



**NATIONAL CONFERENCE *of* STATE LEGISLATURES**

*The Forum for America's Ideas*

**Statement of**

Senator Deb Peters, South Dakota Legislature  
President-elect, National Conference of State Legislatures

**On Behalf of the**

National Conference of State Legislatures

**Hearing on**

No Regulation Without Representation: H.R. 2887 and  
the Growing Problem of States Regulating Beyond Their  
Borders

**Before the**

United States House of Representatives  
Committee on the Judiciary  
Subcommittee on Regulatory Reform, Commercial and  
Antitrust Law

**July 25, 2017**

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**AMENDMENT X**  
**RIGHTS RESERVED TO THE STATES**

*Passed by Congress September 25, 1789. Ratified December 15, 1791.*

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.*

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Chairman Marino, Ranking Member Cicilline, and distinguished members of the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, I am pleased to submit this statement on behalf of the National Conference of State Legislatures and respectfully request that it be added to the record. The National Conference of State Legislatures is the bipartisan national organization that represents the state legislatures of all fifty states and our nation's commonwealths, territories, possessions, and the District of Columbia.

“The powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite.”<sup>i</sup> These words were penned by the father of the United States Constitution and future President James Madison in a 1788 essay, known as Federalist 45, to promote the ratification of the Constitution. Madison, along with Alexander Hamilton and John Jay, wrote the 85 Federalist Papers to convince a skeptical public that a federal government would not diminish the rights that states and Americans had won in the Revolution. The states and their citizens were rightfully justified in their skepticism of a federal government, given the sacrifices Americans endured to free themselves from the abuses exercised over the Colonies by the centralized British régime.

As a remedy against centralized power, Congress proposed, and the states ratified, the Tenth Amendment to the Constitution, which reserved powers to the states that were not delegated to the federal government. Since its ratification, the Tenth Amendment has defined American Federalism, the relationship between the Federal and state governments. However, Congress has persistently endeavored to erode state sovereignty and undermine the significance of the Tenth Amendment in favor of more centralized power at the national level. This erosion of state sovereignty has only accelerated in recent years as the congressional thirst to dictate state governance apparently cannot be quenched.

Since the beginning of the 20th century, federal legislation, primarily but not exclusively, through the Commerce Clause, has increasingly eroded the regulatory power of states. The Framers of the Constitution would be alarmed, as they intended the role of the federal government to be limited, not a government that could regulate anything it wanted. The “No Regulation Without Representation Act of 2017” embodies the usurpation of state sovereignty and expansion of federal overreach the Framers feared. This legislation violates the Tenth Amendment’s guarantee that the sovereign rights of states cannot be abridged by Congress and aims to eliminate states’ powers within their borders, destroying the fundamental principles of federalism that have guided our nation since its founding.

The Tenth Amendment is the cornerstone of constitutional federalism as it reserves broad powers to the states and to the people. States have used this sovereignty to enact laws protecting the health, safety, and welfare of their citizens and local businesses, as they should, as their governments are vested with that responsibility. While the Supreme Court has made clear that the Commerce Clause allows Congress to regulate interstate commerce, it has also noted that the Commerce Clause “does not elevate free trade above all other values.” Therefore, states have the constitutional right to enact laws that are not only in the best interest of their citizens and businesses, but that reflect the popular approval of their citizenries, which is the underlying value of democracy and American Federalism.

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. All too often, members of Congress will tout the importance of “states’ rights” to justify a position on an issue, and then preempt states on other issues that don’t suit their agendas. This ideological impurity is why the American people are frustrated. Therefore, it is the prerogative, no, it is the obligation of states to remind Congress that there are 50 stars on the American flag, not 535.

The No Regulation Without Representation Act is one of the most coercive, intrusive, and preemptive legislative measures ever introduced in Congress. If enacted, this law would prove congressional indifference for the role of states in American governance. Therefore, due to its egregious nature, NCSL adamantly opposes this legislation and urges members of Congress to oppose it as well.

I appreciate the opportunity to testify on behalf of the states. I am also proud to sit here as an elected official from South Dakota, especially as our representative, Kristi Noem, is a friend and former colleague in the South Dakota legislature who has championed states' rights in Congress. I wish her commonsense legislation, the Remote Transactions Parity Act, would have been a part of today's discussion, as it is widely supported by governors, state legislatures, and the business community.

## **EROSION OF STATE SOVEREIGNTY**

*The government formed by the United States Constitution was to be limited in power, with the 10th Amendment making clear that certain powers remain with the states.*

– Congressman Bob Goodlatte, September 30, 2015

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The federal government's gradual encroachment of state sovereignty has jeopardized our federalist system of American governance. In drafting the United States Constitution, which was ratified by state legislatures, the framers envisioned a union of sovereign states that granted limited power to the federal government as they anticipated that the states would be the principal policymakers in the federal system, which was reinforced by the ratification of the Tenth Amendment. However, over the course of our republic, the federal government has gradually usurped many areas of state control to a point where states are now often unable to enact the best policies for their unique citizenries. Therefore, instead of eroding state autonomy, Congress should partner with state lawmakers to restore sovereignty to the states so that they are able to enact policies that best meet the needs of their citizens.

Unlike the current political climate, federalism is not a partisan issue. Despite differences in political philosophy, state lawmakers understand that the federal government has primacy over important policy areas, such as national defense and interstate commerce. However, we also understand that each state is unique and is confronted with different problems and policy choices and that there are rarely instances in which a national, one-size fits all approach, is the best policy for the citizens in every state. However, Congress and the federal executive branch often ignore state concerns and enact laws and rules that: preempt states, put undue burdens on state finances, or are difficult and burdensome to implement. And, as Congress and state legislatures represent the same constituencies, the people who suffer from failed national policies are the people we each represent.

As sovereign states, we look forward to constructively working with Congress and the administration to usher in a new era of federalism in America that will return decision-making back to the states. States are the laboratories of democracy and we need the power and flexibility to innovate, create, and adapt policies that best meet the needs of our citizens. Candidates for Congress and the presidency regularly tout the importance of local governance. In fact, it is a rarity for any candidate to campaign for the need for more centralized control in Washington. However, elected members of both parties are guilty of supporting and enacting policies that do just that. If this pattern continues, the ability of states to effectively govern themselves may soon come to an end.

As members of Congress, you understand the importance of the legislature and the legislative process in deliberating the most important issues of the day. As your counterparts in the states, we look forward to developing a partnership that will grant state legislatures the policymaking authority our forefathers envisioned.

## REMOTE SALES TAX COLLECTION

*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.*

– Justice Anthony Kennedy, *Direct Marketing Association v. Brohl* (2015)

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It has been **1,541 days** since the Marketplace Fairness Act (MFA), legislation that would grant states that met certain simplification requirements the ability to collect already owed sales taxes on out-of-state purchases, overwhelmingly passed the United States Senate 69-27. It has been **1,502 days** since that legislation was referred to this subcommittee. Moreover, it has been **755 days** since the Remote Transactions Parity Act (RTPA), bipartisan legislation sponsored by 69 members of Congress that granted states the authority to enforce their tax laws but went further than MFA in state simplification requirements and safeguards for retailers, was first referred to this subcommittee. RTPA was reintroduced in this Congress **89 days ago** and was referred to this subcommittee **81 days ago**. However, today's hearing is on neither MFA or RTPA. Instead, it is on the No Regulation Without Representation Act, legislation referred to this committee **6 days** ago. The No Regulation Without Representation Act does not fix the remote sales tax collection

problem, but instead, exacerbates it. As a legislator in a state that requires each legislative measure to not only receive a hearing, but receive a vote, I am perplexed. However, I now understand why Congress is so *productive*.

With respect to interstate sales tax collection, the No Regulation Without Representation Act unjustifiably pre-empts state authority as it goes beyond the physical presence standard established in the Supreme Court's *Quill* decision of 1992, a decision that Justice Kennedy has written was "questionable even when decided." While NCSL is advocating for a federal solution on remote transaction tax fairness, we oppose this legislation because it not only preempts existing state laws, but it also fails to level the playing field for all retailers.

