

April 2018

# STATE LEGISLATURES

 NATIONAL CONFERENCE *of* STATE LEGISLATURES

## INTERNET SALES TAXES A Question of Fairness



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### POTENT POWDER

Weighing Benefits,  
Risks of Kratom

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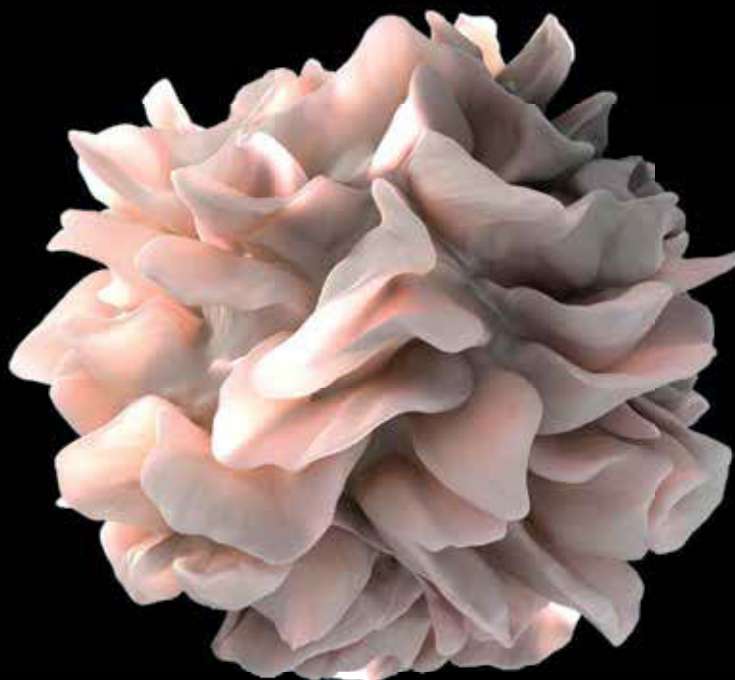
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# STATE LEGISLATURES

The magazine of state policy and politics from the National Conference of State Legislatures,  
the bipartisan organization that serves all lawmakers and staff.

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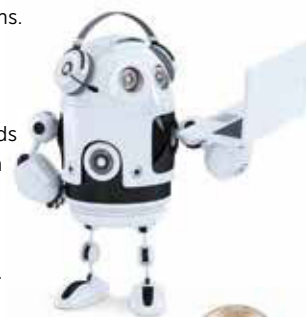
*"I think there's a leader in all of us."*

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# SHORT TAKES

## NEWS FROM NCSL

### NCSL EXPERTISE



**"There will be heated conversations about what role states should take."**

Danielle Dean on net neutrality becoming a hot legislative topic, on [pennlive.com](http://pennlive.com).



**"States for so long have been in catch-up mode."**

Daniel Thatcher on states using increased property tax revenues to consider changing their K-12 funding formulas, in Education Week.



**"That does not necessarily shorten the process. It just makes it more accessible for these citizens."**

Brenda Erickson on people testifying remotely via Skype or other technology at budget hearings, from The Associated Press.



**"If the wage replacement is low, lower-income workers won't take the leave because the wage is not enough for them to live on."**

Jackson Brainerd on a Vermont paid family leave proposal that offers an 80 percent wage replacement, on [vtdigger.org](http://vtdigger.org).

### State Coordinators

NCSL is pleased to announce a new peer-to-peer program designed to educate legislators about NCSL's services. A national roster of state coordinators, appointed by their presiding officers, will answer questions about NCSL, share information about our policy and professional development resources and encourage their peers to get involved. The goal is to have a coordinator in every chamber. Contact [katie.ziegler@ncsl.org](mailto:katie.ziegler@ncsl.org) for more information.



New NCSL state coordinators Idaho Senator Patti Anne Lodge, left, and Colorado Representative Alec Garnett.

### CONNECTIONS

#### A Healthy Partnership

NCSL's Health and Children and Families programs welcomed Dr. Brian Shiozawa, a former Utah state senator now serving as Region 8 director of the U.S. Department of Health and Human Services, and his executive officer, Elsa Ramirez, to NCSL's Denver office for a meet and greet in February. HHS grants—including those from the Centers for Disease Control and Prevention, the Health Resources and Services Administration and the Office of Child Support Enforcement—enable NCSL to sponsor meetings, produce web resources and publications, provide technical assistance and track state legislation.



Seated, from left, are Wade Fickler, head of NCSL's Children and Families Program; NCSL Executive Director Bill Pound; Dr. Brian Shiozawa, Region 8 director for the U.S. Department of Health and Human Services; Elsa Ramirez, HHS Region 8 executive officer; and Martha King, director of NCSL's Health Program. NCSL staff stand behind.



#### Magnolia State Meet-Up

NCSL joined Mississippi Governor Phil Bryant and first lady Deborah Bryant to host a reception for state lawmakers at the Governor's Mansion in February. More than 100 legislators heard from leaders about the many ways to get involved with NCSL and how the organization can help in their legislative duties.

From left, Mississippi native and NCSL Public Affairs Director Mick Bullock, Mississippi House Speaker Pro Tem Greg Snowden, NCSL Executive Director Bill Pound, Mississippi Governor Phil Bryant, first lady Deborah Bryant and House Speaker Philip Gunn.



# States, Cities Ban Bump Stocks

**F**or a short time after last year's mass shooting in Las Vegas, there was bipartisan interest in a federal ban on bump fire stocks, which the shooter used to make his semiautomatic rifles fire at a rate similar to that of a fully automatic weapon. The National Rifle Association stated last fall that bump stocks "should be subject to additional regulations." And even President Trump said in February that he would direct the U.S. Department of Justice to outlaw the devices.

While Congress' urgency to act on the devices has waned, three states and at least two cities have acted on their own.

Massachusetts, New Jersey and Washington, along with the cities of Denver and Columbia, S.C., have enacted laws

prohibiting the sale and possession of bump stocks. California and New York do not explicitly prohibit the devices, but they may fall under their bans on automatic weapons. This year, California introduced a bill to clarify the issue in statute, and more than 20 other states have considered or are considering bump stock bans.

Massachusetts enacted its ban about a month after the Las Vegas shooting. New Jersey's bill became law in January. "While Congress is twiddling its thumbs, New Jersey will step up," Senator Raymond Lesniak (D), the bill's sponsor, said.

Opponents argue that many of the bills are too broad, include other commonly owned accessories and could turn responsible gun owners into criminals.

The bans likely would hold up in court, a legal scholar told *The Associated Press*.

"I don't see a real constitutional issue. I just wonder about actually getting these devices out of circulation for people who already have them," Joyce Malcolm, a professor at George Mason University's Antonin Scalia School of Law, said.

No one knows how many of the devices are in circulation. Few were being sold at the time of the Las Vegas shooting, gun dealers told the AP. But demand spiked in the days and weeks afterward.

Since the shooting, positions have hardened on both sides of the issue and Congress has turned to other priorities. If there are further moves to restrict bump stocks, they are likely to be made in the states.

—Kevin Frazzini

# Going to the MAT to Fight Opioid Crisis

**A**s addiction and overdose deaths continue to touch all communities, expanding access to drugs that help treat opioid addiction is the latest strategy states are using to combat this lethal and costly crisis.

Every day, about 142 Americans die of a drug overdose, and two-thirds of those deaths involve prescription opioids and illicit drugs. Especially hard hit are rural areas, where drug overdose rates recently outpaced those in urban areas. Many rural areas have a shortage of health care practitioners who can provide treatment and recovery services for addiction. Historically, physicians, who are more likely to practice in urban areas, were the only providers who could prescribe medication-assisted treatment, known as MAT, for opioid addiction. These medications, such as methadone and buprenorphine, treat opioid dependence and addiction by diminishing withdrawal symptoms and cravings.

The federal Comprehensive Addiction and Recovery Act of 2016 extends buprenorphine prescribing privileges to nurse practitioners and physician assistants practicing in an office setting after obtaining a waiver and receiving 24 hours of additional training. Allowing NPs and PAs to prescribe this medication could improve the availability of treatment in rural settings, where they are more likely to work.

States are also enabling greater access to these medications by building on the framework provided by federal laws and regulations. Recently, California and Oregon enacted legislation to allow NPs and PAs to prescribe buprenorphine. Colorado passed leg-



islation in 2017 that provides grants to train NPs and PAs in certain rural counties to expand access to MAT. In Vermont, which already allows NPs and PAs to prescribe buprenorphine, legislators are considering a bill that would allow providers to prescribe the drug to prison inmates. And lawmakers in New Jersey and Tennessee have introduced, but not yet passed, measures extending prescribing privileges to NPs and PAs.

—Sydney Enlund

# States Fine-Tune the EITC

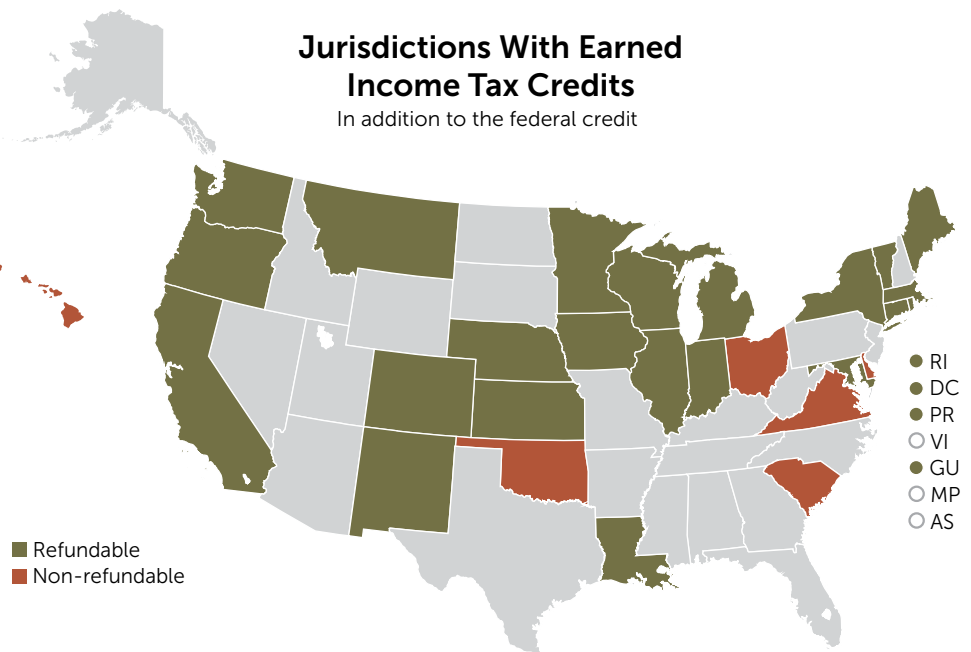
Last year, state lawmakers introduced more than 200 bills and enacted new laws in at least nine states related to the earned income tax credit. Hawaii, Montana and South Carolina created state credits, and California, Illinois, New Jersey and Rhode Island increased the percentage or reach of their credits.

All this is good news for low-income workers and families.

The federal government, 29 states, the District of Columbia, Guam, Puerto Rico and some municipalities use these tax credits to support the financial stability of low-income working families, especially those with children. EITCs reduce the tax liability of qualifying taxpayers in an amount determined mostly by their income level, marital status and number of dependent children. The federal policy has been in place since 1975, and Rhode Island enacted the first state credit in 1986.

State EITCs, which are mostly modeled after the federal credit, reduce low-income residents' state income tax liability. The policies vary somewhat by state in the ways they determine eligibility, in their methods for calculating credits and refunds, in their awareness and outreach efforts, and in data-tracking requirements.

Because many low-income workers don't know that receiving a state or federal EITC refund requires filing a return, they often miss out on credits that could help them.



Source: NCSL, 2017

The average federal credit was \$2,455 in 2016, yet 20 percent of eligible workers didn't claim it, according to the Internal Revenue Service.

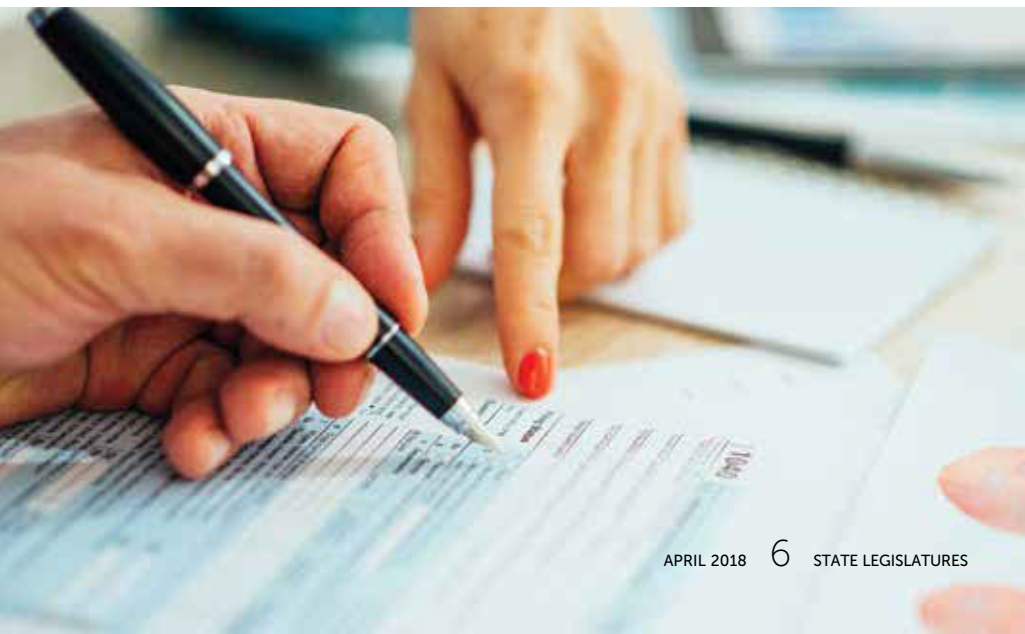
In response, several states have made efforts to increase awareness of the program. Iowa and Maine, for example, require that beneficiaries of certain assistance programs be informed of EITC benefits. Laws in Oregon, Vermont and Virginia directly charge state agency heads with leading outreach activities. Oregon requires the commissioner of its Bureau of Labor

and Industries to adopt rules requiring employers to share information about state and federal EITCs with their employees. In addition, Iowa, Oklahoma, Texas and Virginia, among other states, appropriated funds or implemented measures to help eligible families prepare their tax returns.

California, Hawaii and New Jersey, among others, require state statistical data to be collected and reported. Hawaii's law, for example, requires the director of taxation to report annually on the number of credits granted, the total dollar amount granted and the average credit value distributed for specific income ranges during the previous year.

Proponents of the earned income tax credit say that research demonstrates its benefits. It reduces poverty, encourages employment, stimulates local economies and improves the long-term health, education and finances of workers and their families. Critics argue that the credits reduce tax revenue, are challenging to administer and discourage workers from progressing in their careers because they lose the credit as earnings increase.

—Magazine staff



# Firearms in Schools

**P**resident Donald Trump's support of arming school staff to prevent tragedies like the recent shooting in Parkland, Fla., has generated much debate among state lawmakers. Several have introduced bills to make it easier to get guns in the hands of teachers should there be a need. At press time, bills had been introduced in Alabama, Florida, Kentucky, Louisiana, Maryland, Missouri, Pennsylvania, South Carolina and Washington.

"I can't comprehend when we secure other places like banks and the state Capitol with armed security, that we leave completely undefended the buildings that house our most precious commodity," Michigan Representative Gary Glenn (R) says. He is working on legislation to make it easier for school officials with concealed carry permits to carry guns in schools.

Lawmakers in Colorado, however, defeated a bill to make it easier for people with concealed carry permits to go into schools. This was the fourth time Representative Patrick Neville (R) introduced the measure. He was a 15-year-old student at Colum-



bine High School in 1999, when 12 students and one teacher were shot and killed.

A vast majority of states—48—have laws that generally prohibit firearms in schools, but there are several common exceptions.

After the 2012 shooting in Sandy Hook, Conn., five states—Georgia, Kansas, South Dakota, Tennessee and Texas—passed legislation allowing school employees to carry firearms; most require the employees to get trained first. Missouri, South Dakota, Tennessee and Texas have programs that train school employees who volunteer to carry firearms and serve as school protection officers (though they call it something different

in each state). Idaho, Kansas and Wyoming also allow school employees to bring guns, but only if they have received permission beforehand.

Forty-four states specifically allow law enforcement to bring their firearms into schools; 21 of those states also allow school security staff to be armed. California, Colorado, Delaware, Illinois, Indiana, Maryland, Mississippi, New Mexico, Ohio, Oklahoma, Washington and West Virginia allow security guards, but not other school employees, to carry guns.

Seven states allow concealed carry license holders to bring guns into schools, but only Idaho, Indiana and Missouri require them to get permission first. New Hampshire is the only state that allows anyone to carry a gun into a school, although students must first get permission from a school authority. Another 17 states also allow anyone who has received permission to carry a firearm into school. Hawaii is the only state with no laws on who may have firearms in school.

—Jennifer Palmer, Joellen Kralik and Ben Erwin

# Wiping the Slate Clean

**A** common misconception is that once children turn 18, their juvenile delinquency records are expunged so they can go forth with a clean slate. But that's not always the case, and it can have both immediate and long-term consequences on kids' future education, employment and other opportunities on the way to adulthood. Juveniles with records can be barred from receiving financial aid, getting a job, joining the military or being admitted into certain licensed professions.

Some juvenile records are sealed rather than destroyed; that makes them available to law enforcement and judges but not the public. All states allow most juveniles to petition to either seal or expunge their records, but these procedures often can be confusing and cumbersome. Sometimes, juveniles are never notified and have no idea whether, when or how they can get their records destroyed.

Last year, at least seven states significantly changed the way they handle these records.

Legislators in Colorado, Illinois and Texas enacted provisions

that automatically expunge certain records with no action required by the young person. The new law in Texas, for example, requires expungement of misdemeanor records and the automatic sealing of other records if the young person has reached age 19 with no pending cases or additional convictions.

California, Delaware and Louisiana removed language in their laws that prohibited certain young people from petitioning for sealing or expungement. In Louisiana, juveniles convicted of prostitution offenses can now request that their records be destroyed at any time. In Tennessee, lawmakers required the administrative office of the courts to inform young people when they turn 17 of their rights to petition the court to have their records destroyed. The bill also required the office to create a standard petition form.

So far this year, 24 states have considered nearly 70 bills related to juvenile records. None had passed as of March 1.

—Anne Teigen



# First-Gen Students Make Their Mark



**A** third of all Americans over age 25 earn bachelor's degrees each year. That's up from 21 percent in 1990. As that group increases, the portion of "first-generation students" (students whose parents did not go to college) decreases. The share of these students enrolled in college dropped to 33 percent in 2012 from 37 percent in 2000, according to a new report from the U.S. Department of Education.

Compared with students who have college-educated parents, first-generation students face greater obstacles to earning a degree. They take fewer high-level math classes and earn fewer Advanced Placement or International Baccalaureate credits in high school. They face greater difficulty enrolling in, succeeding in and completing a college degree program. They often require remedial work once at college. They are more likely to be living on their own and need to work while in school.

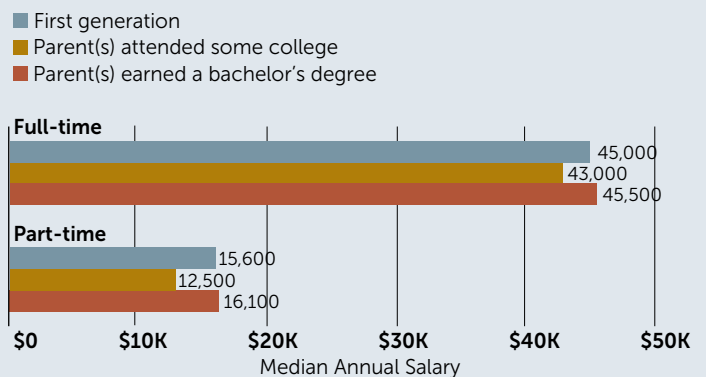
The report found that 33 percent of first-generation students dropped out before earning a degree, compared with only 14 percent of students with college-educated parents. And we know that college-educated Americans enjoy higher incomes, less unemployment and less poverty than those without a degree.

But for those first-generation students who persevered and earned a degree, life after college was similar to that of other students. There was no statistical difference in full-time employment rates nor in median annual salaries four years after graduation between the students, although a smaller portion (4 percent) of first-generation graduates went on to doctoral or professional programs than their peers with college-educated parents (10 percent).

—Magazine staff

## The Power of a Degree—and Persistence

Median annual salary for 2007-08 bachelor's degree recipients by parents' highest level of education, 2012.



**Notes:** Full time is defined as working 35 or more hours per week; part time as working less than that. Primary job is the one held currently or most recently.

Source: U.S. Department of Education, National Center for Education Statistics, 2008/12 Baccalaureate and Beyond Longitudinal Study



# A Question of Fairness

Years of work to simplify the collection of remote state sales taxes may soon pay off.

BY MAX BEHLKE

**A**fter 16 years as a photojournalist for the Las Vegas Review-Journal, Wayne Kodey finally realized his life's dream when he bought his favorite camera store in Las Vegas in 1995. With the internet still in its infancy and customer service his top priority, Kodey's business thrived. Over time he was able to expand and hire more employees.

As the internet matured, however, the shopping habits of Kodey's price-conscious customers changed. Many spent hours with Kodey's employees, learning how to use various aperture settings, filters and lenses, only to politely thank them for their time then leave to purchase the camera online to avoid the 8 percent sales tax. One brazen shopper even used his phone to buy a camera online before leaving the store.

"The price advantage of 8 percent on a \$2,000 camera was \$160—a large gap in today's price-conscious environment," Kodey told a Nevada Assembly committee in 2017. Competition from online sellers gradually eroded his customer base, he said, until he finally had to sell his store in 2013.

"Leveling the playing field would

---

Max Behlke is the director of budget and tax policy in NCSL's State-Federal Relations Division in Washington, D.C.

## Three Scenarios

If the U.S. Supreme Court ends up hearing the *South Dakota v. Wayfair* case, most observers expect it to issue one of three rulings.

**1. The court upholds *Quill*.** This would be the worst-case outcome for South Dakota and the 35 other states that joined its petition. Given the continual growth in e-commerce, if states are unable to collect taxes on internet purchases, the sales tax would most likely no longer be a viable revenue source for states. This would be the preferred outcome for those who support higher income and property taxes over sales taxes, however.

**2. The court issues a narrow ruling.** The court could rule the South Dakota law constitutional but not comment on the broader issue. While this outcome would indeed be a victory for South Dakota, it could mean that other states would have to pass similar laws or else risk legal challenges.

**3. The court overturns *Quill*.** This would be the best outcome for the states. It would allow them to begin enforcing their tax laws for products sold within their boundaries. States would build upon their collaborations that ultimately developed the Streamlined Sales and Use Tax Agreement to ensure a smooth implementation of tax collection and remittance.

have made it possible to continue our business and save those employees their jobs and health benefits,” he said.

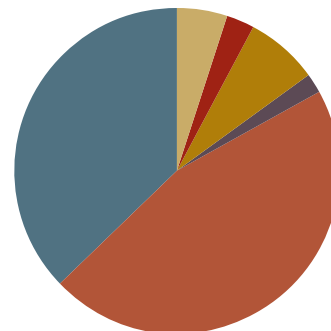
Similar stories abound. The owner of a baby products store in New York tells of a woman who asked him to show her how to assemble a crib. After an hour with her, he learned that she had already bought the crib online to avoid paying the sales tax and just wanted to learn how to put it together.

Then there’s the congressman’s wife who owns a wedding dress boutique. She spent hours with a bride-to-be, helping her find the perfect dress, only to have her walk out to buy the same dress online, tax free. A few days later the audacious bride brought the dress into the store for alterations.

### Is All This Fair?

These stories raise the question: Why are out-of-state retailers allowed to skirt the state sales tax laws that stores on Main Street must adhere to? It’s a question of fairness, as NCSL and many state lawmakers see it, and one that led to *South Dakota v. Wayfair*, the case the U.S. Supreme Court is scheduled to hear on April 17. At press time, however, the future of the case was uncertain. Congress was debating the idea of including a remote sales tax

## Average State Revenue Sources



Corporate Income Taxes 5%  
Motor Vehicle Licenses 3%  
Other Taxes 7%  
Property Taxes 2%  
Sales and Gross Receipts 46%  
Individual Income Taxes 37%

collection bill in the omnibus budget bill to be considered before March 23. If successful, such legislation would likely end the Supreme Court process on the South Dakota law, and whether that would be better for states is debatable.

If the case does go to court, and South Dakota prevails, it’s possible that, for the first time, the state will be able to enforce their sales tax laws on all purchases made by their residents. If the state loses, the long-term viability of the sales tax as a revenue

## The Long and Winding Road



May 26, 1992

In *Quill Corp. v. North Dakota*, the U.S. Supreme Court rules that only businesses with a physical presence in a state should be required to collect its sales taxes.



Aug. 11, 1994

One of the first secure retail transactions occurs over the internet when NetMarket sells a copy of Sting’s “Ten Summoner’s Tales.”



July 16, 1995

Amazon sells its first book online.



April 8, 1999

NCSL’s newly formed Task Force on State and Local Taxation meets for the first time.



December 2002

The NCSL task force adopts the Streamlined Sales and Use Tax Interstate Agreement.



March 22, 2013

The U.S. Senate overwhelmingly passes the Marketplace Fairness Act.



March 2015

Supreme Court Justice Anthony Kennedy welcomes a reconsideration of the *Quill* decision.



Jan. 27, 2016

South Dakota Senator Deb Peters (R) introduces Senate Bill 106 to require large remote sellers to collect and remit the state’s sales tax.

source for states will be in grave jeopardy.

South Dakota's trek to the Supreme Court began with its neighbor to the north. In the early 1990s, Quill Corp., an Illinois-based office supply retailer, was one of the country's most successful mail-order operations. In addition to its extensive catalogue of low-priced products, Quill had the competitive advantage of being able to avoid collecting sales taxes in the states where it had no physical stores.

This tax advantage upset brick-and-mortar, Main Street retailers who had to compete against large, out-of-state companies. Why, they asked, should an out-of-state company receive a competitive advantage over in-state, job-creating businesses like theirs?

The state of North Dakota filed an action in court to force Quill Corp. to collect the state's sales tax, even though it had no offices or employees in the state. Ultimately, the case, *Quill Corp. v. North Dakota*, worked its way to the U.S. Supreme Court. In 1992, the court ruled that requiring businesses to collect and remit sales taxes for states where they had no physical presence would "unduly" burden interstate commerce.

The court reasoned it was too complicated for sellers to comply with so many different state sales tax systems. The court

also urged Congress to pass legislation to fix the problem. In the 26 years since the ruling, Congress has failed to act. The problem from the states' perspective has only worsened with the tremendous growth of electronic commerce.

### Is Quill Just Too Old?

The trouble with the *Quill* decision is its age. Since 1992, technological advancements have fundamentally transformed nearly every aspect of our lives, including the ways we shop and collect taxes.

The *Quill* decision, in fact, came two years before the first secure retail transaction occurred over the internet and three years before Amazon and eBay were launched in 1995. Even Quill Corp. didn't start selling online until 1996.

Now, e-commerce is flourishing. It accounted for 8.9 percent of U.S. retail sales in 2017 and is growing five times faster than offline sales. In fact, e-commerce is expected to grow to almost \$500 billion in the U.S. alone in 2018.

The inability to collect taxes on these online purchases is threatening the viability of the sales tax as a revenue source for the states. Although convenient for the buyer, internet sales have diminished state sales tax revenue by billions of dollars. A joint study by NCSL and the

International Council of Shopping Centers estimated that states collectively lost \$26 billion in uncollected sales and use taxes in 2017. The problem is especially acute for the several states, like South Dakota, that do not levy corporate or personal income taxes and rely primarily on sales taxes to fund vital government services.

### Streamlining and Modernizing

After *Quill*, "states came together to identify the issues they needed to address to modernize and simplify their tax codes in the internet age," former Illinois Senator Steve Rauschenberger said. He was the first Republican co-chair of the task force created by NCSL's Executive Committee in 1999 to study the issue and monitor the newly established Federal Advisory Commission on Electronic Commerce.

"This was an issue of fiscal federalism and state sovereignty," Rauschenberger said. "We felt strongly that if states could streamline sales and use tax administration, Congress would recognize our efforts and grant us the authority to enforce our tax laws."

The task force adopted a set of principles that led to the creation of the Streamlined Sales Tax Project to simplify and modernize sales taxes in the states. After



**March 22, 2016**  
South Dakota Governor Dennis Daugaard (R) signs S.B. 106 into law.



**March 25, 2016**  
The South Dakota Department of Revenue sends notices to 206 retailers to register for a license to collect and remit state sales taxes by April 25, 2016.



**April 28, 2016**  
South Dakota files "declaratory judgment" against online retailers Wayfair, Overstock and Newegg for violating S.B. 106.



**Jan. 4, 2016**  
*State Tax Notes* names NCSL's Task Force on State and Local Taxation its Tax Organization of 2016.



**March 6, 2017**  
The South Dakota 6th Judicial Circuit rules S.B.106 unconstitutional.



**Sept. 13, 2017**  
The South Dakota Supreme Court upholds the lower court's ruling.



**Oct. 2, 2017**  
South Dakota petitions the U.S. Supreme Court to hear the case.



**Jan. 12, 2018**  
The Supreme Court grants South Dakota's petition.



**April 17, 2018**  
The Supreme Court is set to hear oral arguments in the case.

## The Trump Administration Sides With States

Solicitor General Noel Francisco urged the U.S. Supreme Court to expand states' authority to collect sales taxes on internet transactions in a friend-of-the-court brief filed on March 5. "In light of internet retailers' pervasive and continuous virtual presence in the states where their websites are accessible, the states have ample authority to require those retailers to collect state sales taxes owed by their customers," Francisco wrote. "The court should resolve this case by making clear that an out-of-state internet retailer's virtual presence within a state is a sufficient ground for requiring the retailer to collect sales or use taxes owed by its in-state customers."

two more years of work, in coordination with the National Governors Association, the Federation of Tax Administrators and the Multistate Tax Commission, the task force voted unanimously to accept the Streamlined Sales and Use Tax Interstate Agreement in December 2002.

More than half the 45 states that levy a sales tax, along with Washington, D.C., eventually signed the agreement, which would have minimized the undue costs and administrative burdens experienced by retailers that had to collect sales taxes in several different states.

These "streamlined" states, as they became known, simply needed Congress to grant them the authority to enforce the agreement. Now, 16 years later, the wait may be over, but the timing is poor. States will most likely benefit more from a Supreme Court ruling than any language Congress agrees to insert into the federal budget bill.

The first e-fairness bill in Congress was introduced by Senators Mike Enzi (R) of Wyoming and Byron Dorgan (D) of North Dakota. Called the Streamlined Sales and Use Tax Act of 2003, it would have granted states the authority to require out-of-state sellers to collect and remit sales taxes, but the bill never received consideration.

A decade later, however, the U.S. Senate overwhelmingly passed the Marketplace Fairness Act, sponsored by Enzi and

Illinois Senator Dick Durbin (D). It would have granted streamlined states, as well as states that complied with certain simplification requirements, the authority to collect the taxes they are owed. But it languished in the House Judiciary Committee without receiving a hearing, as has a recent, more substantive proposal, the Remote Transactions Parity Act.

State lawmakers felt they had exhausted nearly every path to a solution—until March 2015. That's when Supreme Court Justice Anthony Kennedy threw them a lifeline. In a concurring opinion on another state tax case, Kennedy, who is one of only two justices still on the court since hearing the *Quill* case, wrote: "Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court's holding in *Quill*. A case questionable even when decided, *Quill* now harms states to a degree far greater than could have been anticipated earlier."

This sparked states into action once again.

In January 2016, the NCSL Task Force on State and Local Taxation sent a letter to

every state that levies a sales tax, suggesting options for them to consider to help solve the remote sales tax problem. Since then, 15 states have enacted legislative measures aimed at requiring out-of-state companies to collect and remit applicable taxes.

One of those states is South Dakota.

## From Legislation to Litigation

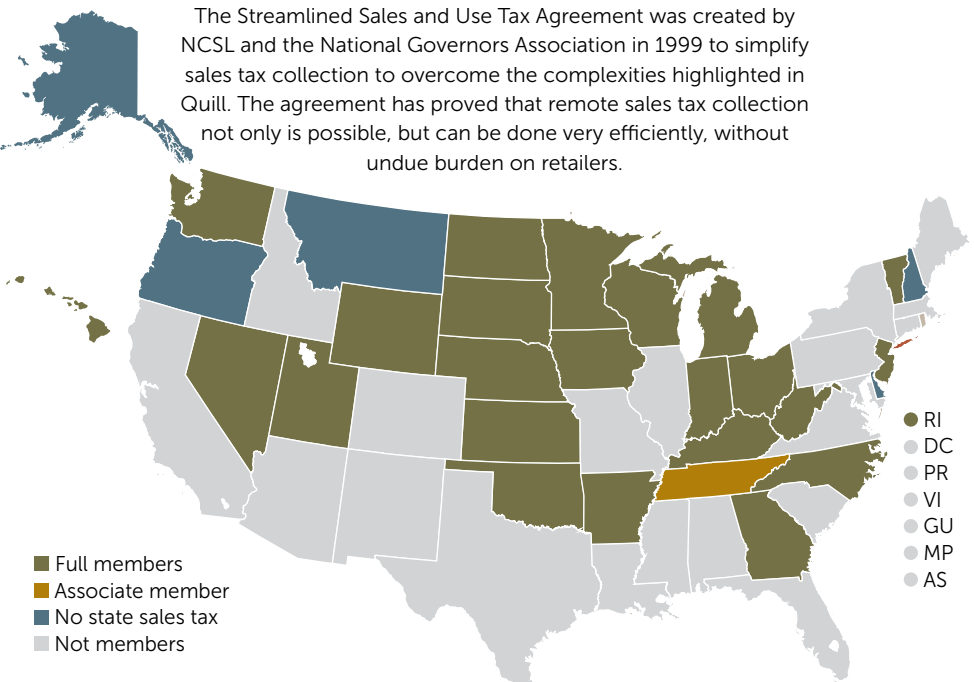
When NCSL President and South Dakota Senator Deb Peters (R) introduced legislation in 2016, her intent was clear: force a legal challenge in the hopes of ultimately overturning *Quill*.

