

LEGISLATIVE UPDATE

INTRODUCTION

Legislative Update is a survey of recent federal and state legislation relating to various aspects of high technology.¹ The survey is comprised of brief summaries of new federal and state laws grouped under appropriate topic headings and listed thereafter alphabetically by jurisdiction, with federal law preceding state legislation. Each summary ends with a citation to the new law.

Although *Legislative Update* includes a broad selection of new federal and state technology-related 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. BIOTECHNOLOGY

Louisiana The Louisiana legislature has enacted a comprehensive scheme governing human *in vitro* fertilization. The Act provides that an ovum fertilized *in vitro* is a biologically human juridical person until implanted *in vivo*, possessing a legal identity apart from that of the medical facility where it is held and capable of suing or being sued. However, *in vitro* fertilized ova possess no inheritance rights against their genetic parents under the Act, though they may assert claims vesting at live birth against the estates of their adoptive parents. Having ascribed the *in vitro* fertilized ovum a juridical entity, Louisiana then cloaks it in further protective legislation: the ovum may not be destroyed, owned, sold, or used for any purpose other than the "complete development

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1. *High Technology Law Journal* wishes to thank Information For Public Affairs of Sacramento, California for providing us with access to their comprehensive computerized database of state legislation.

of human *in utero* implantation." Moreover, persons associated with *in vitro* fertilization are charged with the affirmative duties owed to the ovum. Thus, any physician or facility causing fertilization is "directly responsible" for an ovum's "safekeeping," and the patients who fertilized the ovum "owe it a high duty of care and prudent administration." Act of Aug. 30, 1986, No. 964, 986 La. Sess. Law Serv. 346 (West) (to be codified at LA. REV. STAT. ANN. §§ 9:121-133 (West Supp. 1986)). For a general article providing insight into the motivation behind this legislation, see Lorio, *Alternative Means of Reproduction: Virgin Territory For Legislation*, 44 LA. L. REV. 1641 (1984).

II. HIGH TECHNOLOGY AND CRIME

A. Computer Crime

United States The Computer Fraud & Abuse Act of 1986 makes computer fraud, information destruction, and password trafficking federal crimes. It is now a felony to commit an unauthorized act of computer trespass into a "federal interest computer" with the intent to defraud. A "federal interest computer" is defined as any computer used exclusively by the federal government or by a financial institution, or any computer used by the government or a financial institution whose operation is affected by the trespasser's conduct. Any computer trespass in a federal interest computer that causes a loss in excess of \$1,000 or which "potentially" modifies or impairs an individual's medical records is also a felony. All of the above felonies are punishable by up to five years in prison or a \$100,000 fine, or both. The new law also makes it a misdemeanor to traffic in computer passwords with an intent to defraud, or to disclose similar information without authorization if such trafficking affects interstate or foreign commerce or if the accessing of a federal interest computer is involved. This latter provision is intended to protect large business computer networks by discouraging "pirate bulletin boards," in

which "hackers" exchange secret codes to gain unauthorized computer access.

A more limited computer fraud statute was enacted in 1984, but this earlier law only provided criminal penalties for stealing national security data or for trespassing into government computers for the purpose of obtaining information pertaining to an individual's credit history. The new law asserts federal jurisdiction where there is a "compelling federal interest," reflecting a congressional intent that states handle most computer abuse crimes. Computer Fraud and Abuse Act of 1986, Pub. L. No. 99-474, 100 Stat. 1213 (to be codified as amended at 18 U.S.C. §§ 1030(a), 1030(a)(2)-(3) (1986)).

Louisiana

It is now a criminal offense to (1) transfer an access device to another person with an intent to defraud, (2) possess an access device of another person without authorization and with an intent to defraud, or (3) possess or transfer a counterfeit access device or any equipment used to produce counterfeit devices with such intent. An "access device" is defined as any code, account number, plate, or other means of access to a financial account. An "access device" thus includes credit cards or ATM access cards within its domain. Any violation of these provisions is punishable by a fine of not more than \$2,000 or imprisonment for not more than two years, or both. Previously, prosecutions for such acts of fraud or theft were made either pursuant to conspiracy statutes, which required an overt act, or pursuant to theft statutes, under which there was ambiguity as to whether the item stolen had any inherent value. Act of July 2, 1986, No. 555, 1986 La. Sess. Law Serv. 56 (West) (to be codified at LA. REV. STAT. ANN. § 14:70.4 (West 1986)). Separate legislation provides criminal penalties for persons who provide false information in attempting to obtain an access device. Act of July 10, 1986, No. 871, 1986 La. Sess. Law Serv. 36 (West) (to be codified as amended at LA. REV. STAT. ANN. § 14:70.2 (West 1986)).

- Oklahoma** It is now unlawful to communicate with, store data in, or retrieve data from a computer network for the purpose of using such access to violate any Oklahoma statute. Violation of this provision is a felony punishable by a fine of not more than \$5,000 or imprisonment for not more than five years, or both. Act of Mar. 21, 1986, ch. 26, 1986 Okla. Sess. Laws 48 (second regular session) (to be codified at OKLA. STAT. tit. 21, § 1124 (Supp. 1986)).
- Utah** The Utah Computer Fraud Act of 1979 has been repealed and reenacted as the Utah Computer Crimes Act. It is now a felony to intentionally gain or attempt to gain access to computer-related property without authorization, and to damage, alter, tamper with, modify, or disclose the contents of such property. If the amount of damage is less than \$1,000, however, the offense is reduced to a misdemeanor. The use of computers in performing any of the above acts is also a felony. In addition, using or knowingly permitting another to use a computer or computer-related property to devise or execute a scheme to defraud is a felony. Computer-related property includes networks, systems, programs, software, and other computer property. It is a misdemeanor to intentionally interfere with or interrupt the provision of computer services to someone entitled to receive them. Computer Crimes Act of 1986 (codified as amended at UTAH CODE ANN. § 76-6-705 (1986)) (repealing and reenacting UTAH CODE ANN. § 76-6-703 (1985)).

B. Proprietary Rights

- California** The California Penal Code has been amended to include computer software in its protection of proprietary information rights. Originally, section 653w of the Penal Code only protected rights in various sound recording media by requiring that the package in which such a recording is sold disclose the name of the performer and the name and address of the manufacturer. The definition of "recording" has been amended to include all "tangible media upon which information . . . or images are . . . stored." Knowing or intentional failure to

make disclosure for commercial advantage or private gain subjects an offender to a fine not to exceed \$5,000 or imprisonment for not more than six months, or both. Act of July 15, 1986, ch. 367, 1986 Cal. Legis. Serv. 294 (West) (codified as amended at CAL. PENAL CODE § 653w (West Supp. 1986)).

C. Theft of Services

Nebraska A statute making the unauthorized use of telecommunications services a crime has been amended to specifically include cable television services. The new law also makes it a misdemeanor to knowingly make, possess, sell, advertise for sale, or tamper with devices used to fraudulently obtain unauthorized telecommunications services. Act of Mar. 28, 1986, 1986 Neb. Laws 464 (codified as amended at NEB. REV. STAT. § 28-515 (1986)).

Tennessee Existing provisions in the Tennessee Code regarding the theft of telecommunications signals have been enhanced. Under new amendments, the mere presence of an unauthorized cable tap is *prima facie* evidence of an intent to steal. Theft of a signal from a "microwave multi-point distribution system station" ("MDS") is also explicitly prohibited by the statute. An MDS is a system wherein signals are picked up from a satellite and relayed by microwave signals from a tower transmitter to home receivers. The new amendments also delete a subsection of prior law which specifically exempted satellite reception dishes from the provisions of the cable television signal theft laws. Act of July 1, 1986, 1986 Tenn. Pub. Acts 59 (codified as amended at TENN CODE ANN. § 39-3-1136(a)-(g) (West Supp. 1986)).

D. Electronic Surveillance, Databases, and Privacy

United States The Electronic Communications Privacy Act of 1986 updates and expands existing federal wiretap law by protecting the privacy of both aural and data communications transmitted via modern communications devices. The statute extends the protections currently enjoyed by telephone communications to nearly all types of electronic communications, thereby outlawing eavesdropping on electronic mail networks, computer-to-computer data transmissions, remote computing services, private video conferences, and cellular car telephone conversations. However, the radio portion of cordless telephone conversations, tones transmitted to paging devices, specified transmissions via audio subcarrier, and satellite transmissions of satellite cable programming are exempt from protection under the statute. Also exempt under the law is any other radio communication made through an electronic communications system that is "readily accessible to the general public," such as aeronautical, marine, or public emergency transmissions that can be received by a ham radio.

The Act establishes both civil and criminal penalties for the willful and unauthorized interception of private electronic communications. Individuals who gain unauthorized access to protected communications systems for purposes of commercial advantage, malicious destruction, or private commercial gain will be subject to fines of up to \$250,000 (organizations may be fined up to \$500,000) or a prison sentence of up to five years, or both. If the crime committed under the statute (1) is a first offense, (2) is not for a tortious or illegal purpose, and (3) the interception involves a radio transmission other than a cellular telephone conversation, the violator is subject to a fine of up to \$100,000 and a prison term of not more than a year, or both. If the interception involves a cellular telephone call, the individual is subject only to a \$500 fine for a first offense. Civil penalties consist of the greater of actual damages plus any profits made by the violator, or \$10,000. Furthermore, the Act provides protection for stored electronic communications, such as electronic mail messages which are stored

on the service provider's computer for long periods of time.

The Act also protects customer privacy by limiting the circumstances in which a service provider can make disclosures of communications. Providers of communications may not disclose a communication to any person other than the intended recipient of the communication under threat of criminal and civil penalties. Of course, communications may be disclosed if the disclosure is incidental to the rendition of the communications service. The Act does allow service providers to give federal law enforcement officials access to an individual's electronic communications if such officials first obtain a warrant (or a court order under specified circumstances). Cooperating service providers are protected from any civil actions arising from compliance with such court orders. The Act also has provisions governing the use of pen registers and mobile tracking devices by law enforcement officials. The Act was intended to adapt federal wiretap law, primarily title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510 *et seq.*, to recent technological advances in the communications industry. Electronic Communications Privacy Act of 1986, Pub. L. No. 98-473, 99-508 (to be codified as amended at 18 U.S.C. §§ 2232, 2510-2513, 2515-2520 and codified at 18 U.S.C. §§ 2520-2521, 2701-2710, 3117, 3121-3126 (1986)).

Arkansas

Legislation passed in 1985, which required the issuance of a judicial *ex parte* order prior to the interception of certain wire or oral communications by investigative or law enforcement agencies, has been repealed. The efforts of law enforcement were determined to be severely hampered by the old law. Act of Apr. 30, 1986 (second extraordinary session), Act No. 1 (repealing ARK. STAT. ANN. §§ 41-4501, -4509 (1985)).

Louisiana

It is now a criminal offense to manufacture, assemble, sell, offer for sale, advertise for sale, possess, transfer, import, or furnish to another any device which is primarily or exclusively designed or intended for eavesdropping on or recording of the confidential communications of another. Violation of these provisions is

punishable by a fine of not more than \$2,000 or imprisonment for not more than one year, or both. Act of June 23, 1986, No. 96, 1986 La. Acts 7 (to be codified at LA. REV. STAT. ANN. § 14:323 (West 1986)).

Louisiana It is now a crime to willfully eavesdrop upon or record a confidential communication by means of any electronic amplifying or recording device without the consent of all parties to the communication. No information obtained by violating this statute will be admissible in any judicial, administrative, legislative, or other proceeding except as proof in a prosecution for violation of this statute. However, the law does not apply to law enforcement agencies or their authorized agents. Act of June 23, 1986, No. 97 (to be codified at LA. REV. STAT. ANN. § 14:323 (West 1986)).

III. TECHNOLOGY AND DEVELOPMENT

A. Technology Transfer and Intellectual Property

United States The Japanese Technical Literature Act of 1986 directs the Secretary of Commerce to establish and maintain a program, both in the United States and Japan, to monitor Japanese technological activities. The law also provides for the translation of selected Japanese technical documents and the compilation of a directory listing all programs and services that collect, abstract, translate, and distribute Japanese technical information in the United States. Additionally, it directs the Secretary to consult with United States businesses, professional societies, and libraries regarding their informational needs on Japanese technology. The new law amends section 5 of the Stevenson-Wydler Technology Innovation Act of 1980, 15 U.S.C. § 3704, which was intended to facilitate technological advances in the United States. Japanese Technical Literature Act of 1986, Pub. L. No. 99-382, 100 Stat. 781 (to be codified as amended 15 U.S.C. § 3704 (1986)).

Arizona

The policies of the Arizona Board of Regents have been changed to allow the liberalized transfer to private sector entities of technology developed by university employees. The new legislation essentially requires the disclosure to the Board of (1) potential relationships between university employees and technology transferees, and (2) the benefit or detriment to the state and university of such relationships. Any such relationship must be approved by the Board. The Act also allows the state institution to share in the proceeds of any patent, licensing, or royalty rights which it grants. Act of Apr. 9, 1986, 198 Ariz. Legis. Serv. 839 (to be codified at ARIZ. REV. STAT. ANN. § 41-1509 (1986)).

Louisiana

The Code of Governmental Ethics has been amended to encourage the development of new technology by state employees. Section 1101 of the Code, LA. REV. STAT. ANN. § 42:1101(B) (West 1965), announced the state's general rule that "public . . . employment not be used for private gain." The new law liberalizes this policy by creating an exemption from section 1101 for the "receipt of or sharing in the proceeds of any patent, copyright, licensing right, or royalty" by faculty and staff of state institutions of higher learning. The new exception applies only to activities consistent with a university's mission and approved by the employing campus' president and management board. Act of July 2, 1986, No. 374, 1986 La. Sess. Law Serv. 409 (West) (to be codified at LA. REV. STAT. ANN. § 42:1123(9) (1986)).

B. Employee Competition**California**

Any employee can now be required to assign, or offer to assign, his or her rights to an invention which, at the time of conception or marketing of the invention, (1) results from any work performed by the employee for the employer, or (2) relates to the business, actual, or anticipated research goals of the employer. Any invention developed on an employee's own time without the use of the employer's equipment, supplies, facilities, or trade secret information cannot be required to be assigned or offered to be assigned by contract. Act of July

15, 1986, ch. 346, 1986 Cal. Legis. Serv. 237 (West) (to be codified at CAL. LABOR CODE § 2870(a)(1) (1986)).

C. Technology and Government Agencies

United States The Secretary of Agriculture has been authorized to make grants to public and non-profit institutions to operate centers of rural technological development. The purpose of this legislation is to stimulate the economies of rural areas suffering from high unemployment, low incomes, and few industries and agribusinesses. Rural Industrial Assistance Act of 1986, Pub. L. No. 99-409, 100 Stat. 923 (to be codified as amended at 7 U.S.C. §§ 1932(a), 1932(f)(1)- (3) (1986)).

California The University of California is requested to establish an experimental technology transfer and education project under its aegis to initially serve five Bay Area counties. The project, which may continue through July 1, 1990, will provide assistance to small and medium-sized businesses on a sliding scale fee-for-service basis. The project will seek to provide the following services: (1) technology education to familiarize business owners with the business opportunities available to them because of the development of new technologies; (2) technology assessments and any other advice and assistance which might be appropriate to aid small businesses which produce scientifically-based products; (3) technology development and transfer studies to adapt technological advances to the needs of small businesses; and (4) an inner-city small business technology service which will assist minority inner-city enterprises in identifying their needs and potentials for using new technologies. Act of Aug. 28, 1986, ch. 595, 1986 Cal. Legis. Serv. 199 (West) (to be codified at CAL. EDUC. CODE §§ 92680-92687 (1986)).

Kentucky The Office of Business and Technology (the "Office") has been created within the Office of the Commerce Cabinet. The Office will be responsible for coordinating and monitoring the various activities of state agencies which relate to the adaptation of advanced technologies to the workplace. The Office will also study the

possibility of establishing research and technology centers in the state. Act of Jan. 22, 1986, 1986 Ky. Acts 228 (codified as amended at KY. REV. STAT. ANN. § 12.020 (Michie/Bobbs-Merrill 1986)).

D. Governmental Venture Capital Corporations

Connecticut The Connecticut Product Development Corporation has been given the power to enter into limited partnerships and other contractual arrangements with the private sector to provide financial assistance to Connecticut ventures during the early stages of their development. The purpose of this legislation is to encourage additional capital investment, the establishment of new businesses, the creation of new jobs, and increased commercially-oriented research and development. Act of June 22, 1986, Pub. Act No. 86-255, 1986 Conn. Legis. Serv. 20 (West) (codified at CONN. GEN. STAT. §§ 32-36 and 32-39a (1986)).

Kansas Kansas Technology Enterprise Corporation ("KTEC") has been created to (1) finance basic research, applied research and development, and technology transfer at educational institutions; (2) award applied research matching grants to private enterprises and educational institutions; (3) provide seed-capital financing to emerging businesses in Kansas; and (4) provide technical referral services to all businesses within the state. KTEC is also authorized to establish Centers of Excellence for basic research, applied research, and technology transfer at educational institutions in the state. Finally, KTEC has been directed to develop a matching-grant program for innovative research by small businesses. Act of May 8, 1986, ch. 284, 1986 Kan. Sess. Laws 1513 (codified at KAN. STAT. ANN. § 74-8101 (1986)).

Nebraska The Research and Development Authority has been created to promote innovation in existing and new Nebraska industries, and to create and maintain employment in "areas of importance in the state's economy." The Authority is empowered (1) to provide financial assistance through contracts, grants, equity investments, and loans to technological research and development

projects which are likely to lead to commercialization; (2) to establish incubator facilities across the state to assist entrepreneurs and enterprises; and (3) to develop a communications network and database cataloging various types of assistance available to new and established companies. Act of Apr. 18, 1986, Legis. Bill 850, 1986 Neb. Laws 1259 (codified at NEB. REV. STAT. §§ 58-401-439 (Supp. 1986)).

New Mexico The Research and Development Institute ("Institute") has been created (1) to implement a research and development plan for state support of technologies and products which offer the "greatest opportunities" for economic development in the state, and (2) to acquire applied research and development funds from sources other than state government. The Institute will replace the Energy Research and Development Institute ("ERDI"). The new Institute will receive any funds held by ERDI, but also will be bound to ERDI's contracts and duties. Act of Feb. 28, 1986, ch. 38, 1986 N.M. Laws 811 (codified at N.M. STAT. ANN. §§ 9-15-16 to -15-26 (1986)); (repealing N.M. STAT. ANN. §§ 71-4-9 to -4-20 (1978) and amending N.M. STAT. ANN. § 9-15-13 (1978)).

New Mexico Four million dollars has been appropriated for technical centers in the state. Of this total, \$3.9 million will go to the Technical Excellence Centers in the Rio Grande research corridor which were established in 1983 to provide research centers for advanced technologies, including research involving high technology materials, diagnostic techniques in medicine, computer applications, genetic engineering, and explosive technology. The remaining \$100,000 will go to the Technological Innovation Center, which assists inventors and technology development companies in planning, financial packaging, resource acquisition, cooperative ventures, and other areas. Act of Feb. 28, 1986, ch. 37, 1986 N.M. Laws 808 (codified as amended at N.M. STAT. ANN. § 21-19-9 (Supp. 1986) (Technical Excellence Centers) and N.M.

STAT. ANN. § 21-19-8 (Supp. 1986) (Technological Innovation Center)).

Tennessee The Tennessee Economic Development Corporation ("TEDC") was created and authorized to make investments of seed capital in enterprises located in economically depressed areas of Tennessee. The purpose of the corporation is to create jobs for the state's residents. Investment by TEDC is limited to \$500,000 per enterprise and this investment must comprise less than 50% of the capital in the enterprise. In addition to repayment of these loans, participating enterprises are required to contribute 5% of their profits to TEDC. Act of July 1, 1986, ch. 867, 1986 Tenn. Pub. Acts 342 (codified at TENN. CODE ANN. §§ 4-17-101 to -111 (West Supp. 1986)).

Vermont The Vermont Venture Capital Corporation ("VVCC") was created to provide investment capital, especially equity capital, to new and existing Vermont firms which may not be able to obtain such financing from other sources. The Act also establishes a limited tax credit for investors in VVCC. Act of May 7, 1986, No. 171, 1986 Vt. Acts 264 (codified at VT. STAT. ANN. tit. 10, §§ 281-285; tit. 32, § 5830(b); tit. 16, § 1943(a)(3); tit. 3, § 472(a)(3); and tit. 24, § 5063(a)(3) (1986)).

IV. TELECOMMUNICATIONS

A. Regulation of Telecommunications Corporations

United States The Low Power Cable Television Station Act of 1986 clarifies the definition of "local service area" for low power television stations. The new law allows cable television networks to carry low power television signals as local broadcasts rather than as distant signals. It also modifies the cable compulsory license section of the Copyright Act, 17 U.S.C. § 111, in order to eliminate the notice of identity and the notice of change requirements for cable television systems. Act of Aug. 27, 1986, Pub.

L. No. 99-397, 100 Stat. 848 (to be codified as amended at 17 U.S.C. § 111(d) and (f) (1986)).

Nebraska

Telecommunications companies which provide services within the state will now be regulated by the Public Service Commission ("PSC") in order to provide for the orderly and effective development of the industry. The PSC is empowered to certify and license local and long distance companies doing business in the state and may require performance bonds to protect consumer advances or deposits held by telecommunications companies. The PSC is also empowered to waive, limit, or remove licensing and other administrative requirements not established by statute when it will benefit the public interest, and may revoke such waivers, limitations, and exemptions when it deems appropriate. Rate increases may be initiated *sua sponte* by the PSC or by consumers. The bill exempts one-way broadcast transmissions of radio or television signals, cable television transmissions, and mobile radio, radio paging, and cellular services from PSC regulation. The new law preempts all regional and local regulation of telecommunications companies. Act of Apr. 18, 1986, Legis. Bill 835, 1986 Neb. Laws 835 (codified as amended at NEB. REV. STAT. §§ 75-109, 75-604, 75-609 (1986)).

Wisconsin

A variety of code sections have been amended substituting terms such as "telecommunications utility" in place of "telephone company" in order to explicitly manifest the authority of the Public Utilities Commission ("PUC") over the entire spectrum of telecommunications and information services. However, telecommunications companies with intrastate gross operating revenues exceeding \$100,000,000 are not required to obtain written approval of their contracts from the PUC when the amount of the contract does not exceed \$100,000. The statute includes most telecommunications facilities within the definition of "public utilities," but excludes telecommunications cooperatives and certain small telecommunications facilities. Specific amendments thwart the possibility of monopolization in the telecommunications industry by stipulating the holdings which non-local telecommunications companies can maintain. Act of Apr. 25, 1986, Act No. 297 (vetoed in part), 1985

Wisc. Laws 1294 (codified as amended in scattered sections of WISC. STAT. ANN. (West Supp. 1986)).

B. Telecommunications for State Agencies

Connecticut The State Office of Information and Technology (the "Office") has been established within the Office of Policy and Management. The Office is responsible for developing a comprehensive strategy by February 1, 1988, for implementing state telecommunications goals, which are to include the following: (1) the creation of a telecommunications system to serve state agencies; (2) the provision of emergency telecommunications capabilities sufficient to support state functions; and (3) the implementation of statewide 911 and E-911 systems. The bill also creates a state agency information and advisory committee composed of designees from state agencies, and a private sector information and technology advisory committee composed of representatives from private sector entities which have large information systems, in order to assist the Office in developing these telecommunications goals. Act of June 4, 1986, Pub. Act No. 86-292, 1986 Conn. Acts 292 (codified at CONN. GEN. STAT. §§ 16a-110 to -112 (1986)).

Indiana The development of a statewide telecommunications network has been authorized, to be overseen by an administrative body known as the Intelenet Commission. The Commission will "design, develop, contract for, and manage a statewide integrated telecommunications network . . . to telecommunicate documents, pