.org](http://www.nomoreprisons.org)

### **Progressive Leadership Alliance of Nevada**

821 Riverside Drive  
Reno, NV 89509  
775-348-7557  
[www.planevada.org](http://www.planevada.org)

### **Progressive Majority**

1825 K Street NW, Suite 450  
Washington, DC 20006  
202-408-8603  
[www.progressivemajority.org](http://www.progressivemajority.org)

### **Public Campaign**

1320 19th Street NW, Suite M-1  
Washington, DC 20036  
202-293-0222  
[www.publiccampaign.org](http://www.publiccampaign.org)

### **Public Citizen**

1600 20th Street NW  
Washington, DC 20009  
202-588-1000  
[www.citizen.org](http://www.citizen.org)

### **Renewable Energy Policy Project**

1612 K Street, NW, Suite 202  
Washington, DC 20006  
202-293-2898  
[www.repp.org](http://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](http://www.aclu.org)

### **Right to Vote**

161 Avenue of the Americas,  
12th Floor  
New York, NY 10013  
212-992-8152  
[www.righttovote.org](http://www.righttovote.org)

### **The Robert Wood Johnson Foundation**

P.O. Box 2316  
Princeton, NJ 08543  
888-631-9989  
[www.rwjf.org](http://www.rwjf.org)

### **Rock the Vote**

1313 L Street NW, First Floor  
Washington, DC 20005  
202-962-9710  
[www.rockthevote.org](http://www.rockthevote.org)

### **Sentencing Project**

514 10th Street NW, Suite 1000  
Washington, DC 20004  
202-628-0871  
[www.sentencingproject.org](http://www.sentencingproject.org)

### **Service Employees International Union**

1800 Massachusetts Avenue NW  
Washington, DC 20036  
202-898-3200  
[www.seiu.org](http://www.seiu.org)

### **Smart Growth America**

1707 L Street NW, Suite 1050  
Washington, DC 20036  
202-207-3355  
[www.smartgrowthamerica.com](http://www.smartgrowthamerica.com)

### **State Environmental Resource Center-Defenders of Wildlife**

1130 17th Street NW  
Washington, DC 20036  
800-385-9712  
[www.seronline.org](http://www.seronline.org)



### **Southern Center for Human Rights**

83 Poplar Street NW  
Atlanta, GA 30303  
404-688-1202  
[www.schr.org](http://www.schr.org)

### **Stem Cell Research Foundation**

22512 Gateway Center Drive  
Clarksburg, MD 20871  
877-842-3442  
[www.stemcellresearchfoundation.org](http://www.stemcellresearchfoundation.org)

### **Sudan Divestment Task Force**

1333 H Street NW  
Washington, DC 20005  
202-481-8103  
[www.sudandivestment.org](http://www.sudandivestment.org)

### **Texas Criminal Justice Reform Coalition**

602 West 7th Street, Suite 104  
Austin, TX 78701  
512-441-8123  
[www.criminaljusticecoalition.org](http://www.criminaljusticecoalition.org)

### **Union of Concerned Scientists**

2 Brattle Square  
Cambridge, MA 02238  
617-547-5552  
[www.ucsusa.org](http://www.ucsusa.org)

### **United States Department of Housing and Urban Development**

451 7th Street SW  
Washington, DC 20410  
202-708-1112  
[www.hud.gov](http://www.hud.gov)

### **United States Green Buildings Council**

1015 18th Street NW, Suite 508  
Washington, DC 20036  
202-82-USGBC  
[www.usgbc.org](http://www.usgbc.org)

### **Universal Health Care Action Network**

2800 Euclid Avenue, Suite 520  
Cleveland, OH 44115  
216-241-8422  
[www.uhcan.org](http://www.uhcan.org)

### **Urban Institute**

2100 M Street NW  
Washington, DC 20037  
202-833-7200  
[www.urban.org](http://www.urban.org)

### **USAction**

1341 G Street NW, 10th Floor  
Washington, DC 20005  
202-624-1730  
[www.usaction.org](http://www.usaction.org)

### **Violence Policy Center**

1730 Rhode Island Avenue,  
Suite 1014  
Washington, DC 20036  
202-822-8200  
[www.vpc.org](http://www.vpc.org)

### **Wal-Mart Watch**

1730 M Street NW, Suite 601  
Washington, DC 20036  
202-557-7440  
[www.walmartwatch.com](http://www.walmartwatch.com)

### **Western Prison Project**

P.O. Box 40085  
Portland, OR 97240  
503-335-8449  
[www.westernprisonproject.org](http://www.westernprisonproject.org)

### **Wider Opportunities for Women**

1001 Connecticut Avenue NW,  
Suite 930  
Washington, DC 20036  
202-464-1596  
[www.wowonline.org](http://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](http://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](http://www.wiser.heinz.org)

### **Worker Center-King County Labor Council, AFL-CIO**

2800 1st Avenue, Room 252  
Seattle, WA 98121  
206-461-8408  
[www.wc-kclcl.org](http://www.wc-kclcl.org)

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