

LEGISLATIVE UPDATE

INTRODUCTION

Legislative Update is a survey of recent state legislation relating to various aspects of high technology. This survey is made up of brief summaries of new state laws grouped under appropriate topic headings and listed thereafter alphabetically by jurisdiction. Each summary ends with a citation to the new law. At the end of *Legislative Update*, the summarized laws are cross-referenced by jurisdiction.

Although *Legislative Update* includes a broad selection of new state legislation, it is not intended to be comprehensive. In addition, the summaries do not mention aspects of the new laws that are of limited significance to *High Technology Law Journal* readers.

I. TELECOMMUNICATIONS

A. Regulation of Telecommunications Corporations

Alaska The House Special Committee on Telecommunications has been established for a period of one year ending January 19, 1987, to study telecommunications issues. Act of Jan. 14, 1985, H. Res. 4, 14th Leg., 1st Sess., 1985 Alaska Sess. Laws — (1985).

Indiana The Public Service Commission may, after a hearing and a determination that the public interest will be served, decline to exercise its jurisdiction over telephone companies. In determining whether the public interest is served, the Commission shall consider: (1) whether the exercise of jurisdiction by the Commission is unnecessary because of technological change, competitive forces, or regulation by other state or federal agencies; (2) whether the exercise of jurisdiction produces benefits to telephone company customers; and (3) whether the

exercise of Commission jurisdiction inhibits a regulated entity from competing with unregulated providers of similar telephone services or equipment.

Also, the Commission may now exercise jurisdiction over those telephone companies or telephone services where before it was either limited or not exercised, if the Commission determines after a hearing that regulation is in the public interest and that such regulation promotes one or more of the following: (1) cost minimization of telephone companies; (2) increased efficiency of telephone company management; (3) the development of depreciation guidelines; (4) the elimination of duplicatory regulation; or (5) a competitive environment. A Regulatory Flexibility Committee is also established to investigate and monitor the effects of competition on the telephone industry. Act of Apr. 18, 1985, Pub. L. No. 92-1985, 1985 Ind. Acts 766 (codified as amended at IND. CODE ANN. § 8-1-2.6 (West Supp. 1985)).

Nevada

The Public Service Commission has been given discretion to exempt certain telecommunications services, or public utilities which provide such services, from regulation under Chapter 704 of the *Nevada Revised Statutes* upon a determination by the Commission, after a hearing, that competition for such services exists in the marketplace and that regulation is therefore unnecessary. The Commission is also permitted to allow duplication of service by public utilities in a specified geographical area if: (1) the service is related to telecommunications; (2) the Commission finds that competition should occur; and (3) that any duplication is reasonable. The bill also modifies certain definitions relating to telecommunications. Act of May 31, 1985, ch. 360, 1985 Nev. Stat. 1016 (codified as amended at NEV. REV. STAT. §§ 704.005, .010, .015, .020, .030, .040, .330 (1985)).

Utah

The newly enacted "Public Telecommunications Utility Law" gives the Public Service Commission ("PSC") authority to exempt private telecommunications corporations and public telecommunications services from regulation under Title 54 of the *Utah Code Annotated*, including authority to exempt them from regulations con-

cerning rates, tariffs and fares. In determining whether deregulation orders should be issued, the PSC should consider: (1) the number of providers of similar services; (2) the market share and market power of the corporation seeking regulatory exemption; (3) the market share and market power of other providers of telecommunications services and their ability to make available equivalent services at competitive rates; (4) the impact of regulatory exemptions on the public interest, i.e., whether competition will promote the provision of adequate services at just and reasonable rates; and (5) the economic impact on existing telecommunications corporations. Public Telecommunications Utility Law, ch. 257, 1985 Utah Laws 492 (codified at UTAH CODE ANN. § 54-8b-1 to 54-8b-9 (Supp. 1985)).

Utah Any corporation or person that owns, controls, operates or manages an existing or new private telecommunications system, or expands any existing private telecommunications system, may be required to file a notice with the Public Service Commission disclosing the existence of the telecommunications system and disclosing to whom the service is being provided. A "private telecommunications system" is defined as "all facilities for the transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means." Mobile radios used only by their owners, and not for shared use or resale, are excluded. A civil penalty of not more than \$500 may be imposed for failure to comply with these disclosure requirements. Act of Apr. 29, 1985, ch. 97, 1985 Utah Laws 178 (codified as amended at UTAH CODE ANN. § 54-2-1 (Supp. 1985)).

B. Telecommunications for Hearing or Speech Impaired Persons

1. Telecommunications Equipment

California Each telephone corporation is required to provide at no additional charge a telecommunications device and a single-party line to state agency subscribers for the

purpose of allowing hearing or speech impaired persons access to Members of the Legislature. The Joint Rules Committee is also required to provide such a device in the State Capitol for access to Members of the Legislature. Act of Sept. 28, 1985, ch. 1182, 1985 Cal. Legis. Serv. 872 (West) (codified at CAL. PUB. UTIL. CODE § 2881.1 (West Supp. 1986)).

Nevada A surcharge has been placed on local telephone service to create a special revenue fund for the purpose of providing telecommunications devices to hearing or speech impaired persons at the basic service rate, as well as for maintaining these devices. This program is to be administered by the Department of Human Resources. Act of May 30, 1985, ch. 327, 1985 Nev. Stat. 952 (codified at NEV. REV. STAT. § 707.360 (1985)).

New Hampshire A state program has been established to provide special telecommunications devices to hearing or speech impaired persons. The state will own and maintain the equipment. Act of June 14, 1985, ch. 322, 1985 N.H. Laws 805 (codified at N.H. REV. STAT. ANN. §§ 200-C:7 and §§ 200-C:8 (Supp. 1985)).

2. *Closed Captions for Cable Television*

Connecticut Cable television companies are required to rent or sell closed caption decoders at cost to deaf or hearing impaired subscribers. A closed caption decoder is a device which allows the reception of subtitles which are broadcast in coded form with many television programs. Act of Oct. 1, 1985, Pub. Act No. 85-168, 1985 Conn. Legis. Serv. 199 (West) (codified as amended at CONN. GEN. STAT. § 16-333c (1985)).

C. Taxation

New York A tax credit amounting to twenty-five percent of assessed value is provided to cable television companies that pay operating fees to municipalities. The new law also requires the owners of equipment used for both cable television and telecommunications purposes to report

separately the gross revenues derived from telecommunications use, as well as the total gross revenues derived from all uses of such equipment. In addition, the property tax assessment adjustment factor for certain equipment has been changed. Act of May 28, 1985, ch. 71, 1985 N.Y. Laws 369 (codified as amended at N.Y. REAL PROP. TAX LAW § 102.12(d) (McKinney Supp. 1986)).

New York Equipment such as station apparatus, station connections or private branch exchanges which is not independently capable of providing transmission or switching is excluded from real property tax. Act of Mar. 30, 1985, ch. 72, 1985 N.Y. Laws 375 (codified as amended at N.Y. REAL PROP. TAX LAW § 102.12(i) (McKinney Supp. 1986)).

D. Sales of Telecommunications Equipment

Oregon The seller of new or reconditioned telephone handsets or keysets, private branch exchanges or small automatic branch exchanges is required to disclose to the purchaser, when reasonable, information concerning signaling methods, registration with the Federal Communications Commission, repair arrangements, and warranty provisions. Such disclosure must be made before the sale and must be in writing. A violation of this provision is made subject to both an injunction and a private damage action. Act of July 10, 1985, ch. 538, 1985 Or. Laws 1014 (codified as amended at OR. REV. STAT. § 646.850 (1985)).

E. Telecommunications Services for State Agencies

Alaska The use of teleconferencing by state agencies is now expressly permitted for the purpose of transacting business. Under the bill, both notice of, and participation in, meetings may be accomplished through audio, video or computerized electronic media. The bill makes allowances for voting through electronic means when normal in-person voting is not reasonably possible. Act of May 30, 1985, ch. 54, 1985 Alaska Sess. Laws 1 (to be codified as amended at ALASKA STAT. §§ 44.62.210(a),

.310(a), .310(e), .312(a), .410, .600, .640, and to be codified at ALASKA STAT. § 44.62.635).

Colorado

The powers of the state's Telecommunications Director are now expanded to allow the Director to enter into contracts to provide teleconferencing facilities and services for use by state and local agencies, and to develop uniform standards for such facilities. Local boards of commissioners may now contract with the Telecommunications Director for these services. The bill also makes provision for the teleconferencing of hearings relating to any person in custody between the judicial system of any county and that of another county or a state agency. Act of May 23, 1985, ch. 192, 1985 Colo. Sess. Laws 806 (codified at COLO. REV. STAT. §§ 24-30-903(3), 30-11-107(1)(x), and 30-11-208 (Supp. 1985)).

Florida

The Florida Growth Management Data Communications Network has been established in order to allow state agencies to exchange information on growth management among state automated information systems. The Network will use the same protocol as the existing State Automated Management Accounting System. Participating agencies will remain responsible for data provided to the Network. The Network's Coordinating Council will answer to the governor's office and the legislature, and will be subject to the Florida Sundown Act. Act of June 19, 1985, ch. 85-276, 1985 Fla. Sess. Law Serv. 33 (West) (codified at FLA. STAT. §§ 282.401-.403 (Supp. 1985)).

Illinois

The Department of Central Management Services is now required to implement a plan to provide centralized communications between the offices of federal, state and local governments throughout Illinois. Under prior law, the Department was only authorized to develop a communications plan which covered only state agencies. Act of Sept. 25, 1985, P.A. 84-961, 1985 Ill. Legis. Serv. 142 (West) (to be codified as amended at ILL. ANN. STAT. ch. 127 §§ 63b13.8 and 63b13.18 (Smith-Hurd)).

