

NCSL STANDING COMMITTEE ON COMMUNICATIONS, FINANCIAL SERVICES, & INTERSTATE COMMERCE

POLICY DIRECTIVES AND RESOLUTIONS

**2018 NCSL Legislative Summit
Los Angeles, California**

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1 **COMMITTEE:** **COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY:** **STATE SOVEREIGNTY FOR GAMING**

4 **TYPE:** **AMENDED DIRECTIVE**

5 The National Conference of State Legislatures (NCSL) believes that the federal
6 government must respect the sovereignty of states to allow or prohibit games of chance
7 and skill within their borders.

8 **Internet Gambling**

9 The National Conference of State Legislatures (NCSL) believes the federal government
10 must respect the sovereignty of states to allow or to prohibit Internet gambling by its
11 residents.

12 The 2011 ruling by the United States Justice Department on the Federal Wire Act of
13 1961, 18 U.S.C. §1084, clarifies that intra-state online gambling is lawful. Any effort by
14 Congress or the administration to reverse this ruling is preemptive and diminishes the
15 flexibility of state legislatures to be innovative and responsive to the unique needs of the
16 residents of each state.

17 NCSL requests Congress to consider the perspective of the states as it examines this
18 issue and asks that it involve state legislators in any federal efforts that seek to reform
19 the regulation of online gaming. NCSL strongly opposes any effort by the federal
20 government to overturn the Justice Department's ruling or consideration of legislation
21 overruling state authority by legalizing or regulating gambling at the federal level. NCSL
22 also requests that federal lawmakers be respectful of state legislatures that prohibit
23 online gaming or other forms of gaming within their state.

24 **Sports Gambling**

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25 The National Conference of State Legislatures (NCSL) believes the federal government
26 must recognize the sovereignty of states to allow or to prohibit sports gambling by its
27 residents.

28 ~~The “Professional and Amateur Sports Protection Act,” 28 U.S.C. §§ 3701-3704~~
29 ~~(PASPA), currently prohibits states from “sponsoring, operating, advertising, or~~
30 ~~promoting sports gambling,” except for a handful of states grandfathered under the law.~~
31 ~~The federal ban instituted under the PASPA has not prevented the conduct of illegal~~
32 ~~sports gambling, but has in effect restricted the ability of all but a few states to regulate~~
33 ~~and collect revenue from sport gambling wagers estimated to be in the billions of dollars~~
34 ~~each year, to the detriment of state economies.~~

35 On May 14, 2018, the Supreme Court of the United States declared the Professional
36 and Amateur Sports Protection Act (PASPA), 28 U.S.C. §§ 3701-3704, unconstitutional
37 as violative of the Court’s 10th Amendment anti-commandeering jurisprudence. The
38 Court’s judgement on PASPA exemplifies the failings of a one-size-fits-all federal
39 solution to complex questions of policy, regulation and law enforcement. With the
40 shackles of federal preemption removed, states can begin creating innovative and
41 tailored sports gambling policies that represent the will of voters.

42 The choice to legalize sports wagering is an important policy question, the answer to
43 which is different among our nation’s diverse states. Forcing state policy flexibility and
44 innovation to retreat under threat of federal preemption not only undermines the basic
45 tenants of our nation’s founding documents, but it strains state-federal relations and
46 suppresses the direct will of voters. Conversely, by encouraging state policy innovation
47 and unique legislative solutions, federalism is strengthened and voters are more
48 engaged with the legislative process.

49 NCSL requests Congress recognize respect the sovereignty of states to regulate and
50 tax sports gambling in the current post-PASPA environment. This includes not
51 preempting states’ legislative authority to legalize, regulate and tax sports gambling

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52 ~~activities. and repeal the federal ban on sports gambling by enacting legislation that~~
53 ~~would allow state legislatures to authorize sports gambling by statute. NCSL also~~
54 requests that federal lawmakers be respectful of **respect** state legislatures that **chose to**
55 **maintain their prohibitions on** ~~prohibit sports gaming gambling~~ or and other forms of
56 ~~gaming gambling~~ within their state.

57 **Daily Fantasy Sports**

58 The National Conference of State Legislatures (NCSL) believes the federal government
59 must respect the sovereignty of states to allow or to prohibit daily fantasy sports by its
60 residents.

61 The Unlawful Internet Gambling Enforcement Act of 2006 specifically excludes a
62 fantasy or simulation sports game that “has an outcome that reflects the relative
63 knowledge of the participants, or their skill at physical reaction or physical manipulation
64 (but not chance), and, in the case of a fantasy or simulation sports game, has an
65 outcome that is determined predominantly by accumulated statistical results of sporting
66 events”. Therefore, NCSL will oppose any effort by Congress or the administration to
67 diminish the flexibility of state legislatures to be innovative and responsive to the unique
68 laws and regulations of each state.

69 NCSL strongly opposes any effort by the federal government that would overrule state
70 authority by regulating daily fantasy sports at the federal level. NCSL believes the
71 federal government must recognize the sovereignty of states to regulate and tax daily
72 fantasy sports. NCSL also requests that federal lawmakers be respectful of state
73 legislatures that prohibit daily fantasy sports within their state.

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1 **COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY: NCSL URGES THE UNITED STATES CONGRESS TO**
4 **SWIFTLY PASS THE “STOP ACT”**

5
6 **TYPE: RESOLUTION**

7 **WHEREAS**, The United States has experienced a significant increase in the illegal use,
8 sale, and trafficking of dangerous and potentially fatal synthetic drugs, including
9 synthetic cannabinoids, opioids, and carfentanils;

10 **WHEREAS**, An opioid epidemic is sweeping the United States and has reached crisis
11 proportions, killing thousands of Americans, straining the ability of first responders, and
12 pressuring already critically stressed state and local budgets;

13 **WHEREAS**, there are more than 300 synthetic drugs imported into the United States
14 and more than 500 distributed globally, most of them produced in China, according to
15 the United States Department of State;

16 **WHEREAS**, the United States Customs and Border Protection has implemented
17 advance electronic manifesting and security screening as a key tool for identifying and
18 intercepting high-risk shipments that may include illegal or dangerous goods such as
19 synthetic drugs;

20 **WHEREAS**, the Trade Act of 2002 required the provision of advance electronic
21 manifests and security screening data to the U.S. Customs and Border Patrol on all
22 shipments into the United States except for parcel shipments from foreign posts;

23 **WHEREAS**, this gap in security screening of goods entering the U.S. constitutes a
24 threat to U.S. national security;

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25 **WHEREAS**, a major avenue for the importation of synthetic drugs is the shipment of
26 small parcels through the international mail system via foreign postal services, and such
27 shipments are the only commercial import shipments that do not currently provide
28 advance electronic manifests and security screening data to federal agencies;

29 **WHEREAS**, the steady growth of internet commerce and electronic platforms that
30 facilitate online purchases has resulted in an enormous increase in the volume of
31 shipments that are imported into the United States from sellers in other countries;

32 **WHEREAS**, the lack of data necessary for the U.S. Customs and Border Patrol to
33 screen imported purchases has made it easier to import illegal products, including
34 opioids and synthetic substances, into the United States; and

35 **NOW, THEREFORE, BE IT RESOLVED**, the National Conference of State Legislatures
36 urges the United States Congress to swiftly pass and send to the President's desk for
37 enactment the Synthetics Trafficking and Overdose Prevention Act ("The STOP Act"),
38 which would require advance electronic data screening of all inbound shipments to the
39 United States to facilitate identification and interception of illegal synthetic drugs and
40 chemicals, and other dangerous, counterfeit or illicit goods.

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1 **COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY: NCSL SUPPORTS PASSAGE OF THE FEDERAL**
4 **DIGITAL GOODS AND SERVICES TAX FAIRNESS**
5 **ACT**

6
7 **TYPE: RESOLUTION**

8 **WHEREAS**, digital goods and services are online purchases that are downloaded
9 directly by, or services that are provided electronically to, consumers that can transcend
10 numerous state and local boundaries across the United States; and

11 **WHEREAS**, the exponential growth of digital commerce has demonstrated the
12 importance of digital products to the American economy; and

13 **WHEREAS**, state policymakers recognize that the continued deployment of broadband
14 infrastructure and adoption of broadband services is vital to economic growth and
15 participation in the global economy; and

16 **WHEREAS**, digital goods and services are a major driver of the rapidly growing 21st
17 Century digital economy and as such, fair and rational tax policies are needed that will
18 not impede the continued growth of this segment of the economy; and

19 **WHEREAS**, due to the complex nature of the way digital commerce is transacted,
20 current state and local tax laws governing the taxation of sales transactions are
21 outdated and ill equipped to address many of the issues that surface in taxing today's
22 "borderless" digital economy; and

23 **WHEREAS**, as state and local governments continue to seek to modernize their tax
24 base to include various forms of digital commerce, doing so without establishing a
25 national framework could potentially subject consumers to multiple states claiming the

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26 right to tax the same transaction or subject such transactions to discriminatory taxation
27 at rates higher than the rates imposed on the in-state sales of similar goods or services;
28 and

29 **WHEREAS**, establishing a national framework would clearly identify which state and
30 local jurisdiction can tax a digital transaction, providing much needed certainty to
31 consumers, providers required to collect such taxes and state and local governments
32 seeking to tax such goods and services in a fair, uniform and rational manner; and

33 **WHEREAS**, establishing a national framework as set forth in the Digital Goods and
34 Services Tax Fairness Act as introduced in the 114th Congress preserves state
35 sovereignty as the decision to tax digital commerce or not remains solely with the
36 states; and

37 **WHEREAS**, the Mobile Telecommunications Sourcing Act (P.L. 106-252) established
38 uniformity in sourcing mobile telecommunications services for state and local tax
39 purposes using similar concepts to those contained in the Digital Goods and Services
40 Tax Fairness Act as introduced in the 114th Congress; and

41 **WHEREAS**, NCSL has worked with other state and local organizations as well as
42 members of the Download Fairness Coalition to develop the principles contained in the
43 legislation and is poised to assist states as needed in complying with the federal
44 legislation; and

45 **NOW, THEREFORE, BE IT RESOLVED**, that the National Conference of State
46 Legislatures urges Congress to introduce and pass legislation that provides a
47 framework for the taxation of digital goods and services consistent with NCSL principles
48 ~~in conjunction with or after consideration of the Remote Transactions Parity Act~~, to
49 establish a national framework providing certainty and uniformity for state and local
50 governments in the taxation of digital goods and services, while protecting consumers

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51 from multiple and discriminatory taxation and supporting the continued growth of the
52 digital economy.

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1 **COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY: SMALL CELL DEPLOYMENT**

4 **TYPE: RESOLUTION**

5 **WHEREAS**, wireless communication is a critical part of our everyday lives; and

6 **WHEREAS**, there were 395 million U.S. wireless subscriber connections in 2016
7 representing more than a 4.7% increase from 2015 connections and almost 18 million
8 net add year over year; and

9 **WHEREAS**, demand for wireless service and bandwidth continues to soar as U.S.
10 consumer data usage continued to climb in 2016 with over 13.72 trillion megabytes
11 (MBs) of data used, 1.66 trillion text messages exchanged, and 277.9 billion MMS
12 messages; and

13 **WHEREAS**, the U.S. wireless ecosystem continues to be the recognized global leader
14 in the deployment and adoption of 4th Generation (4G) technology; and

15 **WHEREAS**, the U.S. wireless industry is preparing for the deployment of 5th Generation
16 (5G) technology that will unleash further innovation in the agricultural, education,
17 energy, finance, health care, public safety, and transportation sectors; and

18 **WHEREAS**, Ericsson forecasts nearly 29 billion connected devices by 2022, including
19 around 18 billion related to Internet of Things (IoT) which will ultimately necessitate
20 wireless carrier network upgrades; and

21 **WHEREAS**, U.S. cities are looking to use wireless technology to introduce “Smart City”
22 solutions by employing information and communications technology to improve the
23 efficiency of government services, including transportation and traffic management,
24 public safety, lighting and energy usage, and water and waste management; and

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25 **WHEREAS**, U.S. wireless carriers continuously strive to buildout their networks to keep
26 pace with the ever-increasing demand for mobile broadband services, including more
27 than \$203 billion to improve their coverage and capacity and better serve Americans,
28 with \$26.34 billion invested in 2016 alone; and

29 **WHEREAS**, the wireless industry’s deployment of network facilities is evolving to meet
30 the demands of the future and therefore includes the use of more small cell or micro-cell
31 equipment; and

32 **WHEREAS**, the deployment of wireless infrastructure using both micro cell and macro
33 cell wireless facilities is contingent upon approval by local governments; and

34 **WHEREAS**, the streamlining of the permitting process for all wireless facilities would
35 greatly enhance the deployment of such facilities; and

36 **WHEREAS**, access to public rights-of-ways for the placement of wireless facilities will
37 enhance broadband deployment and provide additional resources to both state and
38 local governments for a variety of services; and

39 **WHEREAS**, in 2009, the Federal Communications Commission promulgated
40 regulations, subsequently upheld by the U.S. Supreme Court, that defined timeframes
41 for state and local action on wireless facilities siting requests, while preserving the
42 authority of states and localities to make the ultimate determination on local zoning and
43 land use policies; and

44 **WHEREAS**, in 2012, the President of the United States signed the “Middle Class Tax
45 Relief and Job Creation Act,” which prohibits state and local governments from denying
46 eligible wireless facilities’ requests to modify existing wireless towers or base stations if
47 the modification does not substantially change the dimensions of the facility; and

48 **WHEREAS**, more than 24 states have recently enacted legislation to assist in
49 expediting the placement of both macro and micro wireless facilities, including the
50 enforcement of the Federal Communications Commission’s application processing

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51 timelines;

52 **NOW, THEREFORE, BE IT RESOLVED**, that in order to avoid federal preemption,
53 NCSL encourages states to provide regulatory certainty for the deployment of wireless
54 facilities, including micro-cell infrastructure, by streamlining local jurisdiction application
55 processes, allowing access to public rights-of-ways, and adopting a fair fee structure;
56 and

57 **BE IT FURTHER RESOLVED**, that NCSL encourages wireless carriers to work
58 cooperatively with all levels of government to modernize laws and regulations in order to
59 facilitate the deployment and timely placement of wireless facilities while maintaining
60 proper local authority over the siting of such facilities.

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1 **COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY: BANKING & FINANCIAL REGULATION OF CANNABIS**

4 **TYPE: NEW DIRECTIVE**

5 **States Regulation on Cannabis Usage**

6 The National Conference of State Legislatures (NCSL) recognizes that the majority of
7 states and territories have legalized medical cannabis usage. Further, NCSL recognizes
8 that a growing number of states have legalized adult-use recreational cannabis. Many of
9 these states are creating substantial regulatory regimes with respect to the cannabis
10 industry to ensure compliance with the law, prevent diversion into the illegal market and
11 provide transparent financial oversight of licensed businesses.

12 **Harm to Financial Institutions**

13 These new regulatory schemes relating to cannabis have created a significant
14 expansion of the cannabis industry authorized under state law. NCSL acknowledges
15 that due to the expansion of legal cannabis, legitimate business enterprises need
16 access to financial institutions that provide capital, security, efficiency, and record
17 keeping. Despite many states passing their own regulations, cannabis remains illegal at
18 the federal level as a Schedule I drug under the federal Controlled Substances Act.
19 NCSL is concerned that under this law, the federal Bank Secrecy Act and concordant
20 regulations impose substantial administrative and operational burdens, compliance risk
21 and regulatory risk that serve as a barrier to banks and credit unions providing banking
22 services to businesses and individuals involved in the cannabis industry. NCSL believes
23 that this form of federal prohibition on cannabis jeopardizes the financial services
24 industry as well as the cannabis industry. Providing banking services to cannabis
25 related businesses entails additional risk to banks and credit unions because cannabis
26 is a Schedule I drug under the Controlled Substances Act, substantially increasing risk
27 of civil or criminal liability.

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28 **Business Protection**

29 Current federal regulations force financial institutions to incur inordinate risk, should
30 they decide to provide banking services to licensed cannabis businesses. The National
31 Conference of State Legislatures recognizes that allowing access to banking services
32 will improve the regulation of cannabis businesses. NCSL recognizes that the current
33 federal guidance for providing financial services to cannabis businesses is insufficient,
34 as it does not change applicable federal laws, imposes significant compliance burdens
35 and is subject to change at any time. NCSL recognizes that without banking options,
36 cannabis related businesses are forced to operate exclusively in cash, while a large and
37 growing cash-only industry attracts criminal activity and creates substantial public safety
38 risks. NCSL acknowledges that a cash-only industry reduces transparency in
39 accounting and makes it difficult for states to implement an effective regulatory regime
40 that ensures compliance. NCSL is concerned with the inability of cannabis related
41 businesses to pay taxes in a form other than cash, which may only be remitted in
42 person. NCSL acknowledges that this creates a substantial burden for state
43 governments to develop new infrastructure to handle the influx of cash and for business
44 owners who may have to travel long distances with large sums of cash. States have
45 been forced to take expensive security measures to mitigate public safety risks to
46 taxpayers utilizing the system, state employees and the public at large. NCSL is
47 concerned that states do not have any control over the enforcement of federal laws and
48 cannot enact legislation that provides banks and credit unions with protections
49 necessary to secure their business interests in light of federal law.

50 **Controlled Substances Act**

51 National Conference of State Legislatures calls on Congress to amend the Controlled
52 Substances Act to remove cannabis from scheduling, thus enabling financial institutions
53 the ability to provide banking services to cannabis related businesses. NCSL
54 additionally acknowledges each of its members will have differing and sometimes
55 conflicting views of cannabis and how to regulate it, but in allowing each state to craft its

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56 own regulations, we may increase transparency, public safety, and economic
57 development where there is support to do so.

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1 **COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY: THE INTERNET AND ELECTRONIC COMMERCE**

4 **TYPE: DIRECTIVE**

5 The Internet defies a detailed one-size-fits-all approach to public policy and regulation.
6 America's federal and state lawmakers, as well as policy makers from other countries
7 should be guided by principles that foster the Internet's development while protecting
8 the security and privacy of individual users.

9 Our nation's state legislatures are well aware of the impact that access to the Internet
10 and electronic commerce have on the economic vitality of our states and communities.
11 State legislatures also recognize that the marketplace for electronic commerce is not
12 just in the United States but is present in the vast global market. State legislatures share
13 the concern of many in Congress that ill-conceived over-regulation and taxation of the
14 Internet and electronic commerce services could harm our nation's ability to compete
15 globally. However, state legislatures also recognize that they have an obligation to act,
16 when and if necessary, to protect the general welfare of their constituents. As the use of
17 the Internet continues to expand, any future or existing regulations must be balanced
18 against market forces in a competitive and technologically neutral manner, as
19 government must not choose the winners or losers of the digital age.

20 Nothing in this policy statement is to be construed as limiting or affecting the right of any
21 state to regulate alcohol according to its local norms and standards pursuant to the 21st
22 Amendment.

23 NCSL opposes unnecessary or unwarranted federal legislation or regulation that would
24 impede efforts by states to promote access to the Internet, enhance competition or
25 increased consumer choice or ensure the security of personal information of consumers
26 conducting electronic commerce transactions.

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27 The National Conference of State Legislatures (NCSL) supports the following principles
28 in formulating laws and regulations that impact the Internet and electronic commerce:

29 **Privacy and Security**

30 Every American should be empowered to protect their privacy and personal information
31 from intrusion or piracy. While NCSL recognizes that there is a need for Congress to act
32 to establish a national policy to protect the personal information of Americans, state
33 legislatures, in the absence of any action by Congress and the federal government,
34 have moved to fill the void. NCSL calls upon the Congress to enact federal Internet
35 privacy legislation that ensures the security of Americans' personal information with the
36 least amount of government regulation as possible. However, NCSL opposes federal
37 legislation that seeks to preempt existing state statutes and regulations governing
38 privacy protections and security for non-Internet based transactions.

39 **Free Speech**

40 The Internet allows people to communicate and share ideas with others with an ease
41 never before possible. Federal government policy should rigorously protect freedom of
42 speech and expression on the Internet, but not restrict states or local governments from
43 oversight protecting freedom of speech. New technologies should adequately enable
44 individuals, families and schools to protect themselves and students from
45 communications and materials they deem offensive or inappropriate. State law
46 enforcement, with federal assistance and resources, must be able to enforce criminal
47 statutes against predators that use the Internet to harm or abuse children.

48 **Self-governance**

49 NCSL requests the Congress to maintain the current self-governance approach that
50 allows the competitive marketplace to drive broadband and broadband-related
51 applications development and deployment. Congress should avoid adopting new
52 mandates and provide the Federal Communications Commission (FCC) with defined
53 and limited authority to oversee, but not proactively intervene in, the broadband Internet
54 marketplace consistent with principles that focus on assessing whether the market

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55 continues to ensure that consumers can:

- 56 (1) Receive meaningful information regarding their broadband service plans;
- 57 (2) Have access to their choice of legal Internet content, subject to the limits on
58 bandwidth and quality of service of their service plan;
- 59 (3) Run applications of their choice, subject to the needs of law enforcement and
60 the limits on bandwidth limits and quality of service of their service plans, as
61 long as they do not harm the provider's network or interfere with other
62 consumers' use of the broadband service; and
- 63 (4) Be permitted to attach any devices they choose to their broadband
64 connection at the consumer's premise, so long as they operate within the
65 limits on bandwidth and quality of service of their service plans and do not
66 harm the provider's network, interfere with other consumers' use of the
67 broadband service, or enable theft of services.

68 **Consumer Protection**

69 Industry self-regulation has made an important contribution to the development of
70 electronic commerce. Industry technologies and best practices, combined with the
71 enactment of strong state laws which outlaw deceptive practices and fraudulent online
72 behavior, are essential elements in promoting electronic commerce and enhancing
73 consumer protection. Privacy and consumer protection continue to be priority issues in
74 state legislatures.

75 NCSL supports the efforts of state legislatures to develop new policy initiatives to
76 protect consumers online, especially when the federal government fails to respond to
77 consumers' concerns. NCSL also recognizes that because of the global nature of the
78 Internet that states must seek cooperative federal action to further enhance consumer
79 protection, privacy and information security. Federal legislation must ensure the
80 authority of state attorneys general to enforce federal statutes protecting consumers.
81 However, NCSL opposes any attempt by Congress to restrict the states' ability to
82 impose criminal and/or civil penalties for illegal activity that may occur over the Internet.

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83 **Growth**

84 Public policies must be designed to foster continuing expansion of useful and affordable
85 bandwidth, encourage development of innovative technologies and promote broad
86 universal access. Federal and state governments must work together to ensure that all
87 Americans, regardless of where they live, have competitive access to high-speed
88 broadband technologies. Government must work to guarantee open and competitive
89 markets for broadband services.

90 **Information Technology**

91 Information technology (IT) is a global industry. A strong American IT industry enhances
92 and strengthens the economic well-being of our states and nation. States and the
93 federal government must work together to ensure a climate that allows America's IT
94 companies to continue to perform research and technology development, to generate
95 innovative new products and services and to solve customer problems. States must
96 have the unfettered ability to continue to seek ways to use IT to better the lives of their
97 residents. Therefore, NCSL opposes any attempt by the federal government to restrict
98 or penalize states' efforts to utilize information technology services and products that
99 allow states to provide more efficient government services to residents at lower costs to
100 taxpayers.

101 **Internet Gambling**

102 Congress must respect the sovereignty of states to allow or to prohibit Internet gambling
103 by their residents.

104 **Electronic Commerce and Taxation**

105 Government policies should create a workable infrastructure in which electronic
106 commerce can flourish. Policy makers must resist any temptation to apply tax policy to
107 the Internet in a discriminatory or multiple manner that hinders growth. Government tax
108 systems should treat transactions, including telecommunications and electronic
109 commerce, in a competitively neutral and non-discriminatory manner. The federal

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110 government and America's industries should work with state legislatures in ensuring
111 equal tax treatment of all forms of commerce and should encourage state efforts to
112 achieve simplification and uniformity through the streamlining of state and local sales
113 and telecommunications tax systems.

114 NCSL supports the reform of the discriminatory taxation of communications services
115 and believes that if state and local governments were to take such action, the need for
116 the federal moratorium on Internet access would cease to exist.

117 ~~Since 2003 NCSL has maintained a neutral position on the extension of the moratorium~~
118 ~~and continues to do so. However, should the moratorium be extended, it is consistent~~
119 ~~with NCSL policy that the moratorium be competitively neutral and apply equally to all~~
120 ~~media used to access the internet.~~

121 **VIDEO FRANCHISE REFORM**

122 Innovation and convergence of existing technologies are radically expanding
123 communications and information services, blurring distinctions between telephone,
124 Internet services, cable, wireless and satellite. These rapid changes often outpace
125 abilities of federal, state and local regulatory regimes to adapt. It is important that video
126 regulatory policy assure that like services are treated alike, investment is encouraged,
127 and services are in a non-discriminatory manner.

128 **State Administration Will Preserve State Authority**

129 Local jurisdictions are the creation of either state constitutions or law. The powers that
130 these political subdivisions of the state exercise were granted to them over time by state
131 legislatures. Those local jurisdictions that have franchise authority have it as a result of
132 state legislation or the state constitution. Therefore, any attempt by Congress to
133 preempt current local franchise authority is a preemption of state sovereignty.

134 While NCSL rarely advocates the consideration of legislation in state legislatures, NCSL
135 has at times, when states are facing a crisis or a serious threat of federal preemption,
136 urged state legislatures to take action. NCSL endorses efforts that remove barriers to

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137 entry for or inequity of regulation among video competitors and foster additional
138 consumer choices in the video marketplace ultimately ensuring competitive neutrality.

139 Government should encourage competition and consumer choices for broadband and
140 video services and promote the deployment of broadband services and technologies.

141 **Fees and Taxation of Video Providers**

142 Franchise fees today are levied, imposed or collected as a percentage of gross
143 revenues, used for general revenue purposes and not based on the actual direct and
144 identifiable costs of any benefit to the entity that pays the fee. To the extent such fees
145 are intended as payment for use of public rights-of-way, that fee should be limited to the
146 actual, direct and identifiable cost of such use, and that portion of the fee should be
147 applied only to those who use the rights-of-way. Franchise fees should be collected and
148 administered by one central agency per state.

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1 **COMMITTEE: THE COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE (JOINT WITH LABOR &**
3 **ECONOMIC DEVELOPMENT)**

4 **POLICY: RESOLUTION SUPPORTING INTELLECTUAL**
5 **PROPERTY (IP) RIGHTS AND PROTECTIONS TO**
6 **PROMOTE PRODUCTIVITY, COMPETITIVENESS AND**
7 **JOBS**
8

9 **TYPE: RESOLUTION**

10 **WHEREAS**, intellectual property (IP) rights and innovation are primary drivers of job
11 creation and America’s economic growth; and

12 **WHEREAS**, over 45 million jobs are directly and indirectly supported by IP-intensive
13 industries, according to the U.S. Department of Commerce 2016 report, as significant
14 drivers of GDP, exports and wages in every state of the Union; and

15 **WHEREAS**, IP-intensive industries are responsible for \$6.6 trillion in private sector
16 output (GDP); and

17 **WHEREAS**, according to the U.S. Chamber of Commerce, the average worker in an IP-
18 intensive industry earns 30 percent higher wages than those of non IP-intensive
19 industries; and

20 **WHEREAS**, IP-intensive industries drive American exports accounting for
21 approximately \$1 trillion (74 percent of total U.S. exports); and

22 **WHEREAS**, given the important role that IP plays in sustaining a long-term economic
23 growth, policymakers should give high priority to fostering innovation and protecting
24 intellectual property; and

25 **WHEREAS**, protecting and enforcing the IP rights of businesses are critical to
26 advancing global economic recovery, driving competitiveness and export growth, and

27 creating high-quality jobs; and

28 **WHEREAS**, IP protections, though vital, must be balanced with other priorities,
29 including the right of citizens to access affordable drugs and medical devices and the
30 ability of state governments to contain Medicaid costs; and

31 **WHEREAS**, the National Conference of State Legislatures believes that balanced
32 efforts to promote innovation through intellectual property protection and affordable
33 healthcare are critical to improving the nation's long-term competitiveness in a global
34 market, and to achieving certain socioeconomic improvements in the quality of
35 American life;

36 **NOW, THEREFORE, BE IT RESOLVED**, that the National Conference of State
37 Legislatures calls upon all levels of governments to work cooperatively with the private
38 sector, nonprofits, and academia to create, develop and implement robust pro-IP
39 awareness and enforcement; and,

40 **BE IT FURTHER RESOLVED**, the National Conference of State Legislatures supports
41 efforts to ensure the Intellectual Property Enforcement Coordinator within the Executive
42 Office of the President has sufficient staff, budget, and authority to fulfill the obligations
43 and achieve the goals outlined in the Prioritizing Resources and Organization for
44 Intellectual Property Act of 2008 (PRO-IP Act) and the National IP Strategy; and

45 **BE IT FURTHER RESOLVED**, the National Conference of State Legislatures
46 supports robust and balanced IP protection and enforcement provisions in trade
47 agreements, protecting U.S. jobs and wages while ensuring that excessive monopoly
48 protections do not saddle states or individuals with burdensome costs that limit
49 healthcare options or endanger public health;

50 **BE IT FURTHER RESOLVED**, that the National Conference of State Legislatures
51 supports existing efforts to shut down the top illegal rogue websites globally that are
52 willfully selling counterfeit goods and facilitating digital theft; and

53 **BE IT FURTHER RESOLVED**, that a copy of this resolution be sent to the President of
54 the United States and all members of the 115th Congress.

