



A LEONINE BUSINESS

2017 Legislative Review/ Preview Report

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From the election of Donald Trump, to congressional gridlock, to Brexit, 2016 was a year of heightened political activity. Some changes were expected, while others came as a surprise. As we see the pendulum swing back to the right in the White House, GOP lawmakers and governors also won big across the country in the historic November elections. With Republican leadership at the executive level, control of congress and 33 red governor's mansions, a push to return power to the states is already mounting. At the federal level we will see a focus on repealing the Affordable Care Act, immigration reform, trade deals, tax cuts and increased infrastructure spending. These same themes trickle down and will be the focus of lawmaking throughout blue and red states alike this session.

In this report, we look back at some key policy developments from 2016 and how they will play out this year in state houses across the country.

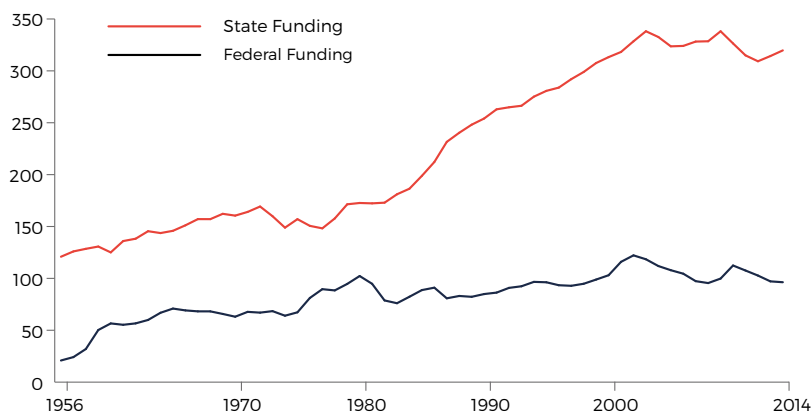
BUDGET/FINANCE

Infrastructure Spending

A resounding message of Republican President-elect Donald Trump's campaign was of middle class job growth and prosperity through increased infrastructure spending. While it is true that America is faced with crumbling infrastructure, most of the capital to fund these projects comes from the state and local level. In 2014, total public spending on infrastructure by federal, state and local governments was \$416 billion—the states provided \$320 billion and the federal government provided the remaining \$96 billion, according to the [Congressional Budget Office](#).

Public Spending on Transportation and Water Infrastructure, 1956 to 2014

Billions of 2014 dollars



SOURCE: [Congressional Budget Office](#)

The American Society of Civil Engineers has given the U.S. a D+ on its [infrastructure report card](#). In order to get to a B-, or a passing grade, it will cost \$3.6 trillion by 2020, and only about 55 percent of that capital has been committed. Research shows the need for infrastructure spending is high throughout the U.S., but state funding has decreased over the past decade. State budgets are often pressured by rising pension and healthcare costs, leaving smaller pools of capital for infrastructure spending.



As states look to fill their transportation funds to finance infrastructure projects, one way that is gaining traction is through increasing the gas tax. **New Jersey** was the only state to increase the gas tax in 2016, but **Pennsylvania** drivers saw their gas tax increase by \$0.08 on January 1, 2017. Other states such as **Alabama**, **California**, **Minnesota** and **Tennessee** are likely to see legislation this year that is aimed at increasing the gas tax, according to [NCSL](#). **Wisconsin** Republican Gov. Scott Walker is fighting a proposed gas tax, saying that he will veto any gas tax that comes across his desk during the 2017 session, [Wisconsin Public Radio](#) reports.

As we move into 2017, there will be increased attention and legislative activity focused on infrastructure spending.

Cap on Lending Rates

On November 8, **South Dakota** voters approved [Initiated Measure 21](#), which put in place a 36 percent APR all-in cap on loans from all state-licensed moneylenders. The covered loans include commercial and personal loans, including installment, auto loans, and payday and title loans. On the same day, South Dakota voters rejected proposed [Constitutional Amendment U](#), which would have put in place an 18 percent APR cap on loans in the state, unless the borrower agreed to a higher rate in writing. The amendment also included a requirement that any future law capping interest rates in the state would have to include the opportunity for the borrower to agree to a higher rate in writing. Amendment U was proposed by the payday industry to preempt the rate cap proposed in Measure 21.

The approval of the South Dakota measure brings the state up to par with 14 other states that currently have rate caps in place, the [Center for Responsible Lending](#) reports. This may also spur other states to consider legislation regarding rate caps as consumers and lenders continue to work toward finding a balance where lenders do not lose money and consumers do not end up trapped in a cycle of debt. In the 2016 session, 42 bills in 20 states and the **U.S.** Congress were considered regarding 36 percent and lower rate caps. Of those, four bills were enacted in **California**, **Connecticut**, **Mississippi** and **New Hampshire**. Seven bills will carry over from **Virginia** into the 2017 session and legislation has been prefiled in **Missouri** and **New Mexico**.

20 states and Congress considered legislation regarding 36 percent and lower rate caps:

Alabama
Arizona
California*
Connecticut*
Florida
Hawaii
Illinois
Kansas
Kentucky
Mississippi*
Missouri**
Nebraska
New Hampshire*
New Mexico**
Oklahoma
Pennsylvania
South Carolina
Tennessee
Virginia**
Washington
U.S. Congress

*Enacted

**Filed for 2017



Raising State and Local Revenue

As the federal government prepares to transition to a new administration, many states are concerned with what impact the changes will have on their budgets. According to the National Association of State Budget Officers' [State Expenditure Report](#), state spending is predicted to have modest growth, however federal funding to states is likely to decline, requiring states to find ways to balance their budgets to make up for less federal funding.

According to [The Rockefeller Foundation](#), some states and localities are looking at innovative ways to raise funds, including social impact bonds (SIBs), which bring the government, investors, philanthropies and nonprofit organizations together to fund social programs, with investors being repaid if improved social outcomes are achieved. [Forbes](#) reports that **Connecticut** and **South Carolina** announced plans to use SIBs in their states this year. In Connecticut, a SIB of \$11.5 million aims to provide a program for families with parents that have substance abuse problems, with goals measured by toxicology screenings and keeping families together. In South Carolina, a \$30 million SIB would provide first time, low-income mothers with home visits with the goals measured through reductions in pre-term birth and child injury.

