Policy Directives and Resolutions for Consideration

2018 NCSL Legislative Summit
Los Angeles, California

DEBATE

TABLE OF CONTENTS

COMMUNICATIONS FINANCIAL SERVICES AND INTERSTATE COMMERCE
NATIONAL CONFERENCE OF STATE LEGISLATURES SUPPORTS PASSAGE OF THE FEDERAL DIGITAL GOODS & SERVICES TAX FAIRNESS ACT .................................................. 2

THE INTERNET AND ELECTRONIC COMMERCE ................................................................. 4

REMOTE COMMERCE ........................................................................................................... 10

LAW, CRIMINAL JUSTICE AND PUBLIC SAFETY
CANNABIS AND FEDERALISM ............................................................................................... 12

NATURAL RESOURCES AND INFRASTRUCTURE
ENCOURAGING CONGRESS TO SUPPORT THE EMERGING CONSERVATION ECONOMY .................................................................................................................... 14
WHEREAS, digital goods and services are online purchases that are downloaded directly by, or services that are provided electronically to, consumers that can transcend numerous state and local boundaries across the United States; and

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

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

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

WHEREAS, as state and local governments continue to seek to modernize their tax base to include various forms of digital commerce, doing so without establishing a national framework could potentially subject consumers to multiple states claiming the right to tax the same transaction or subject such transactions to discriminatory taxation at rates higher than the rates imposed on the in-state sales of similar goods or services; and

WHEREAS, establishing a national framework would clearly identify which state and local jurisdiction can tax a digital transaction, providers required to collect taxes, and allow state and local governments seeking to tax such goods and services to do so in a fair, uniform and rational manner; and
WHEREAS, establishing a national framework as set forth in the Digital Goods and Services Tax Fairness Act as introduced in the 114th Congress preserves state sovereignty as the decision to tax digital commerce or not remains solely with the states; and

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

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

NOW, THEREFORE, BE IT RESOLVED, that the National Conference of State Legislatures urges Congress to introduce and pass legislation that provides a framework for the taxation of digital goods and services consistent with NCSL principles to establish a national framework providing certainty and uniformity for state and local governments in the taxation of digital goods and services, while protecting consumers from multiple and discriminatory taxation and supporting the continued growth of the digital economy.
The Internet defies a detailed one-size-fits-all approach to public policy and regulation. America's federal and state lawmakers, as well as policy makers from other countries should be guided by principles that foster the Internet's development while protecting the security and privacy of individual users.

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

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

NCSL opposes unnecessary or unwarranted federal legislation or regulation that would impede efforts by states to promote access to the Internet, enhance competition or increased consumer choice or ensure the security of personal information of consumers conducting electronic commerce transactions.
The National Conference of State Legislatures (NCSL) supports the following principles in formulating laws and regulations that impact the Internet and electronic commerce:

**Privacy and Security**

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

**Free Speech**

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

**Self-governance**

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

(1) Receive meaningful information regarding their broadband service plans;

(2) Have access to their choice of legal Internet content, subject to the limits on bandwidth and quality of service of their service plan;

(3) Run applications of their choice, subject to the needs of law enforcement and the limits on bandwidth limits and quality of service of their service plans, as long as they do not harm the provider’s network or interfere with other consumers’ use of the broadband service; and

(4) Be permitted to attach any devices they choose to their broadband connection at the consumer’s premise, so long as they operate within the limits on bandwidth and quality of service of their service plans and do not harm the provider’s network, interfere with other consumers’ use of the broadband service, or enable theft of services.

Consumer Protection

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

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

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

Information Technology

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

Internet Gambling

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

Electronic Commerce and Taxation

Government policies should create a workable infrastructure in which electronic commerce can flourish. Policy makers must resist any temptation to apply tax policy to the Internet in a discriminatory or multiple manner that hinders growth. Government tax systems should treat transactions, including telecommunications and electronic commerce, in a competitively neutral and non-discriminatory manner. The federal
government and America’s industries should work with state legislatures in ensuring equal tax treatment of all forms of commerce and should encourage state efforts to achieve simplification and uniformity through the streamlining of state and local sales and telecommunications tax systems.

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

**VIDEO FRANCHISE REFORM**

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

**State Administration Will Preserve State Authority**

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

While NCSL rarely advocates the consideration of legislation in state legislatures, NCSL has at times, when states are facing a crisis or a serious threat of federal preemption, urged state legislatures to take action. NCSL endorses efforts that remove barriers to entry for or inequity of regulation among video competitors and foster additional consumer choices in the video marketplace ultimately ensuring competitive neutrality.

Government should encourage competition and consumer choices for broadband and video services and promote the deployment of broadband services and technologies.
Fees and Taxation of Video Providers

Franchise fees today are levied, imposed or collected as a percentage of gross revenues, used for general revenue purposes and not based on the actual direct and identifiable costs of any benefit to the entity that pays the fee. To the extent such fees are intended as payment for use of public rights-of-way, that fee should be limited to the actual, direct and identifiable cost of such use, and that portion of the fee should be applied only to those who use the rights-of-way. Franchise fees should be collected and administered by one central agency per state.
The 1967 Bellas Hess and the 1992 Quill Supreme Court decisions denied states the authority to collect sales and use taxes by out-of-state sellers that have no physical presence or nexus in the taxing states, and urged Congress to address the issue of remote sales tax collection. It is estimated in various studies that state and local governments are losing between $8 billion to $35 billion a year in uncollected sales taxes from remote transactions and that annual losses will continue to grow as more commerce is conducted online. Congress’ failure over the last 26 years to address the issues raised by the Supreme Court in 1992, resulted in an effort by states to require remote sales tax collection based on economic presence. The first case ready for review by the Supreme Court, South Dakota v. Wayfair, resulted in the Court overturning its previous decisions in Bellas Hess and Quill, which allowed states to require remote sellers to collect sales taxes for purchases made by their residents. The Wayfair decision by the Supreme Court has made the need for congressional action unnecessary.

Having state tax sovereignty returned to the states for sales tax collection, states now have the obligation to act with fairness and transparency in administering the remote sales tax collection system. The responsibility will be on states to ensure that the burden to collect sales taxes by remote sellers is no greater than the burden on in state sellers if states are to avoid a preemptive federal framework imposed by Congress. States must work together as partners in the collection of sales taxes or face a call from sellers for federal intervention. Action by state tax departments regarding remote sales tax collection without the consent of the elected policymakers in the state legislature and executive branch should be avoided.
NCSL recognizes that 24 states have enacted legislation to join the Streamlined Sales and Use Tax Agreement (SSUTA), which was recognized by the Supreme Court in the majority opinion as a viable way for states to collect remote sales taxes. While it is an option for the remaining 21 states that have a sales tax, it is not mandatory. However, those 21 states should consider joining SSUTA or consider enacting legislation to work with SSUTA for: a central registration system for remote sellers, a central system for the certification of Certified Software Providers (CSPs), ensure that remote sellers are provided the same compensation as in-state sellers, provide a publicly available taxability and exemption table, and, provide a rates and boundary database in an easily downloadable format.

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

Moreover, NCSL will oppose unnecessary federal legislation that preempts the states' authority, as granted by the Supreme Court, to collect sales taxes from remote sellers.
The National Conference of State Legislatures (NCSL) maintains that the federal government should respect state decisions to regulate cannabis, including hemp in non-FDA approved cannabis products. NCSL recognizes that its members have differing views on how to treat cannabis in their states and believes that states and localities should be able to set whatever policies work best to improve the public safety, health, and economic development of their communities.

NCSL believes that federal laws, including the Controlled Substances Act (CSA), should be amended to explicitly allow states to set their own cannabis policies without federal interference and urges the administration not to undermine state cannabis policies. Where states have authorized cannabis production, distribution, and possession by establishing an effective regulatory scheme, the administration should direct federal prosecutors to respect state cannabis laws when exercising discretion around enforcement. NCSL maintains that the administration should prioritize its enforcement actions against criminal enterprises engaged in cannabis production and sale, and not against citizens who are compliant with state cannabis laws. Furthermore, NCSL urges Congress to prohibit the administration from using federal funds to enforce the CSA in a manner inconsistent with these enforcement priorities.

The National Academies of Sciences, Engineering, and Medicine identified challenges and barriers in conducting cannabis research in a 2017 report: The Health Effects of Cannabis and Cannabinoids. NCSL urges Congress and the administration to address the challenges and barriers identified in this report. NCSL believes that it is especially important that Congress and the administration provide researchers access to cannabis
in the quantity, quality, and type necessary to research the health effects of cannabis
use and that adequate funding sources are made available to support cannabis and
cannabinoid research that explores the health benefits and risks of cannabis use.
COMMITTEE: NATURAL RESOURCES AND INFRASTRUCTURE

POLICY: ENCOURAGING CONGRESS TO SUPPORT THE EMERGING CONSERVATION ECONOMY

TYPE: RESOLUTION

WHEREAS, one of the growth industries is the conservation economy which is a result of natural resource management practices that better manage the country’s diverse bioregional conservation economies; and

WHEREAS, we live in a time of tremendous change, the extent of which is the subject of intense debate around the world, that recognizes the clash of immediate human needs of food and water with current practices that have a long-term impact on the land and water’s capacity to support life, livelihoods, and traditional lifestyles including local and indigenous subsistence living; and

WHEREAS, increasing population and migration of people across the country strains each State’s biodiversity and the current management of land and water is being evaluated because there is a sense of urgency to understand the impacts, among other things, or storm water run-off, rain acidity, wastewater, and fish farms; and

WHEREAS, new initiatives related to natural resource management are integrating innovative science, traditional ecological knowledge (TEK), clean technology and green initiatives, as an example, and are encouraging new career pathways, advancing STEM jobs in conservation; and

WHEREAS, there is a growing need for a STEM workforce to advance knowledge of nature’s ecosystem and growing demand for new partnerships to be established across the country between federal agencies, state agencies, NGOs, conservationists, scientists, consumers, producers, urban planners, entrepreneurs, and local
and indigenous organizations to share their expertise, tools, and resources to achieve socio, financial, and economic prosperity through stewardship of natural resources for future generations.

NOW, THEREFORE, BE IT RESOLVED, that the National Conference of State Legislatures (NCSL) acknowledges new technology exists, such as wireless devices, advanced satellite monitoring, embedded microprocessors, weather stations, drones, and robots that monitor, test, or collect data to enhance natural resource management in a manner that improves efficiency, creates new jobs, and revolutionizes how we access locations previously too costly and dangerous; and

BE IT FURTHER RESOLVED, that NCSL supports the conservation economy in which economic wealth is harvested from a bioregion’s natural resources in a way that meets local communities’ needs and does not lessen the natural and social health and well-being of a bioregion; and

BE IT FURTHER RESOLVED, that NCSL supports the development of an educated workforce to support the conservation economy and an increase in commerce related to research, innovation and development of new technologies to better manage natural resources and the country’s diverse bioregional economies; and

BE IT FURTHER RESOLVED, that NCSL encourages Congress to fund the advancement of education, research, innovation and technology, and to collaborate with businesses and organizations that create jobs to meet the growing conservation economy.