"State sovereignty, or states' rights, is not a doctrine of convenience," Peters said. "Rather, it's the idea that states, and their citizens, know best how to govern themselves."

Peters' legislation requires out-of-state sellers to collect and remit the state's sales tax based on their volume of sales in the state, rather than their physical presence in the state. Businesses included are those that either sell more than \$100,000 in goods, or process 200 or more transactions annually in South Dakota, or both.

## Keep It Simple

The Streamlined Sales and Use Tax Agreement was created by NCSL and the National Governors Association in 1999 to simplify sales tax collection to overcome the complexities highlighted in *Quill*. The agreement has proved that remote sales tax collection not only is possible, but can be done very efficiently, without undue burden on retailers.



Source: NCSL





*South Dakota Senator, and NCSL president, Deb Peters testifying before a congressional subcommittee on behalf of states.*

Before the law became effective, the state sent letters to more than 200 online retailers to let them know they would need to start collecting and remitting sales taxes or risk legal action. Only 70 remote sellers complied. The state responded by filing a complaint in court against the defiant retailers.

### **On the Fast Track**

Designed to elicit legal action, the law states that if its legality is challenged, the case must be heard “as expeditiously as possible” by a state circuit court.

Appeals to circuit court rulings in South Dakota go directly to the state Supreme Court, which, the law states, must also hear the case as expeditiously as possible.

These provisions are why, in less than

**“State sovereignty, or states’ rights, is not a doctrine of convenience. Rather, it’s the idea that states, and their citizens, know best how to govern themselves.”**

two years from enactment, the law has made it to the U.S. Supreme Court.

The defendants—Wayfair.com, Overstock.com and Newegg.com—have argued the law is unconstitutional because it violates the *Quill* decision. The state has countered that *Quill* is no longer relevant considering how much has changed since the case was decided 25 years ago.

The circuit court agreed with the online retailers and, ultimately, the state Supreme Court did too. In October 2017, the state formally petitioned the U.S. Supreme

Court, asking for the authority to enforce its 2016 remote sales tax law.

In January, the Supreme Court agreed to hear the case, and in February, set April 17 for oral arguments.

### **Better Late Than Never**

Regardless whether the Supreme Court hears the case or Congress passes legislation that negates the case, it will have a profound effect on states and the future of the sales tax.

Although it’s too late to benefit Wayne Kodey, the former camera store owner, there are plenty of other Main Street retailers who could be breathing a little easier if Congress or the high court agrees that remote sellers should be collecting the same state sales taxes they are required to collect. And that will make all the work state lawmakers and NCSL staff put into this effort well worth it.

# Kratom Concerns

**As kratom use  
surges, some states  
enact bans.**

**BY CHRISTINE  
VESTAL**

**O**n a sunny November afternoon in the quiet college community of Carrboro, N.C., a steady stream of customers walks through the doors of a local cafe called Oasis for a cup of an increasingly popular herbal beverage. The menu offers coffee, black tea, beer, wine and pastries, but nearly everyone opts for a \$5 mug of kratom (pronounced KRAY-dum).

A powder ground from the leaves of an indigenous Southeast Asian tree related to the coffee plant, kratom (*Mitragyna speciosa*) offers pain relief and mood enhancement, similar to prescription painkillers.

Advocates say the substance, which does not depress the respiratory system and therefore presents little to no overdose risk, could help reduce the nation's reliance on highly addictive and often deadly prescription painkillers. Some addiction experts also argue the plant could be used as an alternative to methadone, buprenorphine and Vivitrol in medication-assisted therapy for opioid addiction.

Used for centuries to fight fatigue, pain and anxiety in Indonesia, Malaysia, Myanmar, Papua New Guinea and Thailand, kratom was rarely taken in the United States until recently.

Now, with growing concerns about the dangers of prescription painkillers, an estimated 3 million to 5 million people are using kratom and reporting positive results, based on information from retailers. But worries that the unregulated plant product could be abused for its mild euphoric qualities and that users could become addicted are spurring federal officials to issue public health warnings—and a handful of states and cities to impose bans.

Alabama, Arkansas, Indiana, Tennessee, Vermont, Wisconsin and the District of Columbia have banned kratom, along with at least three cities—Denver, San Diego and Sarasota, Florida. Illinois and Louisiana ban sales to minors. And legislation was considered in 2016 in at least six other states—Florida, Kentucky, New Hampshire, New Jersey, New York and North Carolina.

Animal studies have shown that kratom use may lead to addiction. But user surveys indicate that although the herb can be habit-forming, withdrawal symptoms are no worse than those encountered when quitting coffee, sugar or certain herbal supplements. Withdrawal symptoms, which typically last three to four days, include muscle aches, cravings, a runny nose, restlessness and mood swings.

The Drug Enforcement Administration last year said it intended to classify the herbal supplement as an illegal Schedule 1 drug, along with heroin, LSD and marijuana. But after public demonstrations, letters from Congress and a petition with more than 142,000 signatures, the agency put the proposal on hold.

Last month, Food and Drug Administration chief Scott Gottlieb issued a public health warning, citing 36 deaths in which kratom was present, but not necessarily the cause. About 50,000 Americans die of drug overdoses each year. In addition, the FDA, which has been seizing imports of kratom at U.S. ports since 2013, stepped up import enforcement.

The agency also cited a 10-fold increase in kratom-related calls to poison centers between 2010 and 2015—from 26 calls to 263, out of roughly 2.2 million calls a year. And Gottlieb

Christine Vestal is a staff writer for Stateline, an initiative of the Pew Charitable Trusts, which published this story on Dec. 4, 2017. Reprinted with permission.

warned about the unknown risks of using kratom to treat opioid addiction, saying he fears some kratom may have been laced with opioids, and that the FDA needs to conduct further study on the plant's potential benefits.

In response, the American Kratom Association, a Colorado-based advocacy and lobbying organization, issued its own analysis of FDA data on adverse drug events, calling the kratom numbers "incredibly insignificant in the broader context" of drug-related deaths and adverse reactions.

### A Variety of Ails

At Oasis, no one seems concerned about the hubbub in Washington. Owner Robert Roskind says the controversy has only improved business by focusing attention on what he says is still a little-known plant with huge benefits and few drawbacks. "Except for the rare upset stomach or lightheadedness, it has helped nearly everyone," he said. "And it's cheap. I have about 300 customers and most come here several times a week. Some buy take-home packages."

With subdued lighting, soft music and mystical artwork, Oasis has a peaceful vibe. Customers are happy to talk about their reasons for taking kratom, and they vary widely.

A group of University of North Carolina students from nearby Chapel Hill sit on floor pillows in a corner, reading and working on laptops. Kratom sharpens their focus when they need to study for an exam, one student said. "It's like coffee without the jitters."

A 27-year-old tattooed chef from Brooklyn said he started drinking kratom to relieve withdrawal symptoms after he decided to quit heroin on his own three months ago. A conservatively dressed 22-year-old fraternity brother said kratom has helped him stop binge drinking.

A woman in her 40s, recovering from brain cancer therapy, says it relieves her anxiety and improves her sense of well-being. Two women who work with preschoolers say it lowers their stress level. And a 29-year-old construction worker says it keeps his fibromyalgia symptoms, including pain and fatigue, at bay so he can get up and work every day.

Even among the diverse crowd here at Oasis, Bob Whyte, a well-dressed 80-year-



old businessman from Chapel Hill, stands out. A self-described straight-laced "boy scout," he said he's been drinking kratom three times a day to relieve severe back pain from failed surgery.

"I'd been taking tramadol and hydrocodone consistently for two years when I found out about kratom," he said. Whyte said his doctors didn't want him to keep taking the highly addictive prescription painkillers, and they had no objections when he told them he was switching to kratom.

At first, Whyte said he was a little fearful about trying the plant-based medicine. Roskind gave him a kratom brownie and suggested he eat half of it at home. "I picked a day when I wouldn't be driving and sat on the front porch and had half a brownie. I waited a half-hour and felt fine, so I had the other half. That's when I had a little happy moment there on the porch," he said sheepishly.

Since that July morning, Whyte said he's figured out what dose is best for him—enough to bring his pain down to a tolerable level without feeling drowsy. Now he says he's telling everyone he knows about kratom.

### Research Needed

Despite rave reviews from kratom users, most physicians and researchers argue that research using human clinical trials is needed to accurately determine the leaf powder's potential harms and benefits. They also insist that oversight of commercial sales of the plant is needed to ensure

consumers are getting high-quality, uncontaminated products.

But scientists and other stakeholders differ about whether sales of the plant should be curtailed in the meantime.

The American Society of Addiction Medicine argued in comments to the DEA last year that the whole botanical product, like the powder sold at Oasis, should be made illegal to prevent people with addictions from trying to use it to recover. Since three FDA-approved medications exist that have proven safe and effective, using kratom to treat opioid addiction presents an unnecessary risk for people with addictions, the group said.

At the same time, they recommended that what appear to be the plant's primary active ingredients, mitragynine and 7-hydroxymitragynine, should remain legal so they can be researched for their pain relief and addiction treatment potential.

Oliver Grundmann, an associate professor of medicinal chemistry at the University of Florida College of Pharmacy, has surveyed kratom users and found that very few report becoming addicted and most use it to treat chronic pain, mental health conditions and drug addiction.

"I'm questioning whether we are doing any good by banning kratom," Grundmann said. If states and the federal government make kratom illegal, he said, it would not only slow the progress of research, but it would also leave many kratom users no choice but to switch back to painkillers or heroin.





## VOUCHING FOR BULLIED KIDS

Every state, the District of Columbia and the territories have enacted anti-bullying laws, but the cost of moving to another school can make some families feel “trapped” at the school where their child has been bullied, Florida Senator Bill Galvano (R) says. His “Hope Scholarship Program” would make public K-12 students who are victims of one of 10 types of incidents—from bullying to sexual assault—eligible for a \$7,000 private school voucher or \$750 to cover transportation to another public school. Under the proposal, which would be paid for via voluntary contributions from motorists buying or registering vehicles, school principals would determine a child’s eligibility for the program.

## A RIGHT TO HEALTH CARE?

Should health care be enshrined as a constitutional right? The proposed “Hope Amendment” would have changed Oregon’s Constitution to read: “It is the obligation of the state to ensure that every resident of Oregon has access to cost-effective, medically appropriate and affordable health care.” Oregon voters won’t weigh in on that question for now, as a bill to put the proposal on the ballot died in a Senate committee, with lawmakers concerned it might invite lawsuits against the state. But the House passed the bill, meaning there’s interest in the idea. No state has made health care a constitutional right.



## A COSTLY MISSING COMMA

As State Legislatures reported in September last year, three Maine truck drivers sued their employer for unpaid overtime wages. State overtime-pay rules, they observed, did not apply to the “canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of” foods. But was the law exempting those who, like the drivers, distribute food or those who pack it for shipping and distribution? A comma (an Oxford comma, to be precise) after “shipment” would have made the meaning clear—but because it was unclear, the drivers were owed back pay, they argued. A federal appeals court agreed, and the case was settled in their favor. The Legislature has since amended the law’s punctuation.



## TRACKING OPIOID PRESCRIPTIONS

Nebraska is the first state to require pharmacists to report the prescription drugs they dispense to a prescription drug monitoring program. PDMPs are statewide databases that let doctors see a patient’s prescription history and are among the most promising state-level strategies for improving opioid prescribing, according to the Centers for Disease Control and Prevention. A doctor can see, for example, if a patient has been seeking prescriptions from other doctors. Lawmakers in Alaska, Arkansas, Delaware, Georgia, Maryland, Montana, New Jersey, South Dakota, Washington, Wisconsin and Guam also have enacted measures establishing PDMPs, but those systems aren’t up and running yet.





### HOLD MY ROBOCALLS, PLEASE

Montana has no law against robots, but robocalls are another matter. A federal court has ruled that the state's ban on political robocalls is constitutional, the Billings Gazette reports. The ban, which was approved in 1991, was challenged by a consulting company that uses automated calls and claimed it was being deprived of its right to free speech. The court, however, said the

law is a "constitutionally permissible content-based regulation of speech" and that campaigns have other ways of getting information out, including leafleting, billboards, posters, yard signs, bulk mailing, the internet and social media.



### THE JURY'S OUT ON NON-UNANIMOUS VERDICTS

Juries in Louisiana and Oregon can convict most felony defendants with a 10-2 vote, though Louisiana requires unanimous convictions in capital cases. All other states and the federal government require 12-0 felony verdicts. Proponents of non-unanimous verdicts say they result in fewer hung juries, and that such systems empower jurors and crime victims. Critics say they can marginalize minority jurors whose votes aren't needed and increase wrongful convictions. They were disappointed that the U.S. Supreme Court last year declined to hear a case targeting Louisiana's law, but remain hopeful that Oregon lawmakers will refer to voters a proposal to change to a 12-0 system, OregonLive.com reports.

### PLACE YOUR SPORTS BETS

States like the odds on sports betting. Legal gambling yielded nearly \$28 billion in revenue to local and state governments in 2015, according to the Rockefeller Institute of Government, and many see legal sports betting as an additional, potentially lucrative revenue opportunity. Standing in the way is PASPA, the 1992 Professional and Amateur Sports Protection Act, which bans states from authorizing

or licensing sports betting.

But with the U.S. Supreme Court expected to rule on a case that could invalidate the act, sports betting bills have been filed in at least 20 states, some serving simply as placeholders until the case is decided.



### POSH PAVEMENT IN THE PEACE GARDEN STATE

Are your state's road conditions rough or refined? Reason Foundation's "Annual Highway Report" uses spending and performance data submitted to the federal government by state highway agencies to rank each state's highway system in 11 categories, including spending per mile, pavement conditions, deficient bridges, traffic congestion and fatality rates. The top 10 best road systems overall for 2015, the most recent year with complete data available, were North Dakota, Kansas, South Dakota, Nebraska, South Carolina, Montana, Idaho, Wyoming, Missouri and Utah.

# License Overload?

Lawmakers are questioning whether we've gone too far with occupational and professional licensing.

BY ALBERT DOWNS  
AND IRIS HENTZE

Albert Downs and Iris Hentze are policy researchers in the Employment, Labor and Retirement Program at NCSL. Their colleagues Allison Hiltz and Suzanne Hultin contributed to this article.

**N**urses and athletic trainers need one, so do barbers and cosmetologists. Even home inspectors need one. An occupational or professional license can require hours of instruction, intense testing and, in some cases, high fees. It's all worth it, many say, if it protects public health and safety and ensures a minimum level of quality in products and services.

The number of jobs requiring a license has grown steadily, from about 5 percent of all occupations in the 1950s to more than 25 percent of the American workforce today. The share of licensed workers, however, varies by state, ranging from a low of 12 percent in South Carolina to a high of 33 percent in Iowa.

Licensing is a state responsibility, and each has developed its own regulations, usually with decision-making authority falling to quasi-governmental boards made up of people overseeing occupations most of them are employed in. Education and training standards vary widely, along with the fees and the limitations on who may apply for a license. (Some states bar those with immigrant status or a criminal history, for example.)

Michigan requires three years of education and training to become a licensed security guard, for example, while most other states require 11 days or fewer. And while all 50 states license cosmetologists and emergency medical technicians, the education requirements vary greatly. Iowa, Nebraska and South Dakota require cosmetologists to study at least 233 days; Massachusetts and New York double that time. But the length of training time required of entry-level EMTs averages just 33 days nationwide.

Proponents say licensing is the best tool lawmakers have to protect workers and the public. Populating boards with the people who have the expertise necessary to address the profession's specific issues is key. "Doing so increases the effectiveness of the administrative system that is designed to provide consumers with an assurance of the qualifications of licensees along with a means of enforcement for the benefit of the public," says Dale Atkinson, executive director of the Federation of Associations of Regulatory Boards. Supporters also point out that the increase in licensing has enjoyed bipartisan, nationwide support.



### Critics Cite Studies

Critics, who also come from across the ideological and partisan spectrum, cite studies that show no evidence licensing improves safety. One such study was conducted by labor economist and licensing expert Morris Kleiner. He studied the effects of occupational regulations on one of the fastest growing segments of the U.S. labor market—the online, on-demand economy that includes ride-sharing networks.

In 2017, Kleiner compared data on the safety and quality of trips driven by licensed Uber drivers with those driven by new, unlicensed drivers in Houston, New York and New Jersey. He “found that occupational licensing frequently had no effect on safety and quality.” Even when there was a positive effect, Kleiner says “the magnitude of the effect was small.”

Other studies back Kleiner’s conclusion. According to a 2015 review done by the Department of the Treasury Office of Economic Policy, the Council of Economic Advisers and the Department of Labor, 85 percent of the research on licensing concluded there was little evidence it improved the quality or safety of products and services.

Findings like these have prompted law-

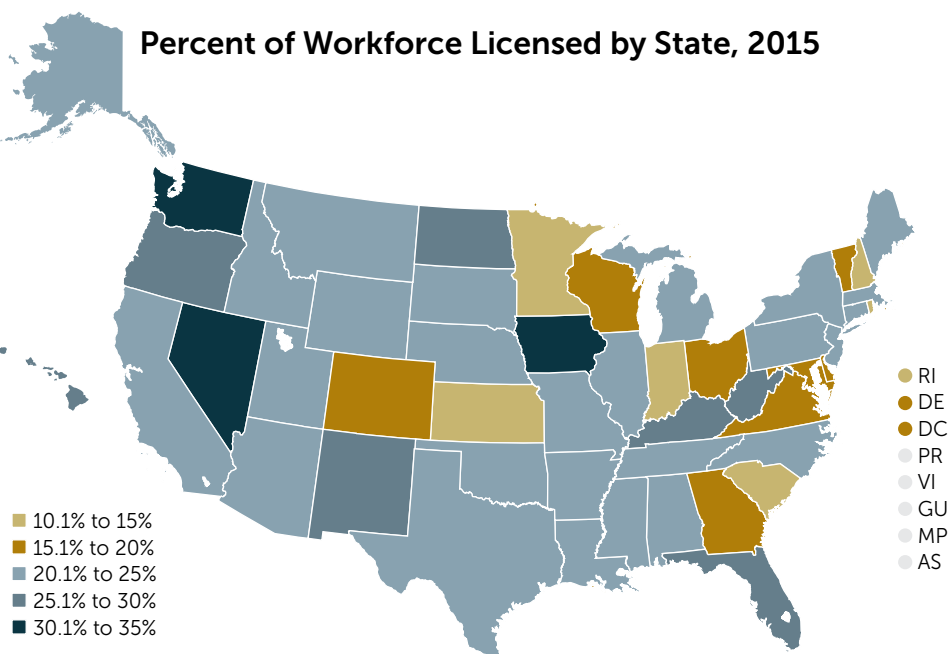
makers to re-examine the design and impact of their licensing requirements. They are concerned that the differences and disparities among states can restrict workers’ job opportunities. They wonder if the fees and time required to earn licenses are fair. They question whether our 50-state patchwork is the best way to achieve states’ policy goals. And they are beginning to look for alternatives that can ensure minimum levels of safety and quality.

### Questioning the Status Quo

Lawmakers in Oklahoma and Utah last year began reconsidering who they license and why. Oklahoma legislators created a task force to do a yearlong review and deliver recommendations to the Legislature. Utah lawmakers expanded the oversight power of the Legislature to include all licenses and commissioned a study of the state’s licensing requirements.

Utah Senator Todd Weiler (R), who chairs the Occupational and Professional Licensure Review Committee, says the Legislature hopes to streamline the regulation of professions and “lower the barriers to entry for new workers, and for workers crossing state lines for professions like nursing and teaching.” The Legislature

Percent of Workforce Licensed by State, 2015



Source: “Occupational Licensing: A Framework for Policymakers,” the Department of the Treasury Office of Economic Policy, the Council of Economic Advisers and the Department of Labor, 2015





MAYBE SOME PROFESSIONS DON'T REQUIRE REGULATION,  
**BUT HEALTH CARE  
IS NOT ONE OF THEM.**

Do you really want an untrained, unregulated person



**SPINEBOARDING YOUR CHILD?**



**EVALUATING YOUR CHILD FOR A CONCUSSION?**



**RESTARTING YOUR CHILD'S HEART DURING  
A SUDDEN CARDIAC ARREST SITUATION?**

Athletic trainers are highly qualified, multi-skilled health care professionals who collaborate with physicians to provide preventative services, emergency care, clinical diagnosis, therapeutic intervention and rehabilitation of injuries and medical conditions. This is a public safety concern. When you deregulate health care professions, people suffer. Support state regulation of athletic training.

To learn more about the important role of athletic trainers in work, life and sport, visit [www.atyourownrisk.org](http://www.atyourownrisk.org).



A SAFER APPROACH TO  
WORK, LIFE AND SPORT





especially wants to ensure that spouses of active-duty military personnel can work in their chosen professions as families are transferred from base to base, he says.

Mississippi and Tennessee, which also completed reviews, both enacted legislation to increase oversight of licensing boards and establish clearer standards for creating new boards and licensing requirements. The focus was on preserving regulations that have been shown to benefit health or safety. Delaware and Michigan are now doing reviews, and several other legislatures are considering policy changes.

### Wide Policy Impact

Licensing can affect other policy goals as well. Rules that prevent former prisoners from earning certain licenses, for example, can have a “significant and sometimes detrimental impact,” says Illinois Representative Marcus C. Evans Jr. (D). “A goal of criminal justice reform is to reduce recidivism. If individuals with criminal backgrounds have the opportunity to earn licenses for various occupations, this gives them the opportunity to market themselves for good-paying jobs and an end to a life of crime.”

Evans succeeded in passing 2016 legislation ensuring that former offenders can earn an occupational license unless their crimes directly relate to that occupation. Less successful was a bill he introduced last year that would have required all applications for employment, certification, registration and licensure to clearly state that the applicant was not obligated to disclose

arrest or conviction records.

