

ALEC 2013: JOBS, INNOVATION, AND OPPORTUNITY IN THE STATES

TWENTY FIVE PROPOSALS TO PUT THE STATES BACK TO WORK



About the American Legislative Exchange Council

Jobs, Innovation, and Opportunity in the States has been published by the American Legislative Exchange Council (ALEC) as part of its mission to discuss, develop, and disseminate public policies which expand free markets, promote economic growth and limit the size of government. ALEC is the nation's largest nonpartisan, voluntary membership organization of state legislators, with more than 2,000 members across the nation. ALEC is governed by a Board of Directors of state legislators, which is advised by a Private Enterprise Board representing major corporate and foundation sponsors. ALEC is classified by the Internal Revenue Service as a 501(c)(3) nonprofit, public policy and educational organization. Individuals, philanthropic foundations, corporations, companies, or associations are eligible to support ALEC's work through tax-deductible gifts.

Acknowledgements

A special thanks to our state legislators who created our model legislation and who work tirelessly in the states every day to advance the principles of limited government and free-markets.

Managing Editors

Michael Bowman, Senior Director of Policy & Strategic Initiatives

Michael Hough, Resident Fellow

Authors

Michael Hough, Resident Fellow

Amy Kjose, Civil Justice Task Force Director

Sean Riley, Health & Human Services Task Force

Director

John Stephenson, Communications & Technology Task Force Director

Cara Sullivan, Interim Commerce, Insurance, and Economic Development Task Force Director

Jonathan Williams, Tax & Fiscal Policy Task Force Director

Todd Wynn, Energy, Environment, and Agriculture Task Force Director

Special Thanks

First our appreciation to our supporters, members, and our Executive Director Ron Scheberle and the entire ALEC staff that enables this model legislation and this publication to happen.

Model legislation is available at www.alec.org. For questions about model legislation contact Briana Mulder at bmulder@alec.org 202-742-8507



JOB, INNOVATION, AND OPPORTUNITY IN THE STATES

TWENTY FIVE PROPOSALS TO PUT THE STATES BACK TO WORK

With unemployment remaining stubbornly high, and most Americans worrying about pocketbook issues like jobs, energy costs, retirement security, and health care affordability – ALEC releases its plan for Jobs, Innovation, and Opportunity.

State lawmakers today face very difficult economic challenges. Since 1973, ALEC has focused on providing solutions to America’s biggest problems. State lawmakers can conquer today’s economic challenges by refocusing on our nation’s founding principles of limited government and free markets. The states, not Washington, D.C., must take the lead in restarting America’s economic engine and putting people back to work.

This book contains information on 25 pieces of model legislation in the following nine subject areas:

1. Limiting Taxes and the Growth of Big Government	4
2. Protecting Workers’ Retirements	7
3. Harnessing America’s Energy Resources and Reducing Costs	9
4. Cutting Red Tape and Eliminating Unnecessary Regulations	11
5. Economic Opportunity	13
6. Harnessing Innovation	15
7. Improving Education	17
8. Increasing Access to Health Care and Controlling Costs	19
9. Preventing Lawsuit Abuse	21

1 LIMITING TAXES AND THE GROWTH OF BIG GOVERNMENT

Problem: Excessive Growth of State Governments

Today, states face structural deficits created by overspending. Most of the legislative “fixes” over the past few years for state budget gaps have merely postponed or obscured the problems, rather than addressing them directly.

According to the Mercatus Center at George Mason University, “Rapid growth in per capita spending, a lack of economic freedom, and weak balanced budget rules caused the [budget] gaps.”¹ The recent recession exposed these underlying issues. From 1985 to 2005, most state budgets doubled, and some tripled in size.² In the past decade alone, state and local budgets grew 90 percent faster than the private sector’s Gross Domestic Product (GDP).³

To solve this problem, the temptation will be to use a “business-as-usual” approach: raise taxes, raid non-general fund accounts, delay funding of some legislation, and avoid fully funding pensions to postpone meaningful budget reforms. Some of these actions may give states a temporary “patch” in their budget shortfall, but when pension tabs for delayed contributions come due, and when there are few off-budget accounts left to raid, states that did not take real action to solve their budgetary shortfalls will face even greater budget deficits.

Additionally, as ALEC’s *Rich States, Poor States* publication so aptly points out, tax increases come at a very high cost: the erosion of state economic competitiveness. In the words of President John F. Kennedy: “An economy constrained by high tax rates will never produce enough revenue to balance the budget, just as it will never create enough jobs.”

“An economy constrained by high tax rates will never produce enough revenue to balance the budget, just as it will never create enough jobs.”

Solution: Protect Innovation from Bad Actors and Bureaucracy

Instead of continuing to increase spending and raise taxes, ALEC recommends that state lawmakers institute real reforms like amending state constitutions to limit the growth of spending and taxes, empowering governors with a line-item reduction veto to eliminate pork barrel spending, and requiring a two-thirds majorities in legislatures to raise taxes. These reforms will help get states back on the road to limited government and economic prosperity.

In addition, state lawmakers should establish performance based budgeting, which will measure the outcome of government programs. Lawmakers need to know if government programs are working or not. This will give lawmakers greater insight as to what programs are inefficient and should be eliminated and, vice-versa, which programs are effective and should be supported. Finally, legislators should establish a Council on Efficient Government to determine which programs currently being run by the government could be competitively bid out to the private sector.

ALEC Model Legislation

Tax and Expenditure Limitation Act

The *Tax and Expenditure Limitation (TEL) Act* recognizes the important tradeoff between constraints on the growth of state and local government, and the provision of adequate reserves to meet emergencies and to stabilize budgets over the business cycle. The *TEL* is a constitutional provision that links a tax and spending limit to an emergency reserve fund and a budget stabilization fund. The *TEL* also provides for temporary reductions in tax rates and/or tax rebates, when surplus revenue accumulates above the tax and spending limit and reserve funds.

Performance Audits of Government

It is essential that state governments establish credibility with the taxpayers by implementing independent performance audits to ensure accountability and guarantee that tax dollars are spent as effectively as possible. This measure requires the state auditor to conduct independent, comprehensive performance audits on state governments, agencies, programs, and accounts.

State Council on Competitive Government Act

The ALEC *State Council on Competitive Government Act* would make government more efficient, cost-effective and competitive by creating a state council to identify inefficiencies where the government is duplicating services currently provided by the private sector. The policy stops government from unfairly competing with the private sector and creates private sector jobs.

The Super Majority Act

Super-majority requirements are based on the premise that tax increases fuel excessive government spending. Therefore, to more effectively control the budgetary process, the ability to raise taxes or enact new taxes should be made as politically difficult as possible, require broad consensus, and be held to a high standard of accountability. The ALEC *Super Majority Act* calls for a constitutional provision requiring all tax and license fee impositions and increases to be approved by two-thirds of all members of each House. It provides for an exemption if there are insufficient revenues to pay interest on the state's debt.

⚙️ *Item-Reduction Veto Constitutional Amendment*

Currently, governors in 43 states have the authority to reduce state spending through the use of the line-item veto. This authority allows governors to prevent, or at least moderate, “pork-barrel” spending. The theory behind the line-item veto is that the executive, elected by the whole, can more easily stand up to regional and special interests than legislators. Of the 43 states with line-item vetoes, 10 states grant governors the item reduction veto. The item-reduction veto allows governors to reduce spending without striking the entire amount. The ALEC *Item-Reduction Veto Constitutional Amendment* calls for a constitutional provision giving the Governor the power to remove any item or items in whole or in part of any bill, approved by the legislature, making appropriations of money. The approved parts will become law and the rejected parts will become void.



2 PROTECTING WORKERS' RETIREMENTS

Problem: States Overpromising and Underperforming on State Pensions

Because lawmakers have overpromised and underfunded pensions for state employees, states are now facing trillions of dollars in underfunded pension costs and worker retirements have been put at risk. According to a study by State Budget Solutions, states now face a total of \$4.6 trillion in unfunded pension liabilities.⁴ Some states are worse off than others. California, for example, now faces almost \$400 billion in unfunded pension liabilities. Unless lawmakers dramatically reform their pension systems, states will have to either slash pensions or dramatically increase taxes and cut core government services.⁵

“According to a study by State Budget Solutions, states now face a total of \$4.6 trillion in unfunded pension liabilities.”

Solution: Reform State Pensions in order to Preserve them for Workers

States should consider replacing their defined-benefit plans with defined-contribution (401(k) style) plans for new employees. A defined-benefit plan specifies the amount of benefits provided. In a traditional defined-benefit plan, state taxpayers are exposed to high risk and the volatility of pension fund returns. This exposure makes it difficult for the state to project the unfunded liabilities that will be incurred by the plans, and to fund those liabilities. Another flaw in defined-benefit plans in the public sector is the systematic use of unrealistic assumptions regarding the rate of return on assets.

ALEC recommends that states follow the Government Accounting Standards Board (GASB) standards and come clean with the public every year with the full cost of unfunded pension liabilities.

ALEC Model Legislation



Defined Contribution Act

The defined-benefit model of retirement benefits for state and municipal employees is not fiscally sustainable. The ALEC *Defined Contribution Act* requires the legislature to direct the state retirement board to create and maintain a defined-contribution program in which all state and municipal employees will be automatically enrolled.

Promoting Transparency in State Unfunded Liabilities Act

It is clear that citizens are demanding greater transparency in accounting for the costs of state and local government. Given the large and growing unfunded liabilities in pension and Other Post-Employment Benefit plans (OPEB), it is crucial for state and local governments to meet accounting standards for these plans established by the Government Accounting Standards Board (GASB).

GASB requires state and local governments to account for OPEB expenses in their financial statements. OPEB expenses primarily include promises to retirees in the form of health care benefits and life and disability insurance.

Historically, states funded OPEB expenses on a pay as-you-go basis.

States or not required to use the GASB guidelines; however failure to do so may result in states receiving a downgrade in their credit rating.



3 HARNESSING AMERICA'S ENERGY RESOURCES AND REDUCING COSTS

Problem: Increasing Energy Costs are Derailing the Economy and Destroying Jobs

Approximately 29 states across the country have passed renewable energy mandates, also known as renewable portfolio standards. These mandates force electric utilities to provide a percentage or quota of politically-defined renewable energy (solar, wind, geothermal, etc.) as part of the electricity generation mix by a certain year.

States with renewable energy mandates are already seeing increases in electricity rates as the mandated electric utilities are forced to integrate renewable energy by the compliance deadlines. According to the Manhattan Institute, “The gap is particularly striking in coal-dependent states—seven such states with [renewable energy] mandates saw their rates soar by an average of 54.2 percent between 2001 and 2010, more than twice the average increase experienced

by seven other coal-dependent states without mandates.”⁶ Numerous economic studies have assessed the impact of renewable energy mandates on state economies and have found that integrating renewable energy onto the electricity grid will increase the cost of doing business and push companies to do business with other states or nations, thereby decreasing American competitiveness.

“It is imperative that states repeal costly renewable energy mandates in order to ensure affordable and reliable energy.”

The U.S. Bureau of Labor Statistics found that a family with annual income of \$50,000 or less takes a significant hit when energy prices increase. Nearly 50 percent of U.S. households earn less than \$50,000 per year, and these households spend more on energy than on food, spend twice as much on energy than on health care, and spend more on energy than on anything else except for housing.⁷ The picture becomes even grimmer for households with an annual income of less than \$30,000.⁸ It is imperative that states repeal costly renewable energy mandates in order to ensure affordable and reliable energy.

In addition, environmental permitting can add significant costs to the taxpayer and deter investment in the states. Environmental permitting is a necessary yet often lengthy process in the states and can add significant costs to both taxpayers and the entity filing for a permit. Often states do not have a mechanism for streamlining permitting for applicants that have shown a track record of good environmental performance thus hindering investment and economic growth in the state.

Solution: Eliminate Expensive Government Mandates and Red Tape

States should get out of the business of picking winners and losers when it comes to the energy. States should eliminate expensive renewable energy mandates that harm consumers and job creation. In addition, the permitting process for companies with a good environmental track record should be streamlined.

ALEC Model Legislation



Electricity Freedom Act

The ALEC *Electricity Freedom Act* repeals a state's requirement that electric utilities provide a certain percent of their electricity supplies from renewable energy sources by a certain year.



The Performance Based Permitting Act

The ALEC *Performance Based Permitting Act* establishes a performance based environmental permitting system that streamlines permitting for entities that have shown a history of compliance with environmental protections. This *Act* can increase protection of the environment because it encourages compliance with environmental laws. In addition, it decreases the impact on state taxpayers and improves the stewardship of natural resources because it allows good environmental performers to focus their resources on site and situation improvements.



4 CUTTING RED TAPE AND ELIMINATING UNNECESSARY REGULATIONS

Problem: Cost of Regulations is Hurting Businesses and Destroying Jobs

In 2009, the average American worked 64.61 days to pay for the cost of government regulations.⁹ The negative economic consequences of overregulation result in fewer jobs, lower wages, and suppressed economic growth. The regulatory burden associated with direct compliance costs is estimated at \$1.5 trillion annually.¹⁰ This cost is often shouldered directly by small businesses.

Overregulation can prevent a small business owner from opening their doors or from hiring a new employee. When you add up the cost of complying with a complex tax code, health care regulations, and environmental regulations – small business owners are correct to feel crushed.

Recently, the National Association of Manufacturers and the National Federation of Independent Businesses conducted a poll of small business owners and manufacturers and found the following:

- 67 percent of small business owners and manufacturers say there is too much uncertainty in the market today to expand, grow, or hire new workers.
- 69 percent say President Obama's Executive Branch and regulatory policies have hurt American small businesses and manufacturers.
- 55 percent say they would not start a business today given what they know now and in the current environment.
- 54 percent say other countries like China and India are more supportive of their small businesses and manufacturers than the United States.¹¹

This is not a regulatory environment in which small businesses can grow and our economy can thrive.

Solution: Implement Only Necessary Regulations and Give Businesses Flexibility

Lawmakers need to review the cost of regulations before they are implemented. This can be done by requiring a fiscal note explaining the impact of the regulation on small businesses and individuals. In addition, government agencies need to be given the ability to deal with individual cases on a one-on-one basis versus one-size-fits-all regulations. For example, if a junk yard is required to have a fence a certain height, but instead of building a new fence the junkyard owner simply augments an existing one with barbed wire, regulators should be given the ability to judge if this adequately meets the regulation or not.

ALEC Model Legislation

Regulatory Review and Rescission Act

The ALEC *Regulatory Review and Rescission Act* institutes a system allowing state lawmakers to examine the efficacy of regulations before implementation and to review costs, benefits, and potential impacts on employment. In addition, this *Act* provides a system for retrospective review of regulations three years after they take effect and grants the governor the power to rescind regulations after the retrospective review.

Regulatory Flexibility Act

The ALEC *Regulatory Flexibility Act* would improve state rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses. It requires state agencies that want to propose a regulation to prepare an economic impact statement including the number of small businesses subject to the regulation, the projected reporting and clerical costs required for compliance with the proposed regulation, a statement of the probable effect on small businesses, and a description of any less intrusive methods of achieving the purpose of the regulation.



5 ECONOMIC OPPORTUNITY

Problem: Government Creates Barriers for the Unemployed

With unemployment remaining consistently high over the last four years, no one has been hurt worse than low-income and unskilled workers. Unfortunately, the government often puts barriers in front of workers in the form of unnecessary occupational licenses.

According to a 2012 study by The Institute for Justice, licensure hurdles are exceptionally burdensome for lower-income workers, particularly when compared to higher-wage occupations. An analysis of 102 low- to moderate-income occupations revealed that the average occupational license cost \$209 in fees, one exam, and nine months of education and training.¹² These burdensome conditions often prevent low-income individuals from pursuing an occupation, and licenses are often required to practice professions that do not affect public health or safety. Professional licenses for interior decorating, landscaping, and hair braiding are favored by individuals already in the industry in order to prevent competition. In turn, this stifles economic growth and limits the potential for jobs.

In addition, licensing requirements can prevent individuals with criminal backgrounds from obtaining a job. In many states a single misdemeanor offense can prevent individuals from working as a barber or tree trimmer. These policies can lead to an increase in crime because, according to the Federal Bureau of Prisons, unemployed ex-offenders are three to five times more likely to reoffend than those that are employed. Furthermore, employers are discouraged from hiring ex-offenders by immense civil liability issues.

“Government should not get in the way of those working to turn their lives around and become productive members of society.”

Solution: Limit Government Occupational Licenses and Aid Ex-Offenders

Lawmakers should implement the least restrictive means of occupational regulation necessary. Expensive licenses with extensive educational and training requirements should be reserved for professions that affect the safety, health, or welfare of the public. They should not be used for occupations like interior decorators. Furthermore, efforts should be made to assist in the hiring of those with prior criminal backgrounds.

Government should not get in the way of those working to turn their lives around and become productive members of society. Clearly it is preferable to have an individual working, paying taxes, and taking care of their family instead of behind bars and costing taxpayers money. ALEC's commonsense proposals allow ex-offenders to obtain provisional occupational licenses and remove some of the civil liability risk for employers who hire ex-offenders.

ALEC Model Legislation

The Occupational Licensing Relief and Job Creation Act

Occupational licensing increases unemployment by about 1%, raises prices by about 15%, and offers no incremental consumer protection over a competitive market. The ALEC *Occupational Licensing Relief and Job Creation Act* ensures that an individual may pursue lawful occupation free from unnecessary occupational regulations. It eliminates bureaucratic red tape and restrictions on competition by requiring state legislatures to find real harm and select the least-restrictive regulation to address that harm.

The Provisional Licenses for Ex-Offenders Act

According to the Federal Bureau of Prisons, ex-offenders who are employed are three to five times less likely to reoffend. The ALEC *Provisional Licenses for Ex-Offenders Act* allows nonviolent, low-risk ex-offenders to obtain a provisional occupational license if they are otherwise qualified. By providing a means of employment through probationary occupational licenses, this policy helps ex-offenders support themselves, avoid reoffending, and contribute to the economy.

Civil Liability for Employers Hiring Ex-Offenders Act

The ALEC *Civil Liability for Employers Hiring Ex-Offenders Act* would immunize employers who hire ex-offenders without a violent or sex offense from being sued on the sole basis of hiring an ex-offender.



6 HARNESSING INNOVATION

Problem: Growing Threats to Innovation

The Internet, one of the most powerful engines for innovation in human history, is under threat from a combination of bureaucracy and bad actors.

New products and services are constantly being developed on the Internet. But the laws on the books don't account for the speed and breadth with which this innovation is taking place. These laws also don't account for the market power in the Internet economy to disrupt monopolies and protect consumers. Thus, policymakers apply 20th century laws designed for monopolistic challenges from that era to new 21st century technologies. When old laws govern new technologies, costs rise and innovation slows.

“Threats to innovation should be taken seriously because innovation drives productivity and economic growth.”

Innovation is also threatened when bad actors limit consumers' choices on the Internet. These bad actors, using sophisticated technology such as malware and spyware, have been able to access consumers' personal information to commit theft, fraud, and other crimes. Identity theft and invasions of privacy consistently rank high as concerns of consumers on opinion polls. When consumers cannot trust the Internet with their information, they tend not to use the Internet at its

full potential, thereby reducing their online activity and the incentive for new products and services.

Threats to innovation should be taken seriously because innovation drives productivity and economic growth. By connecting the world's population, the Internet has enabled communications, collaboration, and commerce like never before. Since the release of the iPhone in 2007, the Application Developers Alliance reports that 500,000 new jobs and a whole new industry have been created. Without robust innovation to harness, this economic growth and the prosperity that results are at risk.

Solution: Protect Innovation from Bad Actors and Bureaucracy

Policymakers should take steps to protect innovation from bad actors and bureaucracy. This is not a call for new, burdensome regulation of the Internet. In fact, the Internet is an innovative success precisely because it has been largely free of government at all levels. Instead, policymakers should work to enact laws that protect consumers' choices on the Internet and the new products and services developed every day. Moreover, policymakers should strive to ensure that the laws and rules they enact take the right approach: use a light touch, reflect changes in technology, and focus on actual harms.

ALEC Model Legislation

The Computer Spyware Protection Act

The ALEC *Computer Spyware Protection Act* prohibits the installation, transmission, and use of computer software that collects personally identifiable information, and authorizes the State Attorney General to bring a civil action against violators and seek damages ranging from \$1,000 to \$1 million. Spyware is a serious problem that can create substantial privacy risks, increase the risk of identity theft, and cause serious degradation to personal and business computers and other electronic devices that can cost millions of dollars in lost productivity. Therefore, this model *Act* seeks to protect the integrity of the Internet and the marketplace by establishing penalties for criminal behavior.

The Advanced Voice Services Availability Act

The ALEC *Advanced Voice Services Availability Act* protects freedom and innovation on the Internet from the threat of overregulation by maintaining the existing market-based regulatory framework for Internet protocol-based technologies. Different and possibly contradictory rules and proceedings by each of the fifty state public utility commissions threaten Internet-based services such as video calling. Applying the existing state wired telephone service rules to the Internet, for example, could mean separate taxes, mandates, and government approval for any service change. That would be a disaster for the Internet economy. This model *Act* would prevent that disaster and allow the Internet to continue to flourish.



7 IMPROVING EDUCATION

The Problem: Schools are Failing Students and Teachers Unions are Blocking Reforms

For years, the nation's teachers unions have stood in the way of critical education reform. With more than half of fourth graders not scoring proficient on reading exams in all but eleven states, it is clear that our current education system is not getting the job done.¹³ The results are even worse for fourth graders receiving free or reduced lunches and disabled students, with more than three-quarters or more in every state failing reading proficiency tests.¹⁴

For years, teachers unions and their army of lobbyists at the state-level have harmed schools in low-income and minority communities by successfully blocking needed reforms like charter schools and vouchers. Teacher unions have also blocked efforts to hold teachers and students accountable to clear standards.

Solution: More Accountability in Schools and More Choice for Parents

Reforms implemented by Governor Mitch Daniels and the Indiana Legislature are truly groundbreaking. All Indiana schools are now graded on an A-to-F scale based on the performance of students. Teachers that perform well are rewarded, while teachers who do a poor job are asked to find a new job. Indiana also limits collective bargaining for teachers to wages and benefits. In previous years, the teachers union had actually limited the amount of hours that a teacher could spend with their students. Finally, Indiana empowered parents to choose how to educate their children by expanding charter schools, online education, and vouchers for tuition at private schools.

ALEC Model Legislation



Indiana Education Reform Package

The *Indiana Education Reform Package* is inspired by the state's comprehensive set of K–12 education reforms adopted by the Indiana Legislature in the spring of 2011 and signed by Governor Mitch Daniels. Containing seven key reforms, including three ALEC model bills—*Charter Schools Act*, *School Scholarships Act*, and *Early Graduation Scholarship Act*—the reform package presents a means to break the status quo, implementing change by emphasizing teacher quality, school accountability, and parent and student choice.

Education Savings Account Act

The ALEC *Education Savings Account Act* allows parents to use funds that would have been allocated to their child at their resident school district for an education program of the parents' choosing. Under these accounts, funds truly follow the child and parents can choose from an expanded pool of options, including private school tuition, online education, certified private tutors, community colleges, and higher education tuition.

Statewide Online Education Act

To remain competitive in the global economy, states must take advantage of the many new educational opportunities available in the 21st century. The ALEC *Statewide Online Education Act* creates a statewide program that provides high school students with access to online learning options regardless of where the student lives. The options are designed to be high quality and allow for maximized learning potential by focusing on student mastery of subjects at their own pace and own time, instead of the traditional seat-time learning requirements.



8 INCREASING ACCESS TO HEALTH CARE WHILE CONTROLLING COSTS

Problem: Government regulation in the name of consumer protection has served to increase health care costs while harming consumer access and the doctor-patient relationship.

Health care spending represents one-sixth of the nation's economy, with no signs of slowing down. Meanwhile, consumers are faced with reduced access in both public and private insurance due to overburdened systems and skyrocketing premiums. Unfortunately the recent federal health law does little to address costs or access—it will leave 30 million people without coverage¹⁵ and cause increased health spending and government deficits.¹⁶

Half of what the nation spends on health care is public money, and this expansion of government involvement has come at the expense of patient control. The federal health law not only subverts state insurance regulation in favor of federal control, but for the first time creates a federal mandate forcing individuals to purchase a private product, health insurance.

However, government interference doesn't end at the federal level. State-level mandated benefits force individuals to pay for coverage they might not need nor want. For example, a number of states require that insurers cover in vitro fertilization, however for many senior citizens and individuals who simply choose not to have children this is just another added expense to having health insurance. The last few decades have seen thousands of mandated benefits arise around the country, making insurance more expensive. The consequence is that more people drop or decline coverage, increasing pressures on emergency rooms and public insurance programs and decreasing access for the most vulnerable.

Solution: Promote a health care system where businesses and providers compete, and where individuals are in charge of their health decisions.

True consumer choice leads to increased access at lower costs, while encouraging the innovation necessary to meet the growing needs of the nation's diverse populations. Reducing mandates and providing more options for individuals to shop for plans increases market participation and allows government to focus on its intended purpose: providing a safety net for the truly needy, not forcing everyone into a safety net at the expense of choice.

Of course, even if the market is allowed to operate and allocate resources to consumers more efficiently, it will remain important to provide for those who have no other means. Reducing regulations that hurt consumers instead of helping them will go a long way towards accomplishing the shared vision of a healthcare system that is affordable while respecting the doctor-patient relationship.

ALEC Model Legislation

Out-of-State Charity Care Act

The ALEC *Out-of-State Charity Care Act* permits out-of-state health care professionals to provide charity care at free medical clinics. The health care professionals must be licensed in another state or territory and must restrict the services provided to those services he or she is licensed to provide. The health care professional must provide a copy of his or her license for a period of two years.

Mandated Benefits Review Act

The ALEC *Mandated Benefits Review Act* requires that a proposed mandated benefit or an amendment to an existing law or an amendment to a proposal for mandated health benefits, mandated health insurance coverage, or mandated offerings of health benefits, be reviewed by the Department of Insurance. The Department of Insurance shall provide to the legislature an actuarially-based review with regard to the proposal's medical efficacy and financial impact. Optional language provides for review of existing mandated benefits.

Freedom of Choice in Health Care Act

The ALEC *Freedom of Choice in Health Care Act* protects the rights of patients to pay directly for medical services, and prohibits penalties levied on patients for failing to purchase health insurance.



9 PREVENTING LAWSUIT ABUSE

Problem: Lawsuit Abuse is Hurting our Economy

“Eighty-three percent of voters say the number of frivolous lawsuits is a serious problem and three-quarters of all small business owners in America are concerned they might be the target of a frivolous or unfair lawsuit.”¹⁷

“More jobs, higher wages, and better benefits could be provided if the average small business earning \$1 million in revenue didn’t have to spend \$20,000 each year on an out of control lawsuit system.”¹⁸

Most Americans are familiar with stories of lawsuit abuse from the woman who sued McDonald’s when she spilled coffee on herself to the man who sued a drycleaner for millions of dollars for losing a pair of pants.

Trial lawyers and others have found ways to, at times, profit off our nation’s broken legal system at the expense of small businesses and job creators. The cost of lawsuit abuse not only falls to businesses that are forced to pay excessive awards for damages, but they are also passed to individuals in the form of higher rates of insurance against liability and higher product and services pricing. Moreover, absent standards to guide the awarding of damages, jury verdicts can be highly random, varying case to case and district to district. When a particular act earns a much higher penalty in one district than in another, or similar victims are compensated differently in one district than in another, state civil justice systems lack the critical characteristics of predictability and fairness required in a properly functioning capitalist system.

One area of particular abuse is class action lawsuits. Most adults at some point in their lives have been party to—whether knowingly or unknowingly—a class action lawsuit. Attorneys will find one plaintiff with a case against a deep-pocketed defendant and will pull together a class action lawsuit with an often not-present class of hundreds, thousands, or hundreds of thousands of victims. These victims may never have asked to bring a lawsuit but are party to one, and they may stand to recover a minimal award, perhaps merely coupons, while the attorneys stand to recover millions in legal fees.

In addition, many state consumer protection acts go beyond their intended use. With few proof requirements and lenient standards for claims, consumer protection acts are being used to punish law-abiding businesses. The problem with some state consumer protection acts can be most closely likened to a metal detector with too strong a signal that picks up not just weapons and dangerous items but earrings and metal buttons. In the case of the well-known \$54 million lawsuit against Washington, D.C. drycleaners Jin and Soo Chung, they faced severe financial strain because of an aberrant consumer, a standard satisfaction guaranteed sign, and a faulty consumer protection act.

Finally, product liability lawsuits are often the most expensive and difficult to defend, and they often involve complex legal and scientific arguments. In many cases these lawsuits are brought against defendants with a mind for the deepest pocket as opposed to the actual wrongdoer. These lawsuits increase the price of everyday products for consumers.

Solution: Create an Efficient and Fair Legal System

Our legal system should provide full compensation for victims, while rooting out frivolous lawsuits that are harming businesses and slowing job creation. Lawsuit awards should be based on accurate information and should adequately, but not over-, compensate plaintiffs. The legal system should be used to right those legitimately wronged rather than unnecessarily shifting funds out of the business economy.

ALEC Model Legislation

Product Liability Act

ALEC's model *Product Liability Act* would develop a variety of commonsense reforms in state product liability statutes to ensure, for example, that a lawsuit against a product manufacturer is brought against the manufacturer of the product that actually caused the injuries. Where product liability lawsuits are used to punish those actually responsible for an injury and not used to disincentivize entrepreneurial risk taking, the legal system will more justly fulfill its role in the free enterprise system.

Class Actions Improvements Act

To ensure that class actions are not abused and are used solely within the scope of where they make sense, ALEC developed the model *Class Actions Improvements Act*. The model would encourage administrative remedy where appropriate, would allow for the appeal of a decision to bring lawsuits as a class action, and would provide guidelines for the certification of a class action lawsuit. As a whole, the model bill reigns in the scope of class action lawsuits to bring them in line with the intent of the class action mechanism: to allow for speedier justice where very similar claims are to be brought.

Private Enforcement of Consumer Protection Statutes Act

State consumer protection statutes were created with the intent of protecting consumers from businesses taking advantage of them, a very important goal in the free-market system. However, many state consumer protection acts go beyond their intended use. With few proof requirements and lenient standards for claims, state consumer protection acts are being used to punish law-abiding businesses and allow lawsuits under these statutes that would never pass muster in the traditional tort system. ALEC's model bill strikes the right balance between protecting consumers and protecting the rights of law-abiding businesses.

ENDNOTES

¹Mitchell, Matthew. *State Budget Gaps and Growth*. Mercatus Center. August 2010

²Malanga, Steven. "Anti-Business States Awash in Red Ink." *Real Clear Markets*. August 6, 2008

³Gilroy, Leonard and Williams Jonathan, et al. *State Budget Reform Toolkit*. American Legislative Exchange Council, 2011

⁴Biggs, Andrew "Public Funded Pensions, How Funded Are they Really?" *State Budget Solutions*. July 2012

⁵Ibid

⁶Bryce, Robert "The High Cost of Renewable Electricity Mandates." *The Manhattan Institute*. February, 2012

⁷ U.S. Bureau of Labor Statistics. *Consumer Expenditure Survey 2009*. Oct. 2010

⁸Ibid

⁹<http://www.fiscalaccountability.org/regulatory-burden-a762>

¹⁰Ibid

¹¹<http://washingtonexaminer.com/55-percent-of-small-business-owners-would-not-start-company-today-blame-obama/article/2509069#.UlBW38XR41o>

¹²<http://www.ij.org/licensetowork>

¹³Lander, Matthew and Lips, Dan "Report Card on Education." American Legislative Exchange Council. 2012

¹⁴Ibid

¹⁵<http://cbo.gov/sites/default/files/cbofiles/attachments/43472-07-24-2012-CoverageEstimates.pdf>

¹⁶<http://blog.heritage.org/2012/08/22/obamacare-loses-again-in-deficit-reduction-debate/>

¹⁷<http://www.facesoflawsuitabuse.org/facts/>

¹⁸Ibid

AMERICAN LEGISLATIVE EXCHANGE COUNCIL
ALEC