TAXES

Internet Taxes

As states look for different ways to collect additional cash for their balance sheet, an increasingly popular way is to create new or expanded online sales taxes and/or require remote online sellers to report customer sales transactional information to state tax officials.

In the 2015-2016 biennium, there were 67 bills introduced in 23 states that attempted to mandate internet sales tax transactions either by requiring remote companies to collect and remit without in-state physical presence or requiring remote sellers to provide notice to customers and state tax officials. Some measures even proposed to expand the trigger for sales transactions considered taxable. While the majority of these bills failed, a few tax laws were enacted.



Internet tax laws were enacted in 2016 in **Louisiana, Oklahoma, South Dakota** and **Vermont**. South Dakota [SB 106/Chapter 70](#) requires internet businesses to remit sales taxes to the state if they sell more than \$100,000 in-state or conduct 200 or more state sales transactions per year. Louisiana [HB 1121/Act 569](#) requires remote retailers to notify customers of which purchases they made in the past year that are subject to the state sales tax.

The Louisiana law was modeled after **Colorado** [HB 1193](#), a sales tax notice law enacted in 2010. But that law never went into effect as it was invalidated in April 2012 when the **U.S.** District Court for Colorado held that requiring out-of-state retailers to report information about customer purchases violated the Commerce Clause of the United States Constitution ([Direct Marketing Assn. v. Huber](#), No. 1:10-CV-01546-REB-CBS (D. Colo. 3/30/12)). Colorado appealed and won, but the law was never allowed to go into effect as the lawsuit went through the appeals process.

The lack of review by the U.S. Supreme Court will likely motivate other states to pass their own version of Colorado's tax notice law this session.

However, the U.S. Supreme Court let the law stand, as on December 12 the court declined to review the ruling of the U.S. Court of Appeals for the Tenth Circuit, which upheld the tax notice and reporting requirements. The court also denied a cross-petition for certiorari filed by Colorado, which urged the court to address whether the physical presence standard in *Quill v. North Dakota* should be overruled. Colorado is now free to enforce the sales tax notice and reporting requirements legislation. This means that out-of-state sellers making sales into Colorado must notify in-state customers of their responsibility to remit sales tax, and sellers must provide the department with the required customer information. Failure to fulfill these obligations will result in a \$10 per violation fine. Colorado has not yet indicated when the provisions will be deemed effective.

The lack of review by the U.S. Supreme Court will likely motivate other states to pass their own version of this tax notice law this session. **Wyoming** has prefiled [HB 19](#), which would require a seller of tangible personal property, admissions or services who does not have a physical presence in the state to remit state sales taxes if they meet either of the following requirements: the seller's gross revenue from the sale of tangible personal property, admissions or services delivered into this state exceeds \$100,000 or the seller sold tangible personal property, admissions or services in 200 or more separate transactions.

States will start looking to unique sources to tax to increase their revenue. According to [The New York Times](#), about 40 California cities have received [guidance from consultants](#)



about how they would implement an online streaming tax or a tax on “over the top TV (OTT)”. Currently, there are no proposals before any city, but a streaming tax in Pasadena is currently under internal review by the city council. At least one council member, Tyron Hampton, opposes the tax and says he understands the need to find new ways to make money but “The basic tenet of the internet is that the internet is supposed to be free.” Other opponents do not want to see streaming taxed like a utility.

Sugar-Sweetened Beverage Taxes

Municipalities have turned to taxing sugar-sweetened beverages as not only a way to encourage healthy habits but as an alternative means of supporting their budgets. The Philadelphia City Council approved a [1.5 cent per ounce tax](#) on sugary beverages on June 15 and Democratic Mayor Jim Kenney signed the measure on June 20, [NPR](#) reports. Exceptions from the tax include products that are more than 50 percent milk, fruit or vegetable juice, and baby formula. The law took effect January 1. Prior to its’ passing, Berkley, **California**, was the only other U.S. city with a similar tax. Berkley has a population of 112,000 compared to Philadelphia’s 1.5 million.

Voters in three cities in the bay area of California and Boulder, **Colorado** passed ballot measures that will tax the distribution of sugar-sweetened beverages and sweeteners, [NPR](#) reports. The Cook County, **Illinois** Board of Commissioners, which includes Chicago, passed a penny per ounce tax on sugar-sweetened beverages on November 11, the [Chicago Tribune](#) reports. The tax is expected to provide \$74 million in revenue in the 2017 fiscal year based on an effective date of July 1, 2017. Albany, San Francisco and Oakland, California passed measures that will create a penny per ounce general tax on the distribution of sugar-sweetened beverages and sweeteners. Voters in Boulder approved a ballot measure that will create a two-cent per ounce tax on sugar-sweetened beverages and sweeteners.

A large amount of money was spent supporting and fighting the measures. Former Independent **New York** City Mayor Michael Bloomberg gave over \$18 million in support of the Oakland and San Francisco measures, the [Los Angeles Times](#) reports. With states looking for ways to fund their budgets, the recent success of local sugar-sweetened taxes on the ballot might encourage state lawmakers to introduce bills that would tax sugar-sweetened beverages in the upcoming session.



EDUCATION

Education Funding

The battle of how to fund public education is a perennial issue in state capitols nationwide as states deal with rising costs, a laundry list of federal mandates and an increasing number of education priorities. The debate will likely center around the equity of funding as states continuously try to ensure an equal opportunity education for all students. Legal challenges to state funding formulas are currently pending in **Connecticut, Iowa** and **Kansas**.

Connecticut has appealed a lower court ruling that said the state is “defaulting on its constitutional duty” to provide all students with an equal education. The ruling by Superior Court Judge Thomas Moukwasher ordered the state to enact reforms including changing how schools and special education are funded, as well as how teachers are paid and evaluated. According to [Connecticut Magazine](#), Democratic Attorney General George Jepsen has asked the legislature to address many of the concerns raised by the ruling. Another lawsuit was recently filed in **Iowa** that alleges that the state’s school funding formula is a violation of equal protection, due process and of the students’ civil rights, the [Quad-City Times](#) reports. **Kansas** lawmakers are awaiting the outcome of a state Supreme Court ruling that could force the state to spend hundreds of millions more on public education. According to [The Wichita Eagle](#), Republican Gov. Sam Brownback wants to move away from a demographics-based formula to a formula that depends on student outcomes. Regardless of the court’s ruling the state will need to replace the current block grant funding system which expires in June. Retiring Senate Vice-President Jeff King, R-Independence, predicts that this session will surpass the 2015 session as the longest on record.

Looking ahead to the upcoming session a number of states including **Illinois, Washington, Wisconsin** and **Wyoming** are looking to make education funding changes in order to make funding more equitable, increase the amount of funding or create a more sustainable funding model.

A bi-partisan group of **Illinois** lawmakers on the education funding reform commission have been working through the budget impasse to develop the framework for a new funding formula by the February 1 deadline set by Republican Gov. Bruce Rauner, [The State Journal-Register](#) reports. **Wisconsin** Republican Gov. Scott Walker told [WISC-TV](#) that school funding is his top priority in the upcoming state budget. The Education Department has requested over \$700 million in funding for the upcoming school year but Governor Walker didn’t comment on his budgetary plans. **Wyoming** lawmakers failed to approve three bills that would have cut education spending by reverting to the evidence based model of education funding and increasing class sizes. They instead voted to create a subcommittee that is tasked with working on a conceptual amendment known as the education deficit reduction bill. According to the [Casper Star-Tribune](#), in the upcoming year education funding faces as deficit of up to \$400 million.



Legislation pertaining to standardized testing was enacted in 37 states, the District of Columbia and Congress:

| | |
|---------------|----------------------|
| Alabama | Nebraska |
| Arizona | New Hampshire |
| California | New Mexico |
| Colorado | New York |
| Delaware | North Carolina |
| Florida | Ohio |
| Georgia | Oklahoma |
| Idaho | Pennsylvania |
| Illinois | South Carolina |
| Indiana | South Dakota |
| Iowa | Tennessee |
| Kansas | Utah |
| Kentucky | Virginia |
| Louisiana | Washington |
| Maine | West Virginia |
| Maryland | Wisconsin |
| Massachusetts | Wyoming |
| Michigan | District of Columbia |
| Minnesota | U.S. Congress |
| Mississippi | |

Every Student Succeeds Act and Standardized Testing

States are expected to turn their attention toward compliance with the federal Every Student Succeeds Act (ESSA) ([Public Law 114-95](#)) in 2017. ESSA, which builds on the school accountability and improvement provisions of the No Child Left Behind Act ([Public Law 107-110](#)), mandates annual statewide assessments for all students as the cornerstone for measuring progress and quality of education at the district and school level.

Standardized testing, including nationally recognized college and career readiness examinations such as the American College Test (ACT) and Scholastic Aptitude Test (SAT), was a hot topic for legislation in 2016. Legislation pertaining to standardized testing was enacted in 37 states, the **District of Columbia** and **U.S. Congress**. **New Jersey** implemented new high school graduation [requirements](#), which dictate a passing score on certain exams developed by the Partnership

for Assessment of Readiness for College and Careers beginning with the class of 2021. In **Oklahoma** [HB 3218](#) was signed by Republican Gov. Mary Fallin on June 6. The law requires the state to adopt a statewide system of assessments for grades 3-12 to comply with ESSA beginning with the 2017-2018 school year. If funds are available, the student assessment system could include a nationally recognized college and career readiness assessment that would be administered in high school at no cost to the student.

High school graduation requirements were the subject of renewed debate, with 30 states introducing legislation that would have amended them. [The Columbus Dispatch](#) reports that new graduation [requirements](#) in **Ohio**, which mandates demonstration of readiness for college or a career by proficiency on end-of-course tests, receipt of industry credentials or “remediation-free” scores on either the ACT or SAT, will be under review by the legislature.



Legislation pertaining to standardized testing has been prefiled for the 2017 session in **Arkansas, Missouri, Nevada, Oklahoma, Tennessee, Texas** and **Virginia**. The prefiled legislation is indicative of the varied approaches states will take to standardized testing in 2017. **Nevada** [AB 7](#), sponsored by the Assembly Education Committee, was prefiled for the 2017 session and referred to the Education Committee. The bill would authorize the Education Board to select more than one college readiness assessment, repeal current statute that mandates the contents of school improvement plans and instead authorizes the board to implement the requirements via a regulation. In **Texas**, legislation ([HB 515](#), [HB 546](#) and [SB 215](#)), sponsored by both Democrats and Republicans, has been introduced to limit state-required assessment instruments to those mandated by federal law.

With implementation plans due to the **U.S.** Department of Education by April, a number of states are exploring non-legislative methods to comply with ESSA. **Colorado** Education Commissioner Kathy Anthes told [Chalkbeat Colorado](#) that no legislative action is needed to ensure the state's compliance; while **Washington** has delayed its submission of its ESSA compliance plan after parents and teachers demanded more time to look at it, [The Seattle Times](#) reports.

ENERGY AND THE ENVIRONMENT

Clean Energy

Republican President-elect Donald Trump has named **Oklahoma** Republican Attorney General Scott Pruitt to head the Environmental Protection Agency (EPA), [Governing](#) reports. Attorney General Pruitt is a noted opponent of the EPA and Democratic President Barack Obama's clean energy initiatives. He has taken a lead nationally in resisting the administration's national mandates for cleaner burning power plants, which has been a linchpin of the administration's environmental policy agenda. Pruitt's appointment signals that Trump will follow through on a campaign promise to dismantle President Obama's efforts to combat climate change. The change at the EPA will likely only marginally affect states that have more stringent environmental standards, like **California**, but it means that certain aspects of environmental policy could once again be primarily in control of the states as federal standards are enforced less enthusiastically.