Other legislatures have mandated regular reviews of their licensing laws through so-called “sunrise” and “sunset” procedures. Texas law, for example, details a two-year review process for any legislation proposing a new occupational license and for any bill that would significantly alter existing licensing policy. Since 1977, when the sunset law went into effect, 85 regulatory bodies have been consolidated or eliminated. Proponents say the law has saved taxpayers \$1 billion while increasing accountability and improving government resources.

Connecticut lawmakers now require approval by the attorney general and the standing Legislative Regulation Review Committee before any proposal to create, amend or repeal a regulation can be adopted. The proposal must also be filed on the state’s electronic regulation system, where it is available to the public.

“It is important that policymakers remove barriers to employment while still maintaining health and safety protection,” says Connecticut Senate Majority Leader Bob Duff (D). “Streamlining occupational licensing will open up new career paths and



Senator  
Todd Weiler  
Utah



Representative  
Marcus C. Evans Jr.  
Illinois



Senator  
Bob Duff  
Connecticut

## States Form Consortium

With the help of the National Conference of State Legislatures, the Council of State Governments and the National Governors Association Center for Best Practices, 11 states formed the National Occupational Licensing Learning Consortium to share policy options, discuss best practices and engage with experts in occupational and professional regulation.

Through this project, which is funded by the U.S. Department of Labor, Employment and Training Administration, each state will develop a plan to reduce unnecessary barriers to the labor market. Of particular interest will be the challenges facing military veterans and their families, immigrants with work authorization, ex-offenders, and the chronically unemployed.

The group recently released the National Occupational Licensing Database detailing, among other things, the education and training requirements, initial licensing and renewal fees, and portability of 34 occupations across the 50 states and the District of Columbia.

This first-of-its-kind database can be found at [www.ncsl.org/stateslicense](http://www.ncsl.org/stateslicense).

## Low-Income Jobs: Who Licenses the Most and the Least?

The Most	Occupations
Louisiana	71
Arizona	64
California	62
Oregon	59
Nevada	55
The Least	
Wyoming	24
Kentucky	27
Vermont	27
Colorado	28
South Dakota	28

Source: “License to Work: A National Study of Burdens from Occupational Licensing,”  
Institute of Justice, 2012

also bring down the cost of services for consumers.”

### The Need for Watchdogs

States can require occupational licensing, but without some supervision, not everyone will play by the rules. But who should provide the oversight and who should pay for it are up for debate.

Many argue that members of the private sector should be involved in crafting the regulations that will affect them. Inclusion of industry insiders “provides much needed expertise and consumer perspectives and allows for informed decisions,” according to the Federation of Associations of Regulatory Boards.

Others say that interest groups too often gain outsized influence over government decisions and shape policy to benefit their own interests, a phenomenon the late George Stigler, the Nobel Prize-winning economist from the University of Chicago, called “regulatory capture.”

### Court Weighs In

The U.S. Supreme Court addressed the issue in 2015, in *North Carolina State Board of Dental Examiners v. FTC*. The Federal Trade Commission alleged that North Carolina’s dental board violated federal anti-trust laws by using its authority to limit

## What Are the Least Restrictive Regulations?

Many factors affect jobs and the people who do them. Recent legislation in Mississippi ranked the following 11 labor and market forces on a continuum from the least to most restrictive. Occupational licensing ranked as the most restrictive influence on businesses and workers.

1. Market competition
2. Third-party or consumer-created ratings and reviews
3. Private certification
4. Being sued for deceptive trade practices that harm consumers
5. Rules on selling specific goods or services to consumers
6. Inspection of workplaces, products or services
7. Bonding or insurance
8. Registration requirements
9. Government certifications
10. A specialty medical occupational license
11. An occupational license

*Source: Mississippi House Bill 1425, 2017*

competition for its own self-interest, rather than for a legitimate public health or safety concern. In its ruling against the board, the court cited legal scholar Rebecca Haw Allensworth, who in turn had referenced Stigler's theory.

"It can't surprise when licensing boards comprised of competitors exclude competition and regulate in ways that raise their profit," Allensworth wrote in "Cartels by Another Name."

"The courts continue to raise the issue of 'active supervision' being a requirement for state-agency-like licensing boards to receive immunity from federal antitrust laws," says North Carolina Senator Andy Wells (R), chairman of the Joint Committee on Administrative Procedure Oversight. "The current system is problematic. ... When occupational licensing exceeds its intended purpose of protecting the public and instead serves to prohibit competition, it can have a stifling effect on job and economic growth."

Concerned that private sector influence might stifle legislative intent, Tennessee

lawmakers enacted the Right to Earn a Living Act. The 2016 law requires the state's boards to submit proposed regulations to the legislature for approval.

In Arizona, legislators not only passed a version of the Right to Earn a Living Act, they also eliminated license requirements for several occupations, three being fruit packers, cremationists and yoga instructors.

"The problem is that the government has placed fees, imposed ever-changing rules for licensing and enacted burdensome requirements, which have kept people from engaging in their industry," says Arizona Senate Majority Leader Kimberly Yee (R).

Reforming the system was challenging, she said, as lawmakers debated the best ways to balance consumer health and safety with economic concerns. "We must develop a mind-set that establishes a standard of review for licensure," she says. "We need what is necessary for consumer protection, but we also need to be reasonable when determining regulations on various occupations."

Another concern among legislators is the sometimes high cost of getting licensed for a low-paying job.

To cut the debt some cosmetology students amass, Ohio Senator Charleta Taveras (D) introduced a bill last fall to replace some of the required training hours with paid apprenticeship hours. "The average salary of a beginning cosmetologist, a hair stylist, is somewhere between \$19,000 and \$25,000," Taveras told the Statehouse News Bureau. Students face "several thousand dollars of debt that they are carrying—that they are going to have to pay back—at the same time they are trying to work and take care of their families."

Opposition came partly from the education and training providers. "I can't think of anything where cutting education is a good idea," said James Rogers, with the Salon Schools Group, according to the



Senator  
Andy Wells  
North Carolina



Senator  
Kimberly Yee  
Arizona



Senator  
Charleta Taveras  
Ohio

## Occupations Licensed by All 50 States and D.C.

Barbers  
Certified nursing assistants  
Cosmetologists  
Dental hygienists  
Emergency medical technicians  
Heavy tractor trailer truck drivers  
Insurance sales agents  
Licensed practical nurses  
Physical therapy assistants  
School bus drivers  
Transit city bus drivers

**Note:** Occupations were limited to those that require less than a bachelor's degree, are projected to grow at a higher rate than the national average between 2014 and 2024, and currently have employment levels of 10,000 or greater.

*Source: NCSL's National Occupational Licensing Database, February 2018*

news bureau. He added that while "large salons might be able to provide quality, on-the-job training, most won't."


## The Case for Compacts

Workers licensed in one state often face new licensing requirements if they move to another state. Interstate licensing compacts—in which several states agree on a single set of standards—can help increase job market fluidity.

Supporters point to success stories like the Enhanced Nurse Licensure Compact, which launched last year and already includes 28 states. When requirements are consistent across the country, supporters contend, licensing boards are less able to act against the public interest.

Critics contend that compacts can be costly to develop and that they can lead to two-tier fee systems with a "traditional" license fee and "compact plus" fee.

The effort to re-examine occupational licensing enjoys broad bipartisan support. There are many ways to go about it, but best practices include ensuring the problem is clearly identified, understanding the full range of options available and monitoring regulations over time.

Lawmakers will consider some, or all, of these approaches when reviewing their current regulations. After all, they need to understand where they are before they can move toward where they want to be. 

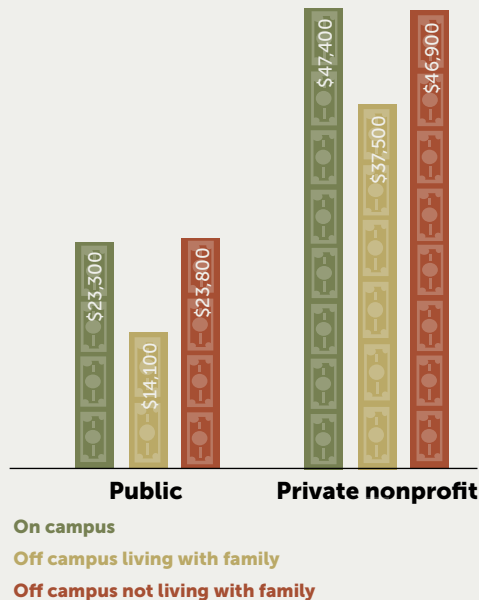
# Will Congress Update the Higher Education Act?

**A**s debate continues over the PROSPER Act—the U.S. House GOP's proposal to revamp the country's higher education system—a bipartisan group of U.S. senators is working on its own plan. The Higher Education Act hasn't been updated in more than a decade, and many believe it's time for an overhaul. Changes are likely to affect the way students apply for financial aid and the way the federal aid system is structured. Although partisan politics exist in any policy debate, including this one, there appear to be several areas of shared concerns, including:

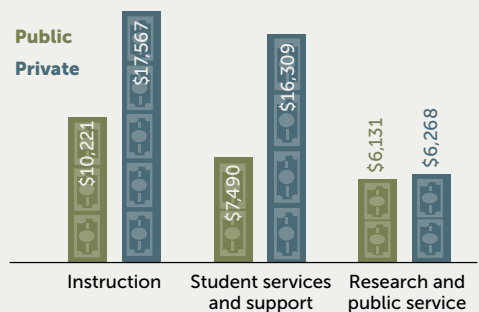
- The costs are too high for too many Americans.
- The federal student financial aid application is too long and complicated.
- Federal aid and repayments are confusing and don't cover job training programs and apprenticeships.
- Applicants for federal aid find out too late what they will be receiving to plan well.

—Magazine staff

**Average Cost to Attend a Year of College or University, 2015**



**How Colleges Spent Their Money, Per Student, 2014-15**

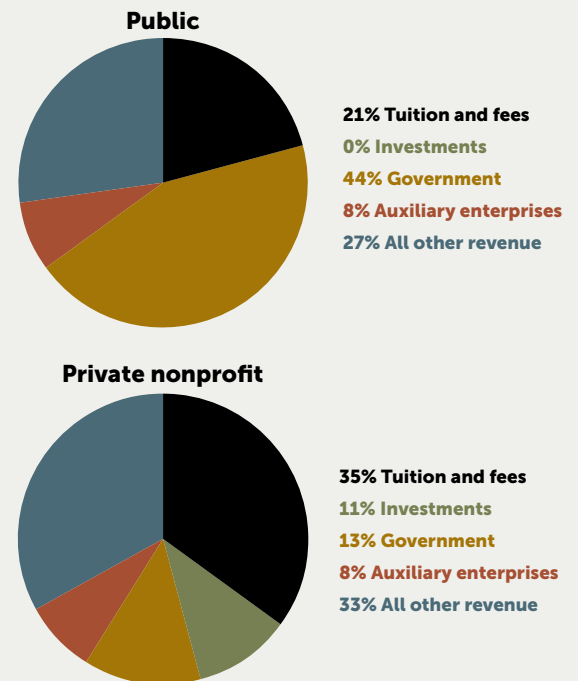


**NOTE:** Expenses per full-time student are reported in constant 2015–16 dollars, based on the consumer price index adjusted to a school-year basis. Expense categories at private institutions include allocated amounts of operation and maintenance of plant, interest and depreciation, while expense categories at public institutions do not.