It has been 25 years since the Supreme Court of the United States urged Congress to address the remote sales tax collection problem. I am disappointed as to why this subcommittee, in the over four years since the Marketplace Fairness Act passed the Senate, has not found time to hold a hearing on either MFA or RTPA, both of which have broad bipartisan support. Enacting a sound, destination based solution for sales tax collection, is more important now than ever. The growth of internet commerce and the inherent price advantage afforded to out-of-state businesses is regrettably transforming Main Street retailers into showrooms. Today's consumers now visit stores, compare products in person, ask questions and obtain help from the store's employees, and then shop online to avoid paying tax, sometimes even while in that store. If you have any question as to remote sellers not recognizing the advantage they have in not collecting tax on these transactions, a simple search of the Internet to purchase virtually any product will yield results with retailers advertising "no tax" or similar advantages. Failing to fix this issue indicates that Congress thinks that this is OK.

Why is the same exact product, sold for the same exact price, to the same individual, who will consume/use it in the same place, taxed differently depending on where it was purchased from? It simply does not make sense. Failure to level the playing field for all retailers is signaling to the retailers in your communities that you care more about remote businesses, and their employees, than you do about your main street sellers. The time to solve this parity issue is now. Every business should be afforded the right to compete but should do so by playing by the same rules. Nothing more, nothing less.

When taxable items are purchased from an out-of-state seller, sales and use tax is owed at the tax rate of where that item is received by the purchaser or its destination. When businesses do not have physical presence in the destination state, they are currently not required to collect and remit the tax and it most always goes uncollected. Therefore, as the Supreme Court suggested in 1992, Congress needs to pass legislation that allows states to collect taxes they are already owed. After all, unlike Congress, states have to balance their budgets. (As a point of clarification, the Court did not suggest that Congress should consider constitutionally questionable legislation that would be egregiously preempt laws in every state.)

The Remote Transactions Parity Act (RTPA) is legislation introduced by Kristi Noem, South Dakota's Representative in Congress who, in addition to championing issues important to South Dakota, has been in leader in protecting state sovereignty. Her commonsense legislation would solve the tax collection problem and would do so by relieving potential undue costs and burdens on sellers; would require participating states to provide software and the services necessary to set-up, install and maintain the software, free of charge, to all remote sellers and provide them liability relief should the software malfunction; would immediately achieve the goal of retail parity; would prevent states from auditing small out-of-state businesses as well as businesses that use the state provided free software; and, perhaps most importantly, would not raise taxes. Remember, this not a new tax, it is a due tax. The approach of RTPA is the overwhelmingly preferred and supported solution for sales tax collection by the states, retail community, and business groups. Through this framework, nothing will be different when shopping online except that the law-abiding, use-tax remitting consumers will no longer have to remit what they owe.

This is the formula that Congress should follow:

**(Free Software)**  
**+ (Free Integration)**  
**+ (Audit Protection)**  
**+ (Liability Relief)**  
**= Retail Parity and Sales Tax Compliance**

We urge the subcommittee to hold a hearing on measures that offer a legitimate approach to address the remote sales tax collection, including the Remote Transactions Parity Act, as soon as possible.

## **EXAMPLES OF STATE LAWS THAT WOULD BE PREEMPTED BY THE NO REGULATION WITHOUT REPRESENTATION ACT**

Unlike the federal government, state and local governments usually have plenary police power, which allows them to legislate for the general welfare. States not only have the right to enact laws to protect their citizens, they have that obligation. Federal overreach to undue state laws passed by referendum or by popularly elected officials, is not only undemocratic, it is anti-American.

While the full scope of the hundreds or thousands of state laws and regulations that would be preempted by the No Regulation Without Representation Act is practically incalculable, included below are specific examples.

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### **SALVIA DIVINORUM**

*Salvia divinorum* is a hallucinogenic plant which causes effects similar to other drugs like LSD, and is often used strictly as a hallucinogenic drug of abuse. The psychoactive component in *Salvia divinorum* is known as Salvinorin A, which is one the most potent naturally occurring hallucinogens.

#### **States & Territories with Laws Prohibiting Salvia**

Alabama	Indiana	North Dakota
Arkansas	Iowa	Ohio
Connecticut	Kansas	Oklahoma
<b>Colorado</b>	Kentucky	<b>Pennsylvania</b>
Delaware	Michigan	South Dakota
<b>Florida</b>	Minnesota	<b>Texas</b>
Guam	Mississippi	Vermont
Hawaii	Missouri	Virginia
<b>Illinois</b>	Nebraska	Wyoming

#### **States Where Salvia is Illegal for Human Consumption**

##### **Georgia**

Louisiana

North Carolina

Tennessee

West Virginia (applies only to “processed” material)

#### **States Where Salvia is Illegal to Provide to Underage Persons**

##### **California**

Maine (and illegal to possess if under 18 years old)

Maryland (and illegal to possess if under 21 years old)

#### **Illegal to Manufacture, Deliver, or Sell Salvinorin A**

Wisconsin

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**STATE LAWS REGULATING PSEUDOEPHEDRINE ON  
METHAMPHETAMINE PRODUCTION AND ABUSE**

Precursor laws have been implemented at both state and federal levels with the aim of stopping the diversion of drugs, including pseudoephedrine (PSE), ephedrine and phenylpropanolamine (PPA), to the illicit production of methamphetamine. The majority of states have enacted laws controlling the sale of pseudoephedrine and ephedrine containing products that are more stringent than the current federal laws. Electronic tracking and block of sales to those exceeding quantity limits is the most common approach states are using, with 32 states having taken this approach to regulate access to PSE. Additionally, some states have chosen to restrict purchase quantities to amounts that are less than currently allowed by federal regulation that restricts retail purchases to <9 grams per 30 days.<sup>ii</sup>

**State Approaches to Pseudoephedrine Regulation**

Regulatory Approach	States with Mandates
Electronic Tracking and Block of Sales when Quantity Limits Exceeded	AL, AR, AZ, DE, FL, HI, IA, ID, IL, IN, KS, KY, LA, ME, MI, MO, MT, NE, NV, NC, ND, OH, OK, PA, SC, SD, TN, TX, VT, VA, WA, WV
Prescription-only Status	MS, OR, AR (non-residents)
Schedule V Controlled Substance	AR, GA, IA, IL, KS, LA, MN, MO, NM, OK, WI, WV
Schedule III Controlled Substance	MS, OR
Greater Restrictions on Purchase Quantities than Required by CMEA	AK, AL, IA, IL, IN, KY, MN, OK, TN, WI, WV
Registry/Block of Sales to Those with Previous Methamphetamine-related Convictions	AL, IL, KY, MI, OK, TN
Pharmacist Determination of Legitimate Medical Need for Non-Prescription Sale	AR, IN

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**STATE IMPORTATION REQUIREMENTS FOR ANIMALS**

**Disease Prevention**

In order to prevent the spread of animal diseases across state lines, state departments of agriculture and other state agencies have created rules and regulations which govern the importation of livestock, companion animals, equines, and other animals. State and local governments are primarily responsible for maintaining public health and controlling the spread of diseases within state borders. Among other state public health emergency preparedness powers, every state, the District of Columbia and most territories have laws authorizing quarantine and isolation, usually through the state’s health authority.

## Examples of State Animal Importation Laws

- **Florida** requires that all domestic fowl, poultry and eggs for hatching purposes imported into Florida, unless exempted by this rule, must be accompanied by an Official Certificate of Veterinary Inspection.
- **Florida** requires that all imported swine, except swine consigned directly to a recognized slaughtering establishment or an approved livestock market for sale to slaughter, to be accompanied by an Official Certificate of Veterinary Inspection.
- **Georgia** prohibits engaging in the business of buying, selling, or transporting in commerce dead, dying, disabled, or diseased animals, or any parts of the carcasses of any such animals.
- **Texas** prohibits any livestock, poultry or ratites that are infected, exposed or quarantined in any manner for an infectious, contagious or communicable disease from entering the state.