California and **Maryland** enacted major legislation in 2016 addressing greenhouse gas emissions. California's [SB 32/Chapter 249](#), signed by Democratic Gov. Jerry Brown in September, codifies a highly ambitious target for greenhouse gas reduction of 40 percent below 1990 emissions levels by 2030. Related law [AB 197/Chapter 197](#) increases legislative oversight over the State Air Resources Board, and directs the board to approve a statewide greenhouse gas emissions limit equivalent to 1990 emissions levels by 2020. Maryland Republican Gov. Larry Hogan signed [SB 323/Chapter 11](#) in April. That bill re-enacted the state's emission-reduction program and changed the emissions target to match California's goal.



Water Contamination

Though perfluorinated chemicals (PFCs) have been showing up in the news more frequently in the past few years, they have been on the radar of organizations such as the [U.S. Environmental Protection Agency](#) (EPA) and the [National Institute of Environmental Health Sciences](#) since the 1980's. Perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) are two of the more commonly known PFCs seen in the media across the country as more states and communities continue or begin testing PFC levels in their ground water and populations. The EPA released the following statement and long-term health advisory in November 2016, setting a national guideline for states as they test for PFC levels:

To provide Americans, including the most sensitive populations, with a margin of protection from a lifetime exposure to PFOA and PFOS from drinking water, EPA has established the health advisory levels at 70 parts per trillion.

Though PFOS is no longer manufactured in the U.S. and PFOA is close to full elimination, these PFCs contaminate the environment as byproducts. The EPA advisory is not a federal regulation, rather it is a guideline. States have been conducting water, well and blood tests for PFC levels surrounding areas of manufacturing that use/used PFCs and areas where products containing PFCs such as Aqueous Film Forming Foams were used repeatedly. **California, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, Virginia and Washington** are some of the states taking action on PFC contamination.

States like New Hampshire have passed [regulations](#) at EPA's maximum contamination level (MCL) guideline of 70 parts per trillion (ppt), while other states such as [Vermont](#) have set their MCL level; Vermont's PFOA and PFOS MCL is 20 ppt. As more tests are run and PFC exposure and water contamination is linked to health issues it is expected that more states will take action in the upcoming session.

HEALTHCARE

Pharmaceutical Pricing

Healthcare-related costs will always be a hot issue amongst local, state and federal elected officials and 2016 was no exception. Not only did the price of the life saving device EpiPen soar, but there was also a 128 percent spike in dermatitis treatment creams and 129 percent increase for treatment of erectile dysfunction drugs. The pharmaceutical pricing battle will be in full force in 2017 and beyond, [MarketWatch](#) reports.



Pharmaceutical companies will continue to be pressured by state and federal officials demanding answers for their constituents.

Some pharmaceutical companies have taken action through “self regulating”; Allergan pledged in September that price increases would stay below double digits each year, Novo Nordisk soon followed in December.

States like **California** ([AB 463](#)), **Massachusetts** ([SB 1048](#)) and **New York** ([FY '17 Budget](#)) proposed legislation last session to combat transparency in an attempt to

regain pricing control. According to [Stat](#), **Vermont** was the first state to be successful at passing a [law](#) to require price hike justification. The law calls for elected officials to identify 15 drugs that rose 50 percent and 15 drugs that rose 15 percent over a 12-month period. The state attorney general is then tasked with contacting and gathering contributing factors for the increase from each manufacturer; all information will be posted on the website and a \$10,000 penalty is imposed upon violation.

Pharmaceutical companies will continue to be pressured by state and federal officials demanding answers for their constituents. The [Maryville Daily Forum](#) reports that U.S. Senators Susan Collins, R-Maine, and Claire McCaskill, D-Missouri, are taking action after reviewing a yearlong investigation into major pharmaceutical companies.

Opioids

As the opioid crisis continues to rage on across the nation—over 30,000 Americans died as a result of opioid overdoses in 2016 alone, according to [PBS](#)—states are continuing to take steps to fight the battle against the abuse of these drugs on multiple fronts. These efforts are focused mainly on two broad issue areas—reducing the availability of heroin and prescription opioids, and expanding programs aimed at treating those who are addicted to these drugs. A number of states have also worked to expand access to and training for Naloxone, the opioid overdose reversal drug. State attorneys general have also been successful in negotiating price decreases for state agencies seeking to purchase the drug.

Other states have worked to crack down on the availability of prescription opioids, seeing them as a gateway drug for heroin abuse. As many as 30 percent of those who use opioids to treat chronic pain become addicted to the drugs, according to a [survey](#) conducted by *The Washington Post* and Kaiser Family Foundation. Armed with this knowledge, numerous state medical and pharmacy boards have worked to revise the guidelines that doctors and pharmacists use to prescribe and dispense opioid analgesics for the treatment of chronic pain, restricting how and when these drugs may be prescribed, and in what quantities.

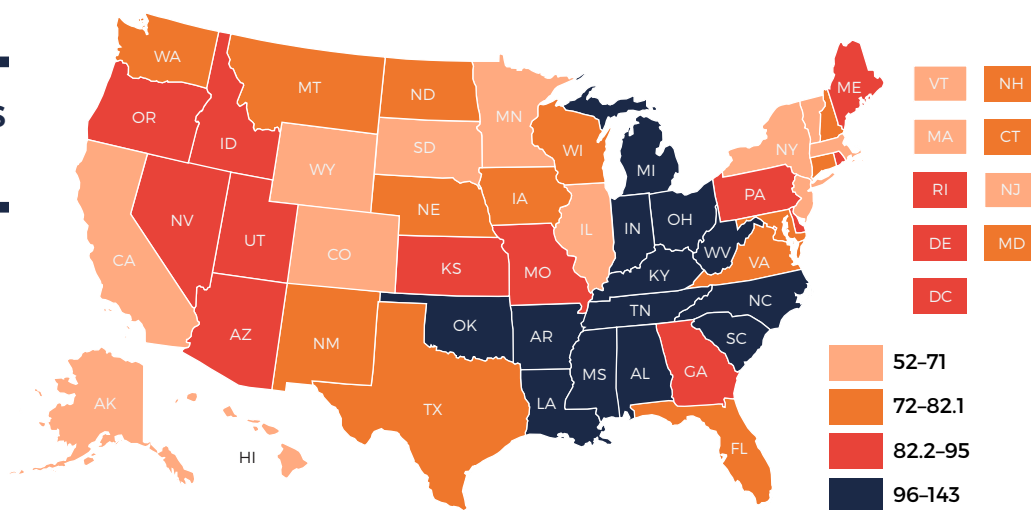


The federal government has also taken a role in combatting opioid abuse alongside state governments. According to [NCSL](#), the **U.S. Centers for Disease Control** has issued grants to 16 states for the purpose of expanding prescription drug monitoring programs, educating health care providers, insurers and patients on the risks involved with opioid abuse and expanding access to opioid antagonists.

With numerous types of state initiatives beginning to show success, states will undoubtedly continue to take aggressive steps to combat opioid abuse during the 2017 legislative session, just as they did in 2016.

Opioid Prescriptions Per 100 People

SOURCE: [Centers for Disease Control and Prevention](#) based on 2012 data from the IMS National Prescription Audit



Repealing the Affordable Care Act

With the 2016 elections now in the rearview and the dust beginning to settle, in the foreground for the nation are large changes to health policy at both the state and federal level, with the two being inextricably linked as a result of the Affordable Care Act (ACA) and congressional Republican plans to repeal the act. While states will tackle many large issues on their own this year, they will also be keeping a close eye on any maneuvers taken at the federal level. How federal policy pans out will inevitably dictate how states will respond.

In past years, one of the main focuses in state health policy was whether to adopt the optional expansion of Medicaid programs, one of the main provisions of the ACA. Any rollback of this expansion would force states who have done so—currently 32 states plus the **District of Columbia**, according to the [Kaiser Family Foundation](#)—to grapple with a sudden loss of federal funds, and how or whether to continue covering the individuals who received benefits under an expanded Medicaid program. A repeal would also place the status of the federal and state exchanges in limbo, depending on how lawmakers choose to go about doing so.



According to [Vox](#), congressional Republicans have not yet united around a single plan on how to go about repealing the ACA and to what extent, but there are currently at least seven different plans in Congress that would all repeal and replace the act to differing extents. Whatever plan Congress chooses in repealing and replacing the ACA, it will undoubtedly have major effects on the direction of state policy for years to come. States will need to keep a close eye on any developments and be prepared to react quickly to ensure that any federal changes do not cause avoidable chaos at the state level.

EMERGING ISSUES

Autonomous Vehicles

In September, the **U.S.** Department of Transportation released a [guidance document](#) on highly automated vehicles (HAVs). This document, along with the accompanying [press release](#), signaled the department's support of HAV deployment as a technology that has "enormous potential for improving safety and mobility for Americans on the road."

At the state level, autonomous vehicle technology regulation is patchwork, with **California** and **Michigan** at the forefront of permitting testing and **North Dakota** and **Utah** committing to study HAV technology. Each year, more bills related to autonomous vehicles are introduced in state legislatures than the previous session. The trend has been towards more permissive legislation, with bills filed in many states that would remove the requirement that a human operator be present in the vehicle. In December, **Michigan** Republican Gov. Rick Snyder signed a package of autonomous vehicle legislation that allows the operation of autonomous vehicles in the state, when previously only testing had been allowed. According to a [press release](#) by Governor Snyder, the legislation positions the state as the world leader in transforming the auto industry.

The path to deploying autonomous vehicles throughout the U.S. has not been entirely smooth. In **California**, the Department of Motor Vehicles revoked the registration of 16 autonomous vehicles being tested by Uber in San Francisco, according to [NPR](#). The state claims Uber failed to file the necessary permits, while the company claims that their self-driving cars don't fall under the state's definition of autonomous vehicles, reports [The New York Times](#). Additionally, consumer privacy and data security remain issues that need to be addressed as HAVs become more commonplace throughout the country.



Independent Contractors

The discussion of employee classification and the use of independent contractors has increased over the past few years with the rise of the gig economy and other employers who rely on the use of independent contractors. Employee misclassification is the practice of labeling an employee as an independent contractor and thus not paying unemployment and other taxes and shielding them from workers compensation and unemployment insurance. This practice has caught the eyes of lawmakers who see it as detrimental to the worker and to the states.

A report from the [National Employment Law Project](#) shows that employer misclassification costs the federal government \$2.72 billion per year. At the state level, many have taken fighting employee misclassification into their own hands. At least 19 states including **Iowa, Massachusetts, Michigan, New Jersey** and **New York** have their own interagency task forces to study the problem and enforce existing rules.

Uber [announced](#) in April that it was settling two class-action lawsuits totaling \$100 million for the misclassification of independent contractors.

Employee classification bills were introduced in 21 states and the **U.S.** Congress in 2016 with laws being enacted in **Arizona, Colorado, Illinois, Maine, North Carolina, Tennessee** and **Utah**. We anticipate this being a key issue this year with the increased rise of the gig economy and states looking to collect on missed out taxes.

21 states and Congress introduced employee classification bills in 2016:

Arizona*
Colorado*
Georgia
Hawaii
Illinois*
Indiana
Kentucky
Louisiana
Massachusetts
Maine*
Michigan
Missouri
Nebraska
New York
North Carolina*
Ohio
Pennsylvania
Tennessee*
Utah*
Vermont
Washington
U.S. Congress

*Enacted

Marijuana

The November 8 elections marked a historical day for marijuana regulation across the country. The industry saw eight wins—**California, Maine, Massachusetts** and **Nevada** approved measures that allow for the recreational use of marijuana. **Arkansas, Florida** and **North Dakota** approved medical marijuana initiatives, and **Montana** voted to lift limitations on an existing medical marijuana law. Now 29 states, spanning nearly



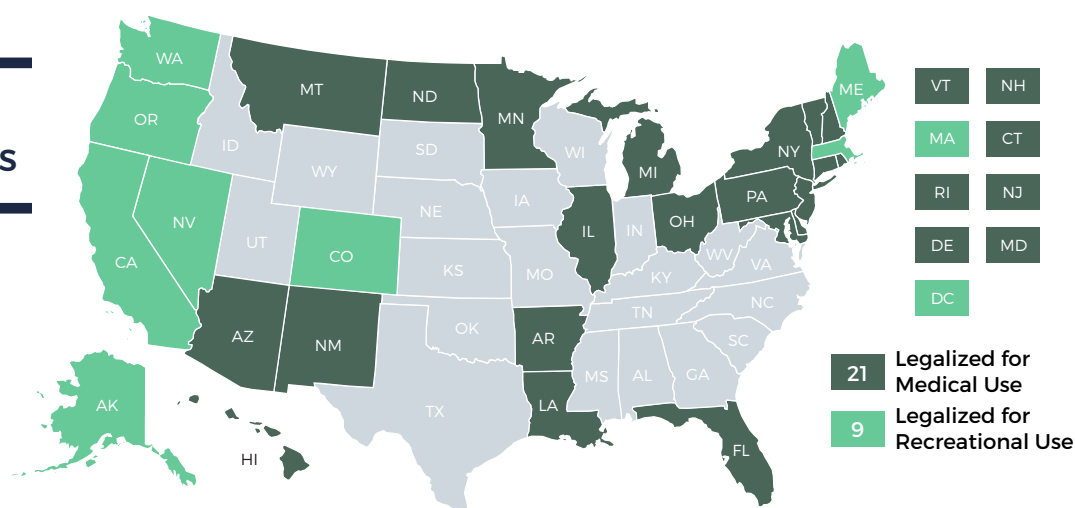
every region of the country, and the **District of Columbia** have laws allowing some form of marijuana liberalization, with eight of those states and the District of Columbia permitting full recreational use for individuals over the age of 21.

Regardless of the fact that a majority of states have loosened restrictions on the sale and possession of marijuana, it is still illegal under federal law, classified as a schedule 3 drug, creating much difficulty and confusion around how to legally transact money across the industry. Currently, only 301 out of the 11,954 federally regulated banks and credit unions are willing to service the marijuana industry.

While the Obama administration has essentially taken a hands-off approach to state legalization initiatives, the incoming Trump administration could choose to enforce the current federal law. While Trump has varied his opinion on marijuana and has said that he supports the legalization of medical marijuana, Republican Attorney General nominee Jeff Sessions has voiced a clear opinion against it, and could easily shut businesses and arrest vendors and growers if he takes office, [Politico](#) reports. However, there are many reasons why the administration may not choose to enforce the federal ban and may even loosen restrictions, so as to benefit from the large source of tax income, support states rights and limit illegal transactions that continue to take place over the border in Mexico.

Marijuana Legalization Status

SOURCE: [Governing](#)





Daily Fantasy Sports

In the fall of 2015, daily fantasy sports, a multibillion-dollar industry in which players pay a fee on a website, choose a virtual roster of athletes and are scored points based on the real-world outcomes of professional games in an effort to win cash prizes, was mostly unregulated. In 2016, **Colorado, Indiana, Kansas, Massachusetts, Missouri, New York, Tennessee** and **Virginia** passed laws legalizing daily fantasy sports. The laws generally establish which state agency will oversee the industry, licensing and renewal fees for daily sports companies, age requirements for players, and consumer protection standards.

New York Democratic Gov. Andrew Cuomo signed [AB 10736/Chapter 237](#) on August 3. Effective immediately, the law requires daily fantasy sports companies to register with the New York State Gaming Commission and imposes a tax equal to 15 percent of their gross revenue in the state and a yearly one-half percent tax up to \$50,000. It also establishes regulations including limiting players to one active and continuously used account, prohibiting minors from participating and ensuring that, unless approved by the commission, online fantasy or simulation sports games or contests with an entry fee are not being directly or indirectly promoted or advertised during the conduct of games. According to [The Wall Street Journal](#), Governor Cuomo said, “This legislation strikes the right balance that allows this activity to continue with oversight from state regulators, new consumer protections and more funding for education.” **Kansas** enacted [HB 2155](#), a broad charitable gaming bill, which also authorized daily fantasy sports. **Massachusetts** Republican Gov. Charlie Baker signed [HB 4569/Chapter 219](#), an economic development bill, which specifies that fantasy sports contests “shall not be considered illegal gaming.” Daily fantasy sports will be legal in Massachusetts through July 31, 2018; a commission of lawmakers and industry experts will make legislative recommendations for daily fantasy sports beyond that time.

DraftKings and FanDuel, the two largest daily fantasy sports companies, announced in November their plans to merge, [NPR](#) reports. The merger requires federal approval before it is final.

A few bills that focus on daily fantasy sports have been prefiled for the 2017 legislative session, including **Montana** [SB 25](#), which would exclude regulation of small-time, social fantasy sports leagues under state laws regulating internet gaming. For example, those that only offer small prizes or charge less than \$35 to join, as well as those that only award prizes of a minimal value, continue for the length of the season, and impose no charge for draft picks or trades and whose sponsoring vendor registers with the department.



TECHNOLOGY

Biometrics

With every technological advancement comes new concerns for lawmakers. There is a growing trend of using biometric identifiers such as voice, fingerprints or facial features, for account verification and background checks. With new technology on the horizon that has not yet hit the mainstream market, there will be an increase in lawmaker debate about passage of new laws. A handful of states have already considered updating current data privacy or student privacy laws to include new definitions of “biometrics identifier,” while others attempt to regulate or restrict use of biometrics by companies, schools or state agencies.

Illinois was the first state to pass a law with enactment of the “Biometrics Information Privacy Act” in 2008. **Connecticut** and **Texas** then followed with biometrics laws. In 2016, Illinois legislators introduced language to amend their law. One amendment would have prohibited requiring customers to provide biometric identifiers for goods or services and another would have allowed security agencies to collect certain biometric information. However, these amendments ultimately did not pass, but could come up again in 2017. Lawmakers in the state did successfully add unique biometric data used for authentication to the definition of “personal information” in an amendment to the “Personal Information Protection Act” through [HB 1260/Public Act 99-0503](#). **North Carolina** ([HB 632](#)) and **Utah** ([HB 358](#)) also added biometrics to student data protection bills that passed in 2016.

In 2017, we can expect to see similar bills, but others may try to broaden the scope. **Missouri** [HB 201](#), which would prohibit school districts from collecting biometric information on students without the express written consent of their parents or legal guardian, was prefiled on December 12. **Texas** Sen. Van Taylor, R-Collin, prefiled [SB 281](#), which proposes to limit the use of biometrics by a government body. The bill would prohibit a governmental agency from capturing or possessing a biometric identifier as a prerequisite for providing a governmental service to someone unless it obtains the prior written consent of the person or his or her legal guardian.

In both 2015 and 2016, **Washington** Rep. Jeff Morris, D-Mount Vernon, pushed a first-of-its-kind bill that would prohibit commercial entities from obtaining or selling biometric information collected about individuals without their consent and clear and conspicuous notice. The bill passed the House but faced harsh opposition from businesses so it failed to get Senate support. This bill will likely come out again in 2017.



Small Cells

Small cells are compact, short-range base stations that complement mobile phone service from larger towers by helping to alleviate network congestion. The Federal Communications Commission sees small cells as vital in deploying 5G service, and in August, announced an [agreement](#) to eliminate historic preservation review for small cell deployments. During the 2016 legislative session, bills aiming to help expedite the permitting process for small cell deployment were considered in **California, Kansas** and **Ohio**. Kansas [HB 2131](#) was enacted in April and Ohio [SB 331](#) was signed by Republican Gov. John Kasich on December 19. The expedited process has not been without opposition, with Cleveland's mayor opposing legislation that would prevent local municipalities from regulating the installation of small cells, according to [WKYC](#).

While legislation on the issue has not yet been prefiled, permitting of small cells is expected to be an issue states and municipalities consider in 2017 as telecommunications technology continues to advance.

Student Privacy

Student data privacy was a priority issue in state legislatures in 2016. A report by the [Data Quality Campaign](#), a nonprofit advocacy group that aims to increase public understanding of education data, summarizes the present landscape of student privacy legislation around the country. The landmark **California** [SB 1177/Chapter 839](#), enacted in 2014 and cited as the Student Online Personal Information Protection Act (SOPIPA), was the first comprehensive legislation aimed at protecting student data and privacy and the SOPIPA model remains at the center of the student privacy policy discussion. **Colorado, Connecticut, Tennessee** and **Virginia** enacted SOPIPA model legislation in 2016, though many other states had enacted similar legislation prior to the start of the biennium. Most of the states that passed new laws in 2016 had already passed student privacy legislation, a sign that states are beginning to build on prior efforts as the conversation around student data privacy evolves around areas such as social media privacy and students' digital privacy rights beyond their education records.

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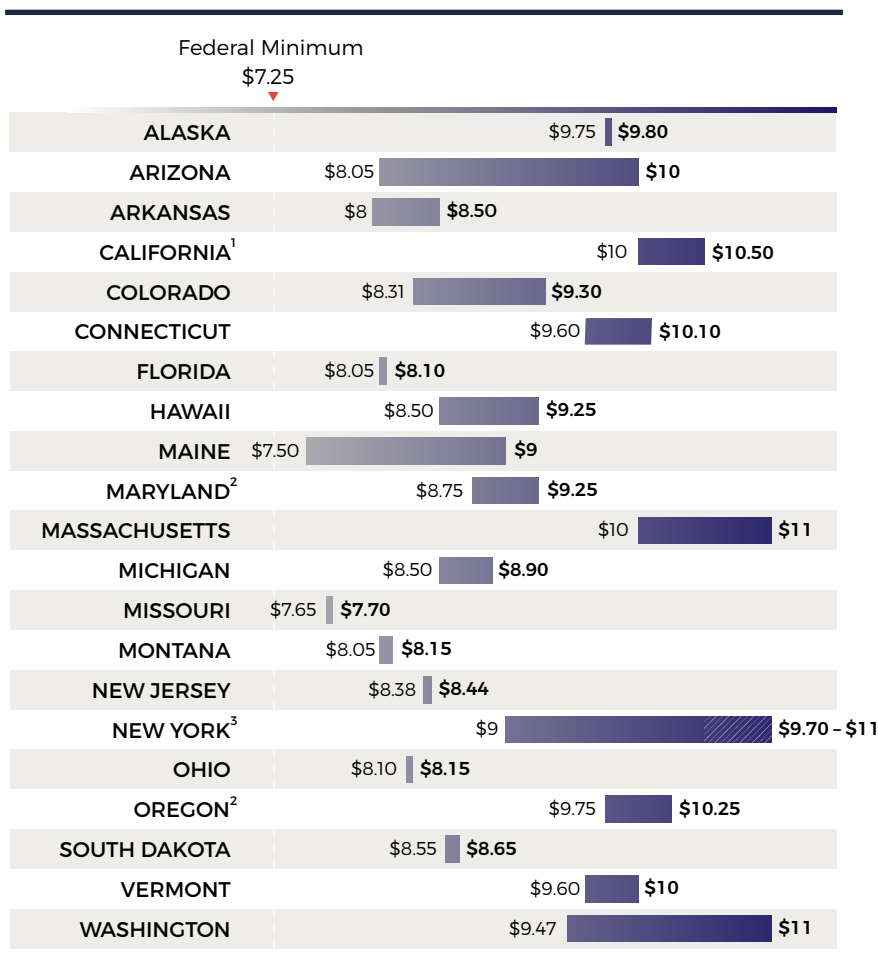
providers and states or school districts. Some bills mandated unspecified provisions that safeguard student privacy and security, while others indicated specific terms that must be contained in such a contract, such as prohibiting a private vendor from selling student data. **Colorado** [HB 1423/Chapter 355](#) and **Connecticut** [HB 5469/Public Act 16-189](#), both based on the SOPIPA model, distinguish between third parties with which schools have a negotiated contract and those that do not have a formal contract. This is the first time this strategy has appeared in student privacy legislation, and more states may seek to replicate this approach in the upcoming session.

CIVIL LIBERTIES

Minimum Wage

The [U.S. Department of Labor](#) sets the federal minimum wage, which has been at \$7.25 since July 2009. Minimum wages are regulated within individual states and are always a hot topic for legislative agendas and ballot initiatives each cycle. Groups such as [The Fairness Project](#) and [Fight for \\$15](#) have taken their campaigns to the states and major cities across the countries. [CNNMoney](#) reports that 21 states will see minimum wage increases in 2017, including four states—**Arizona, Colorado, Maine** and **Washington**—who approved increases by ballot measures in November. Some states will see a very small increase such as [Alaska](#) raising its minimum wage by five cents to \$9.80, while others will see more significant raises such as [Arizona](#) raising their minimum wage by more than 24 percent to \$10.

2017 Minimum Wage Increases



¹ For companies with more than 25 employees

² Effective July 1, 2017

³ \$9.70 - \$11 depending on city/county

SOURCES: [CNNMoney](#) and [U.S. Department of Labor](#)



Iowa is among the group of states whose state minimum wage is set at the federal wage of \$7.25. Republican Gov. Terry Branstad has stated that he will meet with Iowa elected leaders and other experts to discuss raising the minimum wage, reports [The Des Moines Register](#). Other states to keep an eye on for increase discussions with minimum wages set at \$7.25 are **Idaho, Indiana, Kansas, Kentucky, New Hampshire, North Carolina, North Dakota, Oklahoma, Pennsylvania, Texas, Utah, Virginia** and **Wisconsin**.

Tobacco Age Laws

Efforts to increase the legal smoking age remained an important topic of legislative focus for the tobacco industry during 2016. A total of 83 bills with advertising and youth provisions were introduced in 23 states and the District of Columbia. Of these, 15 were enacted in **California, the District of Columbia, Hawaii, Illinois, Iowa, Oklahoma, Tennessee, Vermont, Washington** and **West Virginia**. Over 200 local ordinances have been adopted in 26 states that increase the legal age to purchase tobacco products in various cities and counties across the country, reports tobacco21.org.

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On May 4, Democratic Gov. Jerry Brown signed **California SBX2 7/Chapter 8**, making California the second state to increase the legal age to purchase tobacco products from 18 to 21 years of age, following **Hawaii's** enactment of similar legislation in 2015. Effective immediately, the law prohibits the sale and advertising of tobacco products, including electronic cigarettes, to anyone under the age of 21.

On November 29, Democratic Mayor Muriel Bowser signed **D.C. B21-0152/Act A21-0545**, raising the legal age to purchase tobacco products in the District. The law prohibits the sale of tobacco products to individuals under the age of 21 and additionally prohibits the issuance of vending machine operator's licenses for the sale of tobacco products in an establishment that admits persons under the age of 21.

Five bills will carry over from **New Jersey** and **Virginia** into the 2017 session and legislators in **Texas** have prefiled two bills, [SB 183](#) and [SB 228](#), which would increase the legal age to purchase tobacco products, including e-cigarettes, from 18 to 21.



Women's Reproductive Rights

Access to women's reproductive rights in the **U.S.** is expected to see a shift in 2017. According to [CNN](#), Republican President-elect Donald Trump has said that he plans to appoint “pro-life” judges to the U.S. Supreme Court. Nine states have introduced some form of a “fetal heartbeat bill,” which establishes that as soon as a fetus’ heartbeat can be detected, abortions are illegal. Fetal heartbeats can be detected around six or seven weeks into a pregnancy. In **Ohio**, Republican Gov. John Kasich vetoed that bill ([HB 493](#)), but signed another piece of legislation ([SB 127](#)) banning abortions after 20 weeks and many other states may follow suit.

According to [Bloomberg](#), there are five states with only one abortion clinic: **Mississippi, Missouri, North Dakota, South Dakota** and **Wyoming**. In November, Planned Parenthood and the ACLU sued **Alaska, Missouri** and **North Carolina** because of existing laws designed to prevent or limit access to abortions, [The Washington Post](#) reports.

In 2013, **Texas** passed [HB 2](#), which established restrictions on abortion procedures, providers and facilities. In June 2016, the U.S. Supreme Court heard [Whole Woman's Health v. Hellerstedt](#) and found parts of HB 2 to be unconstitutional. The [decision of the court](#) stated the Texas law created an undue burden and did not “confer medical benefits sufficient to justify the burdens upon access...” When other states such as **Mississippi** and **Wisconsin** tried to challenge the ruling, they were unsuccessful.

In December, the **New York**-based Center for Reproductive Rights filed a [lawsuit](#) in federal court seeking to block a new Texas rule requiring the burial or cremation of fetal remains from abortions or miscarriages. Texas is the 10th state with regulations like this on the books. With conservative lawmakers in control of many state legislatures, governors offices, congress and the executive branch it is likely we will see agendas pushed that have additional restrictions on access to women's reproductive health services.

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Gun Control

With significant gun control measures at an impasse in congress, several states put gun control measures on the ballot this fall with a focus on background checks, private sales and large capacity magazines. **California** voters approved [Proposition 63](#), a change to state law requiring background checks for the purchase of ammunition and a ban of large-capacity magazines. Gun control advocates lost their efforts in **Maine** to require all private gun sales to be subjected to a background check. **Nevada** [voted](#) to have all unlicensed gun sales go through a licensed gun dealer who would run a background check on the parties involved. Voters in **Washington** [supported](#) a statute that authorizes courts to issue extreme risk protection orders to remove an individual's access to firearms.

This year, some states will look to ease their control standards, making it easier for people to buy and carry firearms. Legislation has been filed in **Texas** ([HB 375](#)) that would permit what is being referred to as “constitutional carry,” which would give every resident the right to carry a weapon without a license. [SB 140](#) has also been filed in **Florida** and would allow open carry for licensed gun owners. **Indiana** will also see a “constitutional carry” bill introduced in 2017. There are currently 11 states and **Puerto Rico** where this law stands.