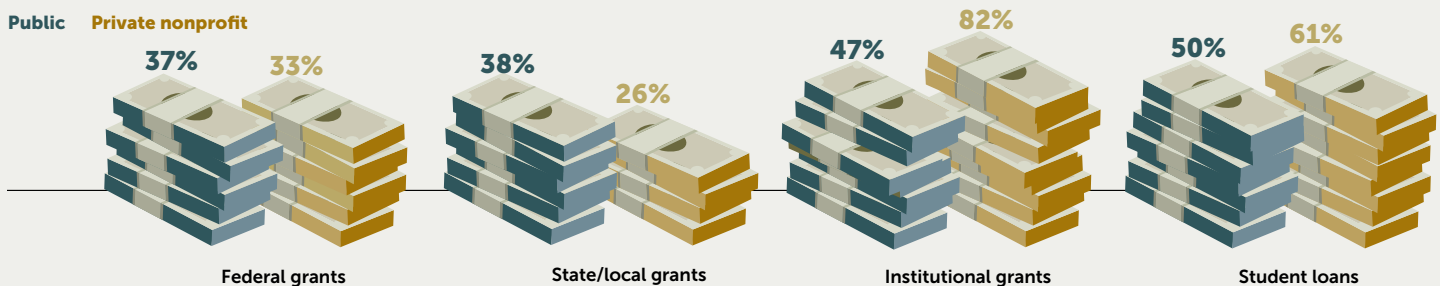
## The Higher Education Act

President Lyndon Johnson signed the first version of the Higher Education Act in 1965 to “strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary education.” The law sets the conditions for dispersing federal student financial aid. Last year, the U.S. Department of Education awarded more than \$120 billion in grants, work-study funds and loans to more than 13 million students. The act has been reauthorized eight times since 1965, the last time being in 2008. The current Higher Education Act was set to expire at the end of 2013 but has been extended while Congress works on the next reauthorization.

## Revenue Sources



## Portion of Students Who Receive Financial Aid



Sources: The College Board; U.S. Department of Education National Center for Education Statistics; Education Commission of the States



# The Case for IT Consolidation

Louisiana is saving millions and better guarding against security threats by centralizing its information technology.

BY ELIZABETH CRISP

Elizabeth Crisp covers Louisiana politics, state government and higher education for The Advocate, which published this story on Dec. 31, 2017. Reprinted with permission.

**T**hree years after a major overhaul of the way the state controls its information technology systems, Louisiana is saving millions of dollars, and officials say that it's well positioned to protect information from security threats.

Efforts are underway to learn even more about cybersecurity threats and what more can be done.

"Right now, I think the state is in its best posture ever, and we're continuing to improve upon that," Dustin Glover, the chief information security officer in the state's Office of Technology Services, said in a recent interview.

Governor John Bel Edwards (D), through an executive order, created a 15-member "cybersecurity commission" to identify and mitigate the state's risks.

In announcing the group, Edwards said his goal was for the state to "continue our commitment to establishing cybersecurity capabilities and resources in order to adequately maintain the stability of public services while ensuring proper privacy and protection for

## Cybersecurity Task Force

The mission of the NCSL Cybersecurity Task Force is to engage members in policy discussions, to extend networking opportunities to legislative leaders through a series of programs and webinars on critical cyber policy issues and to support private-public networks. By participating in ongoing projects, NCSL members can learn best practices and develop guidelines for implementing easily replicable cybersecurity initiatives. To learn more about the task force and its strategic partners, visit [ncsl.org](http://ncsl.org).

the data that is entrusted to the state by our citizens."

Edwards has picked Craig Spohn, executive director of the Cyber Innovation Center in Bossier City, to lead the new commission. It will be staffed under the Louisiana National Guard.

Aside from monitoring the state's security measures, part of the council's charge is to fos-



## Consolidation Is Catching On

When ranking their top 10 priorities for this year, state chief information officers put consolidation of government IT services and governance at No. 3, according to a recent National Association of State Chief Information Officers survey.

Why is consolidation so important? Budget pressures and the need for greater efficiency have prompted the movement in most states. And the effort is paying off. Oklahoma's comprehensive statewide technology consolidation reportedly saved the state more than \$372 million annually. Ohio reported savings of \$50 million in just the first two years of its consolidation.

Consolidating IT resources across a state, though not an easy process, is clearly the favored path. The chief information officers association surveyed state CIOs in 2016 about the status of data-center consolidation. Forty-two percent said they had completed consolidation, 47 percent said consolidation was ongoing and 11 percent said it was planned.

Consolidation can take different forms. Some states merge physical IT offices and servers and create a single agency to serve the IT needs of all state departments. Others consolidate applications, so that agencies have the same software for common business processes such as payroll and accounting.

Another model is a federated approach, with data centers and infrastructure housed in a central IT organization, but with staff and managers remaining in each state agency or department.

Legislatures have driven consolidation in many states. Louisiana lawmakers created the Office of Technology Services in 2014. The new law authorized the state CIO to oversee operation of information technology and resources, and to coordinate all IT systems across the executive branch. It also required the CIO to report on progress to the Joint Legislative Committee on the Budget.

Minnesota passed legislation in July 2011 requiring the state to consolidate IT services. The state's IT employees now report to a central IT agency rather than individual state agencies. Legislatures in Alaska, Colorado, Hawaii, North Carolina, Oregon, Utah, Virginia and Washington, among others, have also passed laws recently to consolidate IT services or provide funding for consolidation.

IT governance structures vary, but every state has a single statewide chief information officer or equivalent in the executive branch. A state CIO provides leadership and management for a state's IT programs and works with agency CIOs and IT leaders throughout the state to support overall goals.

A growing number of states also have created the role of chief information security officer to establish, oversee and facilitate a statewide program to ensure that information is adequately protected. At least eight states—Arizona, Colorado, Florida, Kentucky, Massachusetts, Ohio, Utah and Washington—require, by statute, a statewide executive-branch CISO position or positions in state government. Other states have created CISO positions through executive orders or agency actions.

The responsibilities of the CISO include creating statewide security policies and IT standards, requiring information security plans and annual assessments or reporting, and requiring periodic security awareness training for employees. CISOs with this type of governmentwide authority are better equipped to coordinate and enforce these security measures.

—Pam Greenberg

ter cybersecurity education programs, research and jobs.

Louisiana leaders say the state is always vulnerable to cyberattacks that aim to breach or damage computers and networks. In addition to potentially costing the state money, those threats also pose privacy risks for residents.

"It's always going to be a target," Glover said.

Representative Barry Ivey (R), who often totes an iPad around the state Capitol, sponsored legislation last year requiring an overview of Louisiana's current cybersecurity measures and other information technology issues. He's on the National Conference of State Legislatures' task force on cybersecurity.



Representative  
Barry Ivey  
Louisiana

He said he doesn't have legislation in mind just yet, but he hopes that the report due to the Legislature next month will help identify areas where improvements can be made.

"It will help us understand where we truly are vulnerable and assess whether additional funding is needed and where the most critical needs are," Ivey said. "Understanding where the big holes are could help us prioritize the spending."

He said he worries because most breaches exploit vulnerabilities. Without knowing those potential entry points, the state is less prepared to stop threats, he said.

Louisiana set out on a wave of upgrading its computer systems and consolidating its information technology efforts under the executive branch in 2014. The move has been the subject of glowing articles in *Forbes* magazine and other business publications.

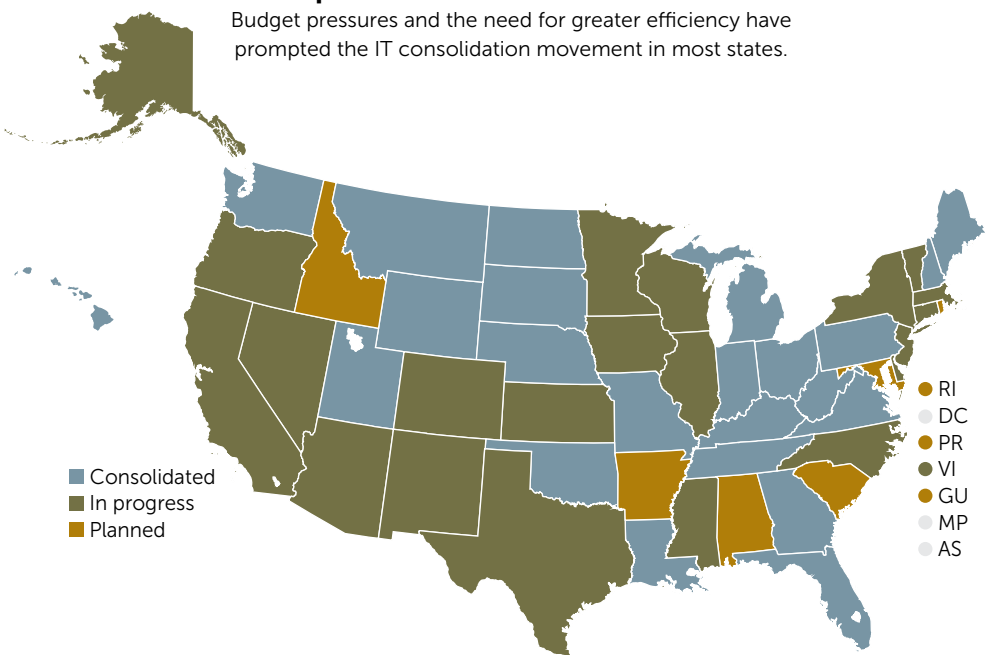
The Office of Technology Services manages an average of 585 million “events per day”—which can include someone logging into a computer, sending an email or visiting a website. There are about 40,000 users in the executive branch.

Eight issues reached the level of becoming “incidents” that had to be more thoroughly investigated in 2017, Glover said. None reached the level of becoming a breach or major issue.

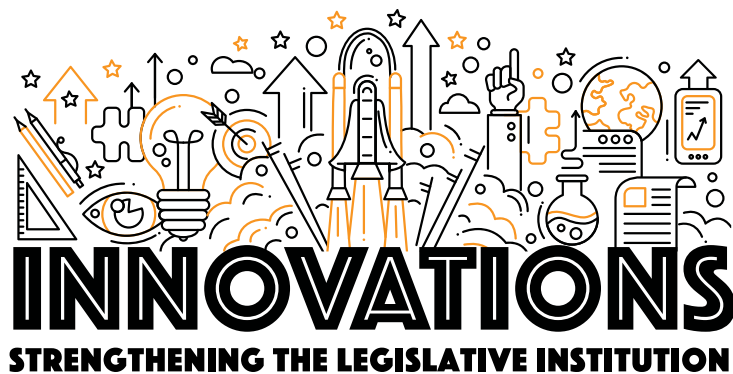
A cybersecurity report compiled by Verizon in 2017 found that public-sector entities were the third-most common breach victims, behind financial organizations and health care organizations. That report also

The Jindal administration announced in 2015 that in the first year of the consolidation, the state saved about \$75 million on its IT services—about \$20 million of that in the general fund.

Budget pressures and the need for greater efficiency have prompted the IT consolidation movement in most states.



APRIL 2018 26 STATE LEGISLATURES



# INNOVATIONS

## STRENGTHENING THE LEGISLATIVE INSTITUTION



### CIVIL DISCOURSE

Lessons from history inspire Idaho lawmakers to work through their differences.

**P**artisan divisions in the Idaho Legislature are nothing like those in Congress. Still, the state's legislative leaders sought to prevent a potential divide from widening. With financial support from NCSL, Senate President Pro Tem Brent Hill (R) and House Speaker Scott Bedke (R) invited David Moss, a professor of business, government and international economy at Harvard Business School, to address the Legislature.