1 **COMMITTEE: THE COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY: REDUCING BARRIERS OF SMART COMMUNITY**
4 **INFRASTRUCTURE**

5
6 **TYPE: NEW RESOLUTION**

7 **WHEREAS**, Smart Community technologies can strengthen America’s cities, states and
8 regions by improving the overall quality of life, economic opportunity, and security for
9 those who live in America’s communities; and

10 **WHEREAS**, the development and deployment of Smart Community technologies in the
11 communication, energy, and transportation sectors provides new opportunities to
12 increase overall public health and facilitates economic growth across urban and rural
13 communities;

14 **WHEREAS**, such Smart Community innovation encompasses a range of technological
15 solutions to modernize and improve the delivery of state and local government services;
16 and

17 **WHEREAS**, Smart Community technologies can achieve community goals, such as
18 increasingly clean and efficient transportation, improved energy management,
19 integration of distributed and renewable energy resources, increase access to better
20 quality broadband connectivity and enhanced transportation mobility; and

21 **WHEREAS**, partnerships between state and local governments and the private sector
22 can support ‘Smart Community’ innovations across all communities and help overcome
23 resource constraints and impediments, and facilitate the efficient coordination of
24 services; and

25 **WHEREAS**, these public-private partnerships can help accelerate Smart Community
26 advancements and new technology deployments that benefit residents and constituents

27 across cities, states, and regions; and ensure that Smart Community technologies are
28 efficiently integrated and provide maximum benefit to the communities they serve; and

29 **WHEREAS**, the infrastructure of the communications, energy, and transportation
30 sectors are not only interconnected, but serve as the foundational elements to enable
31 the deployment of new Smart Community technologies in all communities; and

32 **THEREFORE**, agencies, such as the Department of Transportation, Federal
33 Communications Commission, Federal Aviation Administration, the Department of
34 Agriculture and the Department of Energy should fund grant programs and opportunities
35 for state and local governments that support efficient investments in Smart
36 Communities; and

37 **NOW, THEREFORE, BE IT RESOLVED**, that the National Conference of State
38 Legislatures believes that policymakers, as well as partners from the communications,
39 energy and transportation sectors, should continue to work at the local, state, and
40 federal levels to develop policies that facilitate and accelerate the development and
41 deployment of Smart Community technologies that can maximize benefits for all
42 communities at the local, state, and regional levels.

43 **NOW, BE IT FURTHER RESOLVED**, that the National Conference of State
44 Legislatures supports additional federal funding toward the development of Smart
45 Communities, and that the Department of Transportation should re-launch the 2015
46 Smart City Challenge, and expand the number of communities eligible to receive
47 awards across the nation.

1 **COMMITTEE: COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY: SUPPORTING THE DEVELOPMENT OF A BALANCED**
4 **NATIONAL SPECTRUM POLICY THAT INCLUDES**
5 **UNLICENSED ACCESS IN THE 5GHZ BAND TO MEET**
6 **THE DEMAND FOR WIRELESS TECHNOLOGIES**

7
8 **TYPE: RESOLUTION**

9 **WHEREAS**, states have an interest in policies that preserve and encourage continued
10 private investment to deploy broadband technologies, support small and minority
11 businesses and entrepreneurs' participation in the digital economy, and equip minority
12 communities with the skills and education to take advantage of these technologies; and

13 **WHEREAS**, Wi-Fi spectrum in the 2.4 GHz band has become highly congested,
14 especially in densely populated urban areas making it difficult for Wi-Fi providers to
15 deliver the kinds and quality of service that consumers have come to expect and will
16 only accelerate as the number of wireless devices continues to grow; and

17 **WHEREAS**, the 5 GHz band has enormous potential to support continued growth in
18 unlicensed wireless services, including the next generation of Wi-Fi which will create a
19 platform for technological innovation, investment, and economic growth; and

20 **WHEREAS**, the Federal Communications Commission (FCC) acknowledges the critical
21 role that next generation Wi-Fi technologies can have on consumers and has agreed to
22 take a first step in the 5 GHz band by adding over 100 MHz of spectrum for Wi-Fi,
23 making it available for indoor and outdoor use; and

24 **WHEREAS**, Wi-Fi is essential to unleashing the enormous economic potential of the
25 internet in communities where broadband adoption lags; and

26 **WHEREAS**, while according to the Pew Research Center, more Americans are gaining
27 access to broadband in their homes, adoption rates for African Americans and Latinos

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28 still lag those of whites by 10 to 20 percentage points respectively and when accounting
29 for income only 54 percent of those with a household income under \$30,000 had high
30 speed broadband or a computer at home increasing the importance of Wi-Fi for these
31 communities; and

32 **WHEREAS**, broadband access through Wi-Fi is critical to empowering minority and
33 minority women entrepreneurs to develop, grow and improve productivity of their
34 businesses as well as strengthening U.S. competitiveness nationally and worldwide;
35 and

36 **WHEREAS**, unlicensed Wi-Fi is a critical issue that, if left unresolved, will hinder the
37 broadband industry's ability to grow, innovate and compete and limiting access to this
38 important resource will jeopardize consumers ability to access Wi-Fi; and

39 **WHEREAS**, NCSL agrees that the proliferation of smartphones, tablets and other
40 mobile devices with Internet access has grown significantly, placing a greater demand
41 on both licensed and unlicensed spectrum, and adding additional capacity is essential
42 to support continued innovation and achieve the potential to transform many different
43 areas of the American economy by providing a platform for innovation and is likely to
44 have a substantial impact on jobs, growth and investment; and

45 **WHEREAS**, NCSL strongly believes that ensuring the long-term success of unlicensed
46 services in the 5 GHz band for Wi-Fi will enable the broadband industry to provide
47 reliable and affordable services to broadband customers, particularly given communities
48 of colors' high usage of mobile broadband technology as a primary means of connecting
49 to the Internet with the majority of these connection now being Wi-Fi connections; and

50 **NOW, THEREFORE, BE IT RESOLVED**, that NCSL supports the Federal
51 Communications Commission's move to allocate additional 5 GHz band spectrum for
52 unlicensed use in order to meet increased demand for wireless technologies; and

53 **BE IT FINALLY RESOLVED**, that NCSL send a copy of this resolution to the President

54 of the United States, Members of Congress, the Federal Communications Commission,
55 State Legislatures and Governors.

1 **COMMITTEE:** **COMMUNICATIONS, FINANCIAL SERVICES, &**
2 **INTERSTATE COMMERCE**

3 **POLICY:** **REMOTE COMMERCE**

4
5 **TYPE:** **AMENDED DIRECTIVE**

6 The 1967 *Bellas Hess* and the 1992 *Quill* Supreme Court decisions denied states the
7 authority to collect sales and use taxes by out-of-state sellers that have no physical
8 presence or nexus in the taxing states, ~~holding that legislation by Congress is required~~
9 ~~to create such authority~~ and urged Congress to address the issue of remote sales tax
10 collection. One recent report has estimated that states will lose over \$23 Billion in
11 uncollected sales tax revenues in 2012, of which \$11.4 billion is from electronic
12 commerce, It is estimated in various studies that state and local governments are losing
13 between \$8 billion to \$35 billion a year in uncollected sales taxes from remote
14 transactions and that annual losses will continue to grow as more commerce is
15 conducted online. This disconnect with remote commerce threatens to erode the
16 viability of the sales tax as a revenue source for state and local governments. States
17 have requested Congressional action, but Congress has failed to close this large
18 loophole in the states' sales and use tax system. Congress' failure over the last 26
19 years to address the issues raised by the Supreme Court in 1992, resulted in an effort
20 by states to require remote sales tax collection based on economic presence. The first
21 case ready for review by the Supreme Court, South Dakota v. Wayfair, resulted in the
22 Court overturning its previous decisions in Bellas Hess and Quill, which allowed states
23 to require remote sellers to collect sales taxes for purchases made by their residents.
24 The Wayfair decision by the Supreme Court has made the need for congressional
25 action unnecessary.

26 Having state tax sovereignty returned to the states for sales tax collection, states now
27 have the obligation to act with fairness and transparency in administering the remote
28 sales tax collection system. The responsibility will be on states to ensure that the

29 burden to collect sales taxes by remote sellers is no greater than the burden on in state
30 sellers if states are to avoid a preemptive federal framework imposed by Congress.
31 States must work together as partners in the collection of sales taxes or face a call from
32 sellers for federal intervention. Action by state tax departments regarding remote sales
33 tax collection without the consent of the elected policymakers in the state legislature
34 and executive branch should be avoided.

35 NCSL recognizes that 24 states have enacted legislation to join the Streamlined Sales
36 and Use Tax Agreement (SSUTA), which was recognized by the Supreme Court in the
37 majority opinion as a viable way for states to collect remote sales taxes. While it is an
38 option for the remaining 21 states that have a sales tax, it is not mandatory. However,
39 those 21 states should consider joining SSUTA or consider enacting legislation to work
40 with SSUTA for: a central registration system for remote sellers, a central system for the
41 certification of Certified Software Providers (CSPs), ensure that remote sellers are
42 provided the same compensation as in-state sellers, provide a publicly available
43 taxability and exemption table, and, provide a rates and boundary database in an easily
44 downloadable format.

45 States won a victory in the U.S. Supreme Court and now they have a responsibility to
46 ensure that sellers are treated with fairness and as good corporate citizens. States
47 should follow the Golden Rule of state tax policy: “Do unto taxpayers in other states as
48 you would have them do unto your taxpayers.” Any state that implements remote sales
49 tax collection irresponsibly will only jeopardize the ability of other states to require
50 remote sales tax collection.

51 Moreover, NCSL will oppose unnecessary federal legislation that preempts the states’
52 authority, as granted by the Supreme Court, to collect sales taxes from remote sellers.

53 ~~NCSL calls on Congress to require all sellers, regardless of location, to collect sales~~
54 ~~taxes and remit them to the state to which they are due. Further, NCSL supports a small~~
55 ~~business exception.~~

56 ~~Acknowledging that the complexity of multiple tax rates places a significant burden on~~
57 ~~out-of-state sellers, twenty-four states joined the Streamlined Sales Tax and Use~~
58 ~~Agreement and passed laws to simplify sales and use tax systems, remove burdens to~~
59 ~~interstate sellers, and collaborate on the collection of taxes due to them.~~

60 ~~NCSL calls on Congress to pass legislation overturning the *Bellas*~~
61 ~~*Hess* and *Quill* decisions, affirming the states' sovereign right to enter into such~~
62 ~~agreements, and granting states the authority denied to them by the Court's decisions.~~