## State Poultry Importation Regulations

	Use of VS Form 9-3 required for all shipments coming into State	Permit or other requirements for shipment into State		Use of VS Form 9-3 required for all shipments coming into State	Permit or other requirements for shipment into State
<b>Alabama</b>	yes <sup>1</sup>	—	<b>Nebraska</b>	yes	yes <sup>4</sup>
<b>Alaska</b>	no	yes	<b>Nevada</b>	yes	yes <sup>3</sup>
<b>Arizona</b>	yes <sup>1</sup>	no	<b>New Hampshire</b>	yes <sup>1</sup>	yes <sup>3</sup>
<b>Arkansas</b>	yes <sup>1</sup>	yes <sup>5, 6</sup>	<b>New Jersey</b>	yes	yes <sup>3</sup>
<b>California</b>	yes <sup>3,4</sup>	yes <sup>9</sup>	<b>New Mexico</b>	yes <sup>1</sup>	no
<b>Colorado</b>	yes	—	<b>New York</b>	yes <sup>1,8,10</sup>	—
<b>Connecticut</b>	yes <sup>1</sup>	yes <sup>3</sup>	<b>North Carolina</b>	yes <sup>1,10,***</sup>	—
<b>Delaware</b>	yes	yes <sup>4</sup>	<b>North Dakota</b>	yes <sup>4,5,***</sup>	yes <sup>4,6,9,***</sup>
<b>Florida</b>	yes <sup>1, 8,10</sup>	yes <sup>4,6, 8, 10</sup>	<b>Ohio</b>	yes <sup>1</sup>	—
<b>Georgia</b>	yes	yes <sup>4</sup>	<b>Oklahoma</b>	yes <sup>1, 6</sup>	no
<b>Idaho</b>	yes	—	<b>Oregon</b>	no <sup>5</sup>	no <sup>6</sup>
<b>Illinois</b>	yes	yes <sup>4</sup>	<b>Pennsylvania</b>	yes <sup>***</sup>	no
<b>Indiana</b>	yes <sup>1</sup>	—	<b>Rhode Island</b>	no	—
<b>Iowa</b>	yes <sup>1</sup>	yes <sup>4</sup>	<b>South Carolina</b>	yes	yes
<b>Kansas</b>	yes <sup>1</sup>	yes <sup>4,5</sup>	<b>South Dakota</b>	yes	yes <sup>4</sup>
<b>Kentucky</b>	yes <sup>1</sup>	—	<b>Tennessee</b>	no <sup>1,3</sup>	yes <sup>5</sup>
<b>Louisiana</b>	yes	—	<b>Texas</b>	yes <sup>***</sup>	yes <sup>3,4, ***</sup>
<b>Maine</b>	yes <sup>3</sup>	yes <sup>***</sup>	<b>Utah</b>	yes <sup>1,3,4,5</sup>	yes <sup>4,5,6</sup>
<b>Maryland</b>	yes <sup>1</sup>	yes <sup>4</sup>	<b>Vermont</b>	yes <sup>1</sup>	yes <sup>3,4</sup>
<b>Massachusetts</b>	yes	yes <sup>7</sup>	<b>Virginia</b>	yes <sup>3</sup>	yes <sup>4,6,8</sup>
<b>Michigan</b>	yes <sup>1</sup>	yes <sup>1</sup>	<b>Washington</b>	yes <sup>1,10</sup>	—
<b>Minnesota</b>	yes <sup>1</sup>	yes <sup>4,***</sup>	<b>West Virginia</b>	yes	yes <sup>6,8</sup>
<b>Mississippi</b>	yes <sup>1</sup>	yes <sup>4,6</sup>	<b>Wisconsin</b>	yes	yes <sup>3</sup>
<b>Missouri</b>	yes <sup>1,4</sup>	yes <sup>4, 10</sup>	<b>Wyoming</b>	no	—
<b>Montana</b>	yes	yes <sup>4</sup>			

<sup>1</sup> Or substitute certificate signed by Official State Agency or livestock sanitary official of State or origin.

<sup>2</sup> Or a statement from producer showing date of shipment, name and address of producer, quantity, breed, and pullorum-typhoid status.

<sup>3</sup> All poultry, eggs(hatching), chicks, and poults must originate from Pullorum-Typhoid Clean flocks and be accompanied by a health certificate.

<sup>4</sup> Approval or permit number required to ship into State.

<sup>5</sup> VS Form 9-3 required for National Poultry Improvement Plan participants only.

<sup>6</sup> Additional requirements for non-National Poultry Improvement Plan participants.

<sup>7</sup> Wildlife.

<sup>8</sup> All poultry, eggs(hatching), chicks, and poults must originate from a U.S. Avian Influenza Clean flock (chickens) or a U.S. H5/H7 Avian Influenza Clean flock (turkeys) and be accompanied by a health certificate.

<sup>9</sup> Call State Dept. of Agriculture Animal Health Branch for detail on required avian entry permit in effect 6/19/2015.

<sup>10</sup> Call for AI requirements prior to entry into state.

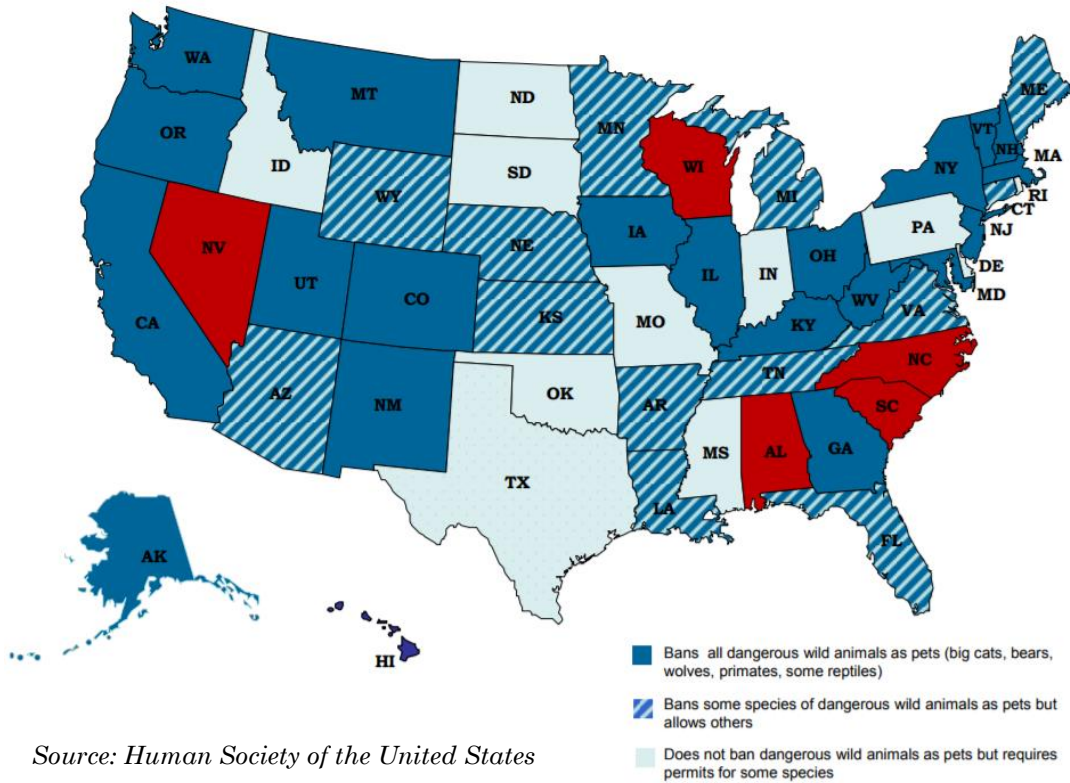
Source: <https://www.poultryimprovement.org/documents/stateImportationRequirements.pdf>

## Dangerous and Exotic Pets

Exotic pet regulations vary from state to state. While some states have a complete ban on exotic pets, other states simply require permits for their possession, and some states have no regulations whatsoever.

### DANGEROUS WILD ANIMAL LAWS

January 2015



Source: Human Society of the United States

### States That Regulate Fire Ants

Alabama	North Carolina
Arkansas	Oklahoma
<b>Florida</b>	Puerto Rico
<b>Georgia</b>	South Carolina
Louisiana	Tennessee
Mississippi	<b>Texas</b>

### STATE INVASIVE SPECIES LAWS

For more than a century, the U.S. government and state and local governments have developed and administered laws, regulations, policies and programs aimed at preventing the harm that serious, non-native, invasive plant and plant pest species can cause to agriculture, the environment and our economy. While many non-native species have proven to be beneficial, it has been clearly demonstrated that numerous

other non-native, invasive plant/pest species have caused billions of dollars of damage to the nation's agriculture, environment and economy.<sup>iii</sup>

At least 47 states maintain a list of plants considered legally "noxious," a term used interchangeably with invasive. Plants identified in these lists cannot be sold, transported, or propagated within the state unless authorized by permit. State laws also specify a variety of control methods for noxious weeds, including mechanical, cultural, biological, preventive and chemical.

#### Examples of State Invasive Species Laws<sup>iv</sup>

- **Idaho** authorizes the Director of the state Department of Agriculture to order the collection, removal and movement of noxious weeds from an infested area to a facility within the state for purposes of biological control research.
- **Montana** authorizes entities to operate check stations that, to the greatest extent possible, will be coordinated with the Department of Transportation and the Department of Fish, Wildlife, and Parks.
- **Pennsylvania** prohibits the importation firewood from out-of-state.
- **Vermont** requires the Commissioner of Forests, Parks and Recreation to adopt rules regulating the importation of untreated firewood due to the potential to spread invasive species.
- **Virginia** law states that any product to be moved either within or out of the Commonwealth, which is suspected of containing the boll weevil, to be subject to inspection. The shipment may be stopped at any time or place by an inspector. When such a product is found to threaten the spread of the boll weevil to noninfested areas, the inspector may require measures to eliminate the infestation.

#### Examples of Invasive Species<sup>v</sup>

- **Asian carp**—a catchall title for species of silver, bighead and black carp from Asia—are fast-growing fish that out-compete native fish for food and habitat.
- **Brown marmorated stink bugs** have become an increasing nuisance in homes and to the agriculture industry. Away from their natural predators, stink bug populations are expanding rapidly.
- **West Nile virus**, spread by mosquitoes infected with the virus, is an invasive pathogen that has caused direct harm to humans (sometimes resulting in death) as well as to wildlife (especially birds). It has been detected throughout most of the continental United States.
- **Cogongrass** is an Asian plant that arrived in the U.S. as seeds in packing material. It is now spreading through the Southeast, displacing native plants. It provides no food value for native wildlife, and increases the threat of wildfire as it burns hotter and faster than native grasses.
- **Feral pigs** will eat almost anything, including native birds. They compete with native wildlife for food sources such as acorns. Feral pigs spread diseases, such as brucellosis, to people and livestock. E. coli from their feces was implicated in the E. coli contamination of baby spinach in 2006.

- **Zebra mussels** first came to the U.S. from Eurasia in ship ballast water released into the Great Lakes. Since 1988, they have spread dramatically, out-competing native species for food and habitat. Zebra mussels can attach to almost any hard surface - they clog water intake and discharge pipes, attach themselves to boat hulls and docks, and they even attach to native mussels and crayfish.
- **European green crabs** found their way into the San Francisco Bay area in 1989. They out-compete native species for food and habitat and eat huge quantities of native shellfish, threatening commercial fisheries.
- **Dutch elm disease** (caused by the fungus *Ophiostoma ulmi*) is transmitted to trees by elm bark beetles. Since 1930, the disease has spread from Ohio through most of the country, killing over half of the elm trees in the northern U.S.
- **Water hyacinth** is a beautiful aquatic plant, introduced to the U.S. from South America as an ornamental. In the wild, it forms dense mats, reducing sunlight for submerged plants and aquatic organisms, crowding out native aquatic plants and clogging waterways and intake pipes.

### Examples of State Noxious Weed Laws

#### **Pennsylvania**

Prohibits the propagation, sale or transport the following noxious weeds:

Canada thistle  
 Multiflora rose  
 Johnson grass  
 Mile-a-minute weed  
 Kudzu  
 Bull or spear thistle  
 Musk or Nodding thistle  
 Shattercane  
 Purple loosestrife  
 Giant hogweed  
 Goatsrue

#### **Virginia**

Prohibits the propagation, sale or transport the following noxious weeds, unless accompanied by a valid certificate or limited permit:

Giant hogweed  
 Cogon grass  
 Water spinach  
 Purple loosestrife  
 Wavyleaf basketgrass  
 Beach vitex  
 Giant salvinia  
 Tropical soda apple

## PHOSPHORUS FERTILIZER BANS

Eleven states prohibit phosphorus fertilizer application unless it is for (1) curing a lack of necessary phosphorus, (2) establishing new turf, or (3) repairing turf. Many states exempt agricultural lands and production, commercial or sod farms, gardening, or golf courses from the ban. And many prohibit applying fertilizer (not only phosphorus fertilizer) on impervious, frozen, or saturated surfaces, or within a certain distance of a water body. Inadvertent application on impervious surfaces must be removed or cleaned up. Some states also have phosphorus fertilizer sale restrictions such as separately displaying phosphorus fertilizer and posting cautionary information.

### States That Ban Phosphorous Fertilizers<sup>vi</sup>

Illinois	New York
Maine	Vermont
Maryland	Virginia
Michigan	<b>Washington</b>
Minnesota	Wisconsin
New Jersey	

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## COMPOUNDING PHARMACIES AND STATES

The federal Food and Drug Administration (FDA) regulates virtually all commercial pharmaceutical manufacturing. However, states are the primary regulator of pharmacies, including community "drug stores," large chains, in-store pharmacy counters and specialty pharmacies. Every state has laws and regulations guiding pharmacy standards and requirements, addressing issues such as required licenses for each facility and for the credentialed pharmacists and other employees who work there. Virtually every jurisdiction also has requirements for secure storage, recordkeeping, the forms or pads used for patient prescriptions, labeling, and safety protocols related to origins, authenticity, chain of custody, expiration dates of products, purity, sterility and storage, among others. This includes the extra, explicit authority granted to "compound" or mix pharmaceutical ingredients into a patient-ready product.<sup>vii</sup>

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<sup>i</sup> James Madison, Federalist No. 45, 313-14

<sup>ii</sup> Impact of State Laws Regulating Pseudoephedrine and Methamphetamine Production Abuse. National Association of State Controlled Substances Authorities. Found at <http://www.nascsa.org/PDF/pseudoephedrineWhitepaper4.18.16.pdf>.

<sup>iii</sup> Invasive Species. National Wildlife Federation. Found at <https://www.nwf.org/Wildlife/Threats-to-Wildlife/Invasive-Species.aspx>

<sup>iv</sup> State Action on Invasive Species. National Conference of State Legislatures. Found at <http://www.ncsl.org/research/environment-and-natural-resources/displaced-by-invaders-state-action-on-invasive-species.aspx>.

<sup>v</sup> Invasive Species. National Wildlife Federation. Found at <https://www.nwf.org/Wildlife/Threats-to-Wildlife/Invasive-Species.aspx>

<sup>vi</sup> State Laws Banning Phosphorous Fertilizer Use. Office of Legislative Research. Connecticut General Assembly. February 1, 2012.

<sup>vii</sup> Compounding Pharmacies and States. National Conference of State Legislatures. Found at <http://www.ncsl.org/research/health/compounding-pharmacies-and-states.aspx>.