At NCSL's Legislative Summit in Boston last summer, Moss delivered a well-received case study for majority and minority leaders from across the nation. His topic was the debate over James Madison's proposal to empower the federal

government to veto any law passed by one of the several states (the "federal negative") during the Constitutional Convention of 1787. Hill and Bedke, who attended the presentation, were impressed by Moss' insights.

"I knew immediately that Dr. Moss' analysis and perspective should be shared with Idaho legislators," Bedke said.

During Moss' presentation in Idaho in February, lawmakers discussed the historical setting of the debate and the crises the fledgling country faced at the time, which ultimately led to the convention, where Madison's proposal failed.

Idaho Senator Dean Mortimer (R), chairman of the Education Committee, noted that Moss' presentation was an excellent reminder of the work that went into crafting the U.S. Constitution and the collaborative, bipartisan efforts required to arrive at a consensus. "I would recommend that presentation to any legislature," he said.

Hill found the talk helpful on multiple

### A Lesson for Civics Teachers, Too

While in Idaho, Harvard government professor David Moss participated in a discussion with the state's public education stakeholders, including the superintendent of instruction, the chairs of the Senate and House education committees, several school superintendents, and high school history, government and civics teachers. Moss described how his high school civics project incorporates the Harvard Business School's case-study approach. That left many in the group interested in adapting the approach to their civics-related high school classes. The Education Committee "looks forward to working with Dr. Moss in the future regarding teacher training on his case-study method project and applying that approach in our schools in Idaho," Senator Dean Mortimer said.

levels. "The case study," he said, "illustrated that the nation's founders, of course, had strongly held views and beliefs; that the setting and time were critical to the very existence of our young country; and, obviously, that it was a highly charged political environment."

The 1787 convention offers many examples of conflict resolution. Despite plenty of political attacks and harsh words among convention delegates, they managed to move forward, to keep their eyes on the policy issue at hand, to consider, debate and reach a solution—and then to move on, because, as Hill said, "Solutions to the next policy matter will find you allied with the same people you've just opposed in debate." He added, "I hope that particular lesson is considered and understood by our members today—that although we each have strongly held views, it is our duty and obligation to work through our differences to find solutions to today's challenges."

Bedke says Moss' presentation drew praise from legislators on both sides of the aisle and "reminded me personally of Benjamin Franklin's admonition to 'keep the republic,'" he said. "I think Dr. Moss gave us all new energy, enthusiasm and resolve."

—Magazine staff



# NEWSMAKERS

*"We've gone the opposite direction, where criminals are feeling emboldened by this law."*

Alaska Senator Mia Costello (R) on rolling back some sentencing and other reforms because, unlike in other states with reforms, Alaska's crime rates have not fallen, in *Governing*.



COSTELLO

**INDIANA SENATE PRESIDENT PRO TEM DAVID LONG (R) ANNOUNCED THAT HE WILL RETIRE** in November after serving in the General Assembly for 22 years, the last 12 as Senate GOP leader. "It's difficult to leave a job that you love and that you believe you were born to do," Long said. "However, none of us is indispensable, and you have to know when the time is right to step away. For me, that time is now."



LONG

**THE IDAHO LEGISLATURE'S LONGTIME CHIEF BILL DRAFTER, MIKE NUGENT, RETIRED IN MARCH** after 41 years of service. Lawmakers from both parties praised Nugent's impartiality, and a House resolution honored his "unparalleled knowledge of Idaho legislative history." Nugent was active in NCSL for many years and was recognized with a Legislative Staff Achievement Award in 2007.



SKINNER



IRWIN



OBERNOLTE

**CALIFORNIA SENATOR NANCY SKINNER (D) AND ASSEMBLYMEMBERS JACQUI IRWIN (D) AND JAY OBERNOLTE (R)** received the inaugural California Council on Science and Technology Leadership Awards. Skinner was recognized for her contributions to the council's Policy Fellowship Program, which recruits and trains scientists and engineers to work in the Legislature. Irwin received an award for consistently considering scientific evidence and advice since early in her career. And Obernolte was recognized for addressing the impact of new technology on Californians.



KAVANAGH



LESKO

**SENATOR JOHN KAVANAGH (R) ASSUMED THE ROLE OF SENATE PRESIDENT PRO TEM IN ARIZONA** after Debbie Lesko (R) left the position to run for a vacant congressional seat. Kavanagh has been a member of the Arizona Legislature since 2006. Lesko won the Republican primary race and will face Hiral Tipirneni in an April 24 special general election.

*"I would like kids to focus on their academics and learning and not on wondering where their next meal is going to come from while they're in school."*

Colorado Senator Rhonda Fields (D) on expanding coverage of reduced-price lunch costs, in *The Colorado Independent*.



FIELDS

**IOWA SPEAKER LINDA UPMEYER (R) WILL CHAIR THE REPUBLICAN LEGISLATIVE CAMPAIGN COMMITTEE** during the 2018 election cycle. Upmeyer, who is the first female House speaker in Iowa history, will be the first woman to chair the campaign committee.



UPMEYER

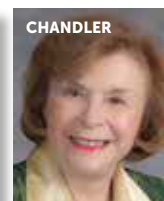
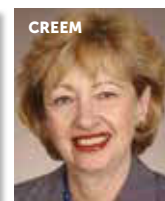


"Ohioans felt their voices weren't being served and that our current system rigged the game, so it was the politicians choosing their voters and not the voters choosing their politicians."

Ohio Representative Jack Cera (D) on a bipartisan effort to reform the state's process for drawing congressional districts, at cleveland.com.



**MASSACHUSETTS SENATOR CINDY CREEM (D) WAS ELEVATED TO MAJORITY LEADER** from assistant majority leader. Senate President Harriette Chandler (D) said Creem is a "very credible and very experienced leader" who is involved in criminal justice and children's issues.



"Losing that SALT deduction is a killer."

New Jersey Senator Paul Sarlo (D) on his bill to allow the state's residents, who pay the nation's highest property taxes, to circumvent a new federal limit on state and local tax deductions, at Bloomberg.com.



**PENNSYLVANIA HOUSE MAJORITY LEADER DAVE REED (R) WILL NOT SEEK RE-ELECTION** as he plans to run for Congress. Reed, who was elected to state office in 2003 and has served as majority leader for three years, will remain in his seat and leadership position until his term ends.



"This allows another option for residents of Virginia, and it does provide some assistance for pain management and may give people an alternative to ... opioids."

Virginia Delegate Benjamin L. Cline (R) on his bill to permit the use of non-hallucinogenic marijuana or cannabis extracts, in The Washington Post.



"Recent legislative attempts to extend the lobby ban and impose stricter ethical requirements have been thwarted by the self-interested politicians we hope to regulate."

Florida House Speaker Richard Corcoran (R), in the (Sarasota) Herald-Tribune.





**S**ome choices are so clearly wrong that no reasonable person could fail to identify them as unethical. You don't need to be a philosopher to know you shouldn't steal public funds. And common sense alone should be enough to stop you from accepting a bribe.

Most people would find it rude to ask friends or associates about the value of a gift, for example, but ethics laws often require a detailed accounting of gifts received. A public official participating in unpaid speaking engagements might not keep records of expense reimbursements,

It would be great if we were wired with alarm bells that went off in ethically dicey situations, or had inner voices that screamed, “Doing this is wrong, illegal and could irreparably damage your career!” Fact is, a comprehensive list of all possible ethics conundrums could fill libraries, making the likelihood of knowing the right answer in every case highly unlikely. Avoiding pitfalls requires developing a set of skills to help you make reliably ethical

By developing these tools and practicing their use, you'll build your ethical muscle memory and learn to make the right call every time.

Ideas or questions about how to identify ethical dilemmas? Contact Nicholas at [nicholas.birdsong@ncsl.org](mailto:nicholas.birdsong@ncsl.org).

# Jason Frierson

Speaker, Nevada State Assembly

**R**aised in Compton, Calif., Jason Frierson attended the University of Nevada, Reno, where he played football and served as study body president. Frierson made Nevada his home, joining the charter class at the UNLV William S. Boyd School of Law. Upon graduating, he was awarded the Barbara Buckley Community Service Award and clerked for a state Supreme Court justice. Frierson was first elected in 2010, lost his seat in 2014, then won it back in 2016, when he was also elected speaker.

**Are leaders born or made?** I don't think leaders are born or made. I think leaders are realized. People have a leadership trait in them, and it is about to what extent individuals are given the opportunity to explore their potential. I think there's a leader in all of us.

**When you were a kid, what did you want to be when you grew up?** I have always found myself in an advocacy position. I have probably been class president or student body president since seventh grade. I jokingly say that I wanted to be a lawyer since I can remember because I was quite argumentative as a child.

**How did you cope with growing up in a tough neighborhood?** Athletics created a significant outlet. It not only kept me busy when I may have otherwise been influenced by more negative parts of my environment, but there was also the discipline, teamwork and focus. Also, we were one of the few real stable two-parent families in the neighborhood. I was blessed with friends that said, 'Jason, you can't come where we're going' because they didn't want to deal with my parents. My friends say that I was always a politician because I lived between two really bad rival neighborhoods. I always had to keep the peace, because I had to walk by them to go to school or the store. I've always been someone who was born to build bridges, to develop and maintain relationships. It's served me in my adult life very well.

**What lessons did you learn playing football?** Sports provided me with exposure to people from different backgrounds in a way that I would have otherwise never experienced. I had maybe two white friends growing up, and

participating in sports, in particular in college, there were folks from big cities and small towns, urban cores and rural farms. We became a team and we had to put those differences aside for a common goal. When we were on that field, we forgot we were from different places. That helped me relate to people who I might not agree with, but recognize that if we have a common goal, we can put those differences aside. I carry that with me.

**What would surprise people most to learn about you?** I have always been and continue to be anxious and uncomfortable about public speaking. It's something I have to work hard at. I feel like I have improved. I attribute it to my recognition that I'm better when I'm genuine.

**How do you stay at the top of your game?** I have relieved myself of the pressure of trying to be someone other than who I am. I'm more effective when I remember that this legislative role doesn't define me; this is just an opportunity to serve. As long as I leave it better than how I found it, when it's over, I'm OK.

**Who is your role model?** My big brother, Damian. When he and I are in a room together, we are two peas in a pod, but objectively we couldn't be more different. He's not a politician. He's not one that's comfortable in the public eye. He's not interested in that at all. He always kept me out of trouble, but he also let me handle challenges so that I grew from it. I think we're unusually close for being five years apart.

**As the parent of a 5-year-old boy and 3-year-old girl, what are you learning from them?** My children are wonderful. They are really cool. They're interesting and smart and they amaze me every day. They remind me that everybody has potential, and everybody is an individual. We raised our kids the same, but they are very different.

**What final words would you like to share?** In this climate of political dysfunction and partisan rhetoric, I'm so passionate and driven about setting a foundation for the institution of the state legislature to be different than the national story. I think on a state level, we have a chance to do what Congress hasn't been able to do. We not only have a chance, we have an obligation to innovate and advocate for those ideas, and then ultimately lead. I think it falls on us. Every week we're reminded that we can't sit back and wait for someone else to do it. As state leaders we have an opportunity and an obligation to be at the forefront of dictating where this country goes.

Jane Carroll Andrade, a contributing editor to the magazine, conducted this interview, which has been edited for length.



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