Illinois

State universities may now enter into multi-year lease, lease-purchase or installment purchase contracts for, inter alia, telecommunications equipment for terms of up

to ten years. Under prior law, the term of such contracts was limited to seven years. Act of Sept. 21, 1985, P.A. 84-779, 1985 Ill. Legis. Serv. 695 (West) (to be codified as amended at ILL. ANN. STAT. ch. 127 § 132.5-1 (Smith-Hurd)).

Kansas

The acquisition of telecommunications services and equipment by state agencies is now under the control of a three-person telecommunications negotiating committee which will advertise for sealed bids and will negotiate contracts for such services and equipment. Under prior law, the Secretary of Administration for state agencies was solely responsible for negotiating such contracts. Bids for telecommunications services and equipment submitted to the negotiating committee will not be subject to the competitive bidding requirements for other state contracts found in *Kansas Statutes Annotated* §§ 75-3738 to 75-3740a. Also, "telecommunications services" is redefined to include data transmission services and equipment. Act of Mar. 7, 1985, ch. 285, 1985 Kan. Sess. Laws 1291 (codified as amended at KAN. STAT. ANN. § 75-4710 (Supp. 1985)).

Virginia

The Department of Information Technology now has the power to administer funds appropriated to it for public telecommunications and to make related contracts. Act of Mar. 17, 1985, ch. 265, 1985 Va. Acts 334 (codified as amended at VA. CODE § 2.1-563.16(6) (Supp. 1985)).

II. HIGH TECHNOLOGY AND CRIME**A. Closed Circuit Television – Child Witnesses****California**

A court is now allowed to order that the testimony of a minor witness, ten years of age or younger, be taken by contemporaneous examination and cross-examination outside the courtroom and out of the presence of the judge, jury, defendant and attorneys by means of a two-way closed-circuit television. Such testimony may be authorized when: (1) it involves an alleged sexual offense committed on or with the minor; (2) the impact on the minor of courtroom examination and cross-examination is shown by clear and convincing evidence

to be so substantial as to make the minor unavailable as a witness unless testimony via closed-circuit television is allowed; and (3) the two-way closed-circuit testimony would accurately communicate the image and demeanor of the minor. Act of May 18, 1985, ch. 43, 1985 Cal. Stat. 46 (codified at CAL. PENAL CODE § 1347 (West Supp. 1986)).

New Jersey The use of contemporaneous testimony by way of closed-circuit television has been approved for use by minor witnesses, sixteen years old or younger, in cases involving sexual assault or child abuse upon a showing that there is a substantial likelihood that the child witness would suffer severe emotional or mental distress if required to testify in open court. The minor witness is not required to have been directly involved in the sexual assault or abuse to be allowed to testify by way of closed-circuit television. The use of videotaped testimony was amended out of the original act and is thus not allowed. Act of Apr. 11, 1985, ch. 126, 1985 N.J. Sess. Law Serv. 6 (West) (codified at N.J. STAT. ANN. § 2A:84A-32.4 (West Supp. 1986)).

B. Theft Of Cable Television Services

North Dakota It is now a misdemeanor offense to knowingly obtain cable television service by any means or device without payment of lawful compensation to the cable television operator, or to knowingly assist or instruct any person in obtaining or attempting to obtain such service without payment. In addition to criminal penalties, anyone committing such an offense may be liable for civil penalties amounting to \$1,000, or treble damages, whichever is greater. Any paraphernalia involved in such an offense may also be confiscated. Further, the act makes it a misdemeanor to manufacture, distribute, offer or possess for sale or rental, or advertise for sale, any descrambler or decoder device. Anyone found violating this offense may be additionally liable for \$10,000, or treble damages, whichever is greater. Either the state or a duly licensed cable television system may bring such actions. Act of Mar. 29, 1985, ch. 180, 1985 N.D. Sess. Laws 538 (codified at N.D. CENT. CODE § 12.1-23.1 (1985)).

Oregon The unlawful distribution of cable television equipment and the tampering with such equipment, punishable as misdemeanors under prior law, may now also subject offenders to civil liability to licensed cable television systems for: (1) actual damages; (2) a penalty of the retail value of any service received not to exceed \$500; and (3) an additional penalty not less than \$100 and not more than \$250. A criminal judgment is not required before a civil action may be pursued. In addition, a presumption is established that one who obtains the use of any communications systems, including telephones, computers, and cable television systems, without compensation is guilty of a theft of such services. If the amount of such theft is more than \$200 within a twelve month period, it constitutes a felony. Act of July 10, 1985, ch. 537, 1985 Or. Laws 1012 (codified as amended at OR. REV. STAT. §§ 30.875, 164.125 and codified at OR. REV. STAT. §§ 164.132 and 164.373 (1985)).

C. Computer Crime

Alabama It is now an offense to willfully and knowingly destroy, disclose, take or use computer programs, computer data, or supporting documentation without authorization. It is also an offense to attempt to achieve access to such programs, data or documentation. Such offenses are classified as felonies when: (1) they cause damage to intellectual property in the amount of \$2,500 or greater; (2) they interrupt or impair government operations, public utilities or public communications; (3) they cause physical injury to any person not involved in said act; or (4) an intent to obtain any property or to defraud exists. The act also creates a criminal offense for destroying, using, taking, injuring, damaging or modifying equipment or supplies used, or intended to be used, in a computer system. Alabama Computer Crime Act, No. 85-383, 1985 Ala. Acts 326 (codified at ALA. CODE §§ 13A-8-100 to 13A-8-103 (Supp. 1985)).

California Subsection (c) of California Penal Code § 502 has been deleted. This subsection made it a felony for any person to maliciously access any computer system for the purpose of obtaining unauthorized information concerning

the credit of another, or to add false information to a system for the purpose of wrongfully damaging or enhancing the credit rating of a person. Act of Sept. 13, 1985, ch. 571, 1985 Cal. Stat. 25 (codified as amended at CAL. PENAL CODE § 502 (West Supp. 1986)).

It is still an offense under California Penal Code § 502 to intentionally access without authorization any computer system, computer network, computer program or data. It is also an offense to intentionally access or cause to be accessed any computer system or computer network in order to devise a scheme to defraud or extort, or to obtain money, property or services with false or fraudulent intent or promises. In addition to criminal actions under this section, civil redress for compensatory damages is also allowed.

Kansas

It is now a misdemeanor to willfully and fraudulently access, or attempt to access, any computer, computer network, software, data or supporting documentation without authorization. It is a misdemeanor to willfully access, or attempt to access, a computer, computer network or other related property and to damage, modify, destroy, copy or disclose such equipment or data thereby causing a loss of value less than \$150. If the loss is greater than \$150, the offense constitutes a felony. In addition, it is a misdemeanor to use a computer, computer network or other related property for the purpose of devising a scheme to defraud someone of money, property or services if such a scheme causes a loss of \$150 or less. Again, if the loss is greater than \$150, the offense is classified as a felony. In any prosecution for a computer crime, it is a defense that the property or services were appropriated openly under a claim of title made in good faith. Act of July 1, 1985, ch. 108, § 1, 1985 Kan. Sess. Laws 539 (codified at KAN. STAT. ANN. § 21-3755 (Supp. 1985)).

Mississippi

It is now a felony to access or cause to be accessed any computer or computer network with the intent to defraud, or to obtain money, property or services by means of fraudulent conduct or representations. It is a misdemeanor to intentionally modify or destroy computer equipment or computer supplies without consent.

However, if the damage caused by such offense amounts to \$100 or more, the offender is guilty of a felony. It is a misdemeanor to deny effective use or access to an authorized user without consent, or to disclose passwords or other means of access to a computer without consent. Again, if the offense results in damage of \$100 or more, it is a felony. It is also an offense to intentionally and non-consensually (1) destroy or modify computer data, computer software, trade secrets, copyrighted material or proprietary information which is stored or produced by a computer, or (2) to disclose, use or copy computer data, software, or trade secrets, copyrighted material or other proprietary information which is stored in or produced by a computer. If the offense causes damage of \$100 or more, it constitutes a felony. However, it is an affirmative defense to these intellectual property offenses that the data or programs were obtained from independent investigation or from published literature. Act of July 1, 1985, ch. 319, 1985 Miss. Laws 30 (codified at MISS. CODE ANN. §§ 97-45-1 to 97-45-13 (Supp. 1985)).

Nebraska

It is now a misdemeanor to intentionally and knowingly access any computer, computer program or data without authorization. The new law makes it is a felony to deprive another of computer property or services, or to obtain such property or services without consent. It is also a felony to alter, damage, delete or destroy any computer, computer program, data or other related property, or to disrupt the operation of a computer or computer network. Act of Mar. 7, 1985, Legis. Bill 371, 1985 Neb. Laws 1 (codified at NEB. REV. STAT. §§ 28-1343 to 28-1348 (Supp. 1985)).

New Hampshire

It is now a criminal offense to: (1) alter or disrupt the dispensing of computer services; (2) take, alter, damage, destroy or tamper with computer equipment or computer data; or (3) use, copy or disclose such data. It is also a criminal offense to knowingly access or cause to be accessed any computer system without authorization. It is an affirmative defense to the latter offense that: (1) the alleged violator reasonably believed he had authorization; (2) he reasonably believed he would have been given authorization without consideration; or (3) he reasonably could not have known that access was

unauthorized. Such offenses constitute felonies when the extent of the damage exceeds \$500 or when a person recklessly engages in such conduct and thereby creates a personal risk of injury to others. Otherwise, they constitute misdemeanors. In addition, in lieu of a fine, a court can order the defendant to reimburse the injured party for up to double the actual damage incurred. Act of May 20, 1985, ch. 139, 1985 N.H. Laws 357 (codified at N.H. REV. STAT. ANN. §§ 638:16-19 (Supp. 1985)).

Ohio

It is a felony to knowingly modify, destroy, obtain possession of or gain access to any writing relating to a computer or computer network without the consent of the owner. No person having possession or gaining access to such writing with the consent of the owner shall convert the writing to his own use, or copy or disclose the writing to another. It is also a felony to: (1) knowingly access, or cause to be accessed, any computer or computer system without authorization; (2) knowingly deny or cause the denial of a computer system or computer service to an authorized user; or (3) knowingly modify, alter, destroy, obtain possession of or damage any computer or computer network without authorization (such a violation constitutes a misdemeanor if the loss or damage amounts to less than \$300). In addition, any person convicted of a violation under this act forfeits possession of any computer, computer network or software used to commit the violation. Venue is proper where the computer or computer system is located at the time of the alleged violation and at any location where the alleged offender commits an activity which is an essential part of any violation. Act of Mar. 26, 1986, Pub. L. No. 141, 1986 Ohio Legis. Bull. — (HB 49, SB 1, 116th Gen'l Assembly) (to be codified as amended at OHIO REV. CODE ANN. §§ 2901.01, 2913.01 and to be codified at OHIO REV. CODE ANN. § 2913.81 (Page)).

Virginia

The same criminal offenses that apply to computers under prior law are now also explicitly made applicable to computer networks. In addition, a new cause of action for computer trespass has been created: any person who uses a computer or computer network without authority and with the intent to make or cause to be made a copy of computer data, programs or software shall be

guilty of a misdemeanor. Act of Mar. 17, 1985, ch. 322, 1985 Va. Acts 398 (codified as amended at VA. CODE §§ 18.2-152.3, -152.4, -152.6, -152.7, -152.14 (Supp. 1985)). In addition, venue for prosecution is allowed where any computer which is an instrument or object of the violation is located at the time of the infraction. Act of Mar. 17, 1985, ch. 322, 1985 Va. Acts 398 (codified as amended at VA. CODE § 18.2-152.10(6) (Supp. 1985)). For a general article on Virginia's response to computer abuses, see Burk, *Virginia's Response to Computer Abuses: An Act in Five Crimes*, 19 U. RICH. L. REV. 85 (1984).

Virginia

It is now a crime to use a computer or computer network to examine any employment, salary, credit or other financial or personal information relating to another person without authority. While prior law required an intent to injure as a predicate for liability, the 1985 amendments eliminate this requirement and simply demand that the examination itself be intentional. Act of Mar. 18, 1985, ch. 398, 1985 Va. Acts 491 (codified as amended at VA. CODE § 18.2-152.5 (Supp. 1985)).

Wyoming

It is now a felony to knowingly and non-consensually take or disclose computer data, programs or supporting documentation valued at more than \$750 that is a trade secret or is confidential. Act of Feb. 21, 1985, ch. 197, 1985 Wyo. Sess. Laws 222 (codified as amended at WYO. STAT. § 6-3-502(a)(iii) (Supp. 1985)).

D. Electronic Surveillance

Louisiana

It is now an offense to: (1) willfully intercept or attempt to intercept any wire or oral communication; (2) willfully use any electronic or mechanical device to intercept such communication; or (3) willfully disclose or attempt to disclose such communication knowing or having reason to know that it was obtained by unlawful interception. It is also unlawful for someone to willfully manufacture, assemble, possess or sell any electronic equipment knowing or having reason to know that it is to be used for the purpose of interception of wire or oral communication. In addition to criminal penalties, devices used in such crimes will be seized and forfeited to the state.

These crimes are punishable by fines of not more than \$10,000 and by imprisonment for two to ten years. In addition, violators are subject to civil suits. Any illegally obtained communications shall not be admissible as evidence. Exceptions are made when the communications are properly gathered by law enforcement officials with prior permission from a court. Electronic Surveillance Act, Act No. 859, 1985 La. Acts 503 (to be codified as amended at LA. REV. STAT. ANN. §§ 15:1301-1312 (West Supp. 1986)).

III. DATABASES

A. Release of Confidential Information

Illinois Any state agency governed by confidentiality requirements that distributes, transmits or contracts out confidential information in a form suitable for electronic data processing must notify the receiver of the information in writing of the agency's confidentiality requirements. Any receiver of such information so notified will be bound by the confidentiality requirements and subject to the same penalties for violation as the transmitting agency. Act of Sept. 14, 1985, Pub. Act No. 84-347, 1985 Ill. Legis. Serv. 244 (West) (to be codified at ILL. ANN. STAT. ch. 127, § 2901-2902 (Smith-Hurd)).

B. Access to Governmental Databases

Connecticut The legislature has appropriated \$30,000 to the Department of Environmental Protection to develop and maintain a natural diversity database and to give technical assistance concerning rare, threatened and endangered species to any person who requests it. Act of June 27, 1985, Spec. Act No. 85-68, 1985 Conn. Acts 78 (Reg. Sess.).

Illinois Computerized text of Illinois statutes and the administrative rules and regulations of state agencies will be made available to the public and to all governmental agencies. Under prior law, the Legislative Reference Bureau was only required to make such information available in

computerized form to certain state and local agencies. The new law also allows the Legislative Reference Bureau to adopt rules concerning public access to the computerized information and requires the Bureau to charge a fee for providing this information. Act of Sept. 22, 1985, Pub. Act No. 84-824, 1985 Ill. Legis. Serv. 125 (West) (to be codified as amended at ILL. ANN. STAT. ch. 63, § 42.15-8 and § 152 (Smith-Hurd)).

C. Public Utilities—Disclosure of Data and Programs

California Public utilities are required to provide the Public Utilities Commission with access to all computer programs and models used in establishing the facts necessary to justify any rate change or rule affecting any rate. The new law also designates procedures for the verification of computer models, operational models and databases as evidence in hearings or proceedings before the Commission. Act of Sept. 30, 1985, ch. 1297, 1985 Cal. Legis. Serv. 356 (West) (codified at CAL. PUB. UTIL. CODE § 585 and §§ 1821-1824 (West Supp. 1986)).

IV. REGULATION OF DATA PROCESSING SYSTEMS

Vermont All data processing services for regulated banking institutions, whether performed in-house or by an outside contractor, are subject to regulation and examination. Previously, data processing services were scrutinized by the state only if those services were actually performed by the regulated banking institution itself. Banking institutions are required to notify the state of the existence of a service relationship within thirty days of the making of a data processing service contract or the commencement of the service itself, whichever comes first. Act of Apr. 18, 1985, No. 18, 1985 Vt. Acts 49 (codified at VT. STAT. ANN. tit. 8, § 79 (Supp. 1985)).

V. SOFTWARE LICENSES

Illinois The Software License Enforcement Act is designed to protect against the unauthorized use, duplication and

distribution of computer software. It provides for binding agreements between purchasers of retail software and software publishers when certain provisions are placed in the form agreement. A person who acquires a copy of computer software will be deemed to have conclusively accepted certain provisions of the license agreement (specified below) if the following requirements for such form agreements are met: (1) written notice must be affixed to or packaged with the software indicating that the use of software will constitute acceptance of the terms of the license agreement; (2) the notice must be clear, conspicuous, readily understandable and in capital letters; (3) the notice must state that the software may be returned for a full refund within a reasonable time if the consumer does not agree to the licensing agreement; (4) the terms of the agreement must be noticeable before the act of acceptance occurs; and (5) the software must not be custom-made for the user. If these requirements are met, the software publisher may obtain acceptance of the following provisions if they are included in the agreement: (1) retention of title to the software by the merchant or publisher; (2) prohibition on the copying of software for any purpose, or limitations on the number of copies which can be made; (3) prohibition or limitation of consumer rights to modify or adapt the software in any way, including prohibitions on decompiling, disassembling or creating derivative works; (4) prohibitions on the transfer, assignment, rental, sale or other disposition of the software; (5) prohibitions on the use of the software on more than one machine or by more than one user; (6) automatic termination without notice of the license upon breach by the consumer; and (7) provisions for attorney's fees and costs for the prevailing party. The act does not address the enforceability of warranty disclaimers which may appear in license agreements, nor does it purport to alter rights granted by United States copyright laws. Software License Enforcement Act, Pub. Act 84-901, 1985 Ill. Laws 794 (to be codified at ILL. ANN. STAT. ch. 29 §§ 801-808 (Smith-Hurd)).

Louisiana

The Louisiana "Shrink Wrap" License Statute contains provisions similar to the Illinois Software License Enforcement Act discussed *supra*. However, the Louisiana

statute does not contain an exception for custom-made software or special agreements with the titleholder, a provision for the collection of attorney's fees or a prohibition on the use of software on more than one machine or by more than one user. The Louisiana statute does include an exception for transferring software when a business is sold. Software License Enforcement Act, Act No. 744, 1984 La. Acts 1846 (codified at LA. REV. STAT. ANN. §§ 51:1961-1966 (West Supp. 1986)) (originally codified at LA. REV. STAT. ANN. §§ 51:1951-1956 (West Supp. 1986)).

VI. TAXATION

A. Charitable Contributions

California Banks and corporations are allowed a fiscal year 1986 tax credit for charitable contributions of computer software not more than one year old to any educational organization which is not an institution of higher learning, such as to the Department of Youth Authority education program. The software must be directly usable to educate students. The amount of the credit shall be equal to twenty-five percent of the fair market value of the contribution.

In addition, a deduction is allowed for charitable contributions of computer software and ancillary or test equipment to an institution of higher education for purposes of research, experimentation, research training, instruction or as part of a research laboratory. The software or research equipment must not be more than two years old. Act of Sept. 30, 1985, ch. 1308, 1985 Cal. Stat. 404 (codified at CAL. REV. & TAX CODE §§ 23606.1, 24357.9 (West Supp. 1986)).

Oregon A corporate tax credit has been established for charitable contributions to post-secondary schools and institutions of higher education of computers, scientific equipment, maintenance services for such equipment and the donation of funds for engineering and scientific research. The amount of the credit is fixed at ten percent of the fair market value of the equipment or services at the

time the contribution is made. Act of June 13, 1985, ch. 695, 1985 Or. Laws 1542 (codified at OR. REV. STAT. § 317 (1985)).

Both the California and Oregon enactments are similar to the special federal tax treatment for contributions of "qualified research property" to educational organizations allowed under I.R.C. § 170(e)(4) (1985).

B. Sales, Use and Property Tax

Illinois

The definition of machinery and equipment exempt from use taxes has been expanded to include computers used primarily to operate exempt machinery and equipment in a computer-aided-design, computer-assisted-manufacturing (CAD/CAM) system. Act of Sept. 17, 1985, Pub. Act No. 84-516, 1985 Ill. Legis. Serv. 37 (West) (codified as amended at ILL. ANN. STAT. ch. 120, § 439.3 (Smith-Hurd Supp. 1985)).

Texas

The list of services subject to sales tax has been amended to include telecommunications services. "Telecommunications services" means electronic transmission of sounds, signals or data. It does not include storage or processing of data. However, interstate long distance telephone service and basic local telephone service have been exempted from taxation. Broadcasts, other than cable television, have also been exempted from taxation. A sale is deemed consummated where the transmission originates. If this cannot be determined, the sale is consummated where the call is billed.

As a result of this legislation, the sale of data or computer programs over phone lines will be taxed like the sale of magnetic tape and keypunch cards. Prior to this enactment, electronic transmission of data or programs was not subject to sales tax because no tangible good was transferred. Act of Oct. 1, 1985, ch. 206, 1985 Tex. Sess. Law Serv. 1075 (Vernon) (codified as amended at TEX. TAX CODE ANN. §§ 151.008(b), .0101(a), .054(b), .302, .305(b), .323, and 182.061; and codified at TEX. TAX CODE ANN. §§ 151.0103 and 151.0104; and codified at TEX. REV. CIV. STAT. ANN. art. 1066c § 4(B) and

6(B)(1)(f), art. 1118x §§ 11B(B)(c)(7) and 11B(B)(b-1), art. 1118y §§ 16(f)(2)(G) and 16(f)(1-A); and repealing TEX. TAX CODE ANN. ch. 182, sub. ch. A (Vernon Supp. 1986)).

VII. TECHNOLOGY AND GOVERNMENTAL AGENCIES

Arkansas

Major changes were made in the powers and responsibilities of the Arkansas Science and Technology Authority. Under new law, the Authority is authorized to create programs and provide funding for: (1) "seed" capital investments in high technology businesses; (2) basic research programs at Arkansas colleges and universities; (3) applied research partnerships between industry and academia, including provision for the transfer of knowledge; and (4) the creation of facilities in cooperation with colleges and universities to foster the growth of technology-based businesses. Specific provision is made to encourage applications for assistance from minority business ventures. Act of Mar. 19, 1985, Act No. 409, 1985 Ark. Acts 758 (codified as amended at ARK. STAT. ANN. §§ 6-1601 to 1603, 6-1604(i), 6-1604(n), 6-1604(p), 6-1610 to 1620 (Supp. 1985)).

Appropriations are provided in specific amounts for each of these programs, totaling approximately \$6 million per year. The Arkansas Development Financing Authority will take over the function of conduit financing authority from the Arkansas Science and Technology Authority. Act of Mar. 26, 1985, Act No. 595, 1985 Ark. Acts 895A and Act of Mar. 27, 1985, Act No. 640, 1985 Ark. Acts 1015A.

Montana

The Montana Science and Technology Development Board has been created to foster economic growth in the areas of science and technology by: (1) stimulating applied research and product development in the public and private sectors; (2) strengthening the research and development capabilities of the state's colleges, universities and other non-profit research centers; (3) transferring new technology and providing technical assistance to business and industry; and (4) furnishing "seed" capital to provide leverage for private investments in new

technologies. Dollar for dollar matching funds are required prior to any expenditure of state funds for research and development or for seed capital investments. The confidentiality of trade secrets and business and financial information provided by applicants is protected. Act of Apr. 24, 1985, ch. 701, 1985 Mont. Laws 1578 (to be codified at MONT. CODE ANN. §§ 90-3-101 and 90-3-102 (1985)).

Oregon

The Oregon Resource and Technology Development Corporation has been created for the purpose of fostering innovation and growth in existing and emerging advanced technology industries, especially in smaller enterprises. The Corporation is an independent, non-profit public organization which will provide financing, make grants and provide other services to high technology enterprises in Oregon and to educational institutions for the purpose of technology research. Expenditures for the two year period beginning July 1, 1985 are limited to \$13 million. Act of July 15, 1985, ch. 814, 1985 Or. Laws 1991 (codified at OR. REV. STAT. §§ 284.610-.710 (1985)).

Washington

The Washington High-Technology Coordinating Board, in addition to its previous responsibilities, is to: (1) work towards increasing private sector participation in Washington high technology programs; (2) identify and evaluate the effectiveness of state sponsored research related to high technology; (3) establish and maintain a plan to guide high technology program development in public institutions of higher learning, including the coordination of technology programs with changing market opportunities in the high tech industry; and (4) work cooperatively with the Department of Trade and Economic Development to identify high technology education and training needs of existing Washington businesses and businesses with the potential to locate in Washington. Act of May 20, 1985, ch. 381, 1985 Wash. Legis. Serv. 497 (West) (codified as amended at WASH. REV. CODE ANN. §§ 28B.65.040, .050, .060 (Supp. 1986)).

VIII. GOVERNMENTAL PROCUREMENT

A. Educational Equipment Procurement

Arkansas Post-secondary vocational-technical schools may acquire data processing or telecommunications equipment and services costing less than \$50,000 without the approval of the director of the Department of Computer Services. The 1983 version of the bill only exempted state-supported institutions of higher education from the approval requirements. Also, equipment used solely for research purposes or for instruction as self-contained units in laboratory settings is now excluded from departmental review, while equipment used primarily, but not entirely, for such purposes may be excluded upon a determination by the Department of Computer Services. Act of Mar. 21, 1985, No. 463, 1985 Ark. Acts 906 (codified as amended at ARK. STAT. ANN. §§ 5-1408, 80-4904 (Supp. 1985)).

Indiana In addition to its existing duties, the Indiana Consortium for Computers and High Technology is also now required to coordinate programs to demonstrate to school corporation personnel the use of computers as instructional tools through June 30, 1987. Previously, the Consortium established regional clearinghouses for information relating to computer instruction, coordinated the training of teachers in computer instruction skills and offered advice concerning the administration of the School Technology Advancement Account. The School Technology Advancement Account, which is part of the Common School Fund, will be refunded up to a level of \$5 million annually. The new law also requires that the computer hardware and software purchased with account money be used primarily for student instruction. Act of Apr. 9, 1985, Pub. L. No. 211-1985, 1985 Ind. Legis. Serv. 51 (West) (codified as amended at IND. CODE ANN. §§ 20-10.1-6.5-3, -4 (West Supp. 1985)).

Louisiana Any public college or university may procure data processing equipment, software, and maintenance services through its purchasing officer without the advance approval of the state central purchasing agency when a

single expenditure for such materials or combined materials does not exceed \$100,000. Act of July 16, 1985, No. 698, 1985 La. Sess. Law Serv. 592 (West) (codified as amended at LA. REV. STAT. ANN. § 39:199 (West Supp. 1986)).

- Texas** The board of trustees of a school district may purchase computers, computer equipment, and software without submitting the purchase contract to competitive bidding if the computer materials are on a list of approved equipment prepared by the State Purchasing and General Services Commission. Previously, all contracts proposed by any Texas public school board for the purchase of any property were submitted to competitive bidding when the property was valued at \$5,000 or more, except in certain emergency situations. Act of June 11, 1985, ch. 456, 1985 Tex. Sess. Law Serv. 3101 (Vernon) (codified as amended at TEX. EDUC. CODE ANN. § 21.901 (Vernon Supp. 1986)).

B. General Agency Procurement

- Louisiana** The terms of contracts for the procurement of data processing equipment, related services or software by the state have been changed. Under the new law, contracts having a term longer than twelve months or encompassing more than one fiscal year must have an annual appropriation dependency clause. Act of July 23, 1985, No. 995, 1985 La. Sess. Law Serv. 999 (West) (codified as amended at LA. REV. STAT. ANN. § 39:198(B)(1)(d) and codified at LA. REV. STAT. ANN. §§ 39:197(10), :197(11), :198(B)(3), :1556(26), :1616 (West Supp. 1986)).
- Oregon** The Executive Department is authorized to devise rules, plans, and specifications to require fair and competitive procurement practices for information systems technology and to promulgate rules concerning the coordination of such systems throughout the executive branch. Under prior law, the department was required only to formulate plans for such coordination and was not specifically authorized to adopt rules or plans concerning procurement. Act of July 13, 1985, ch. 594, 1985 Or.

Laws 1171 (codified as amended at OR. REV. STAT. § 291.038 (1985)).

Texas

The General Services Commission is directed to operate a computer service facility to provide computer services to state agencies that choose to subscribe. Subscribing agencies will be required to pay full cost for the service. The new law establishes a revolving fund account to pay for the administration of the facility. Act of June 14, 1985, ch. 662, 1985 Tex. Sess. Law Serv. 5024 (Vernon) (codified at TEX. REV. CIV. STAT. ANN. art. 601b, §§ 12.01 to 12.04 (Vernon Supp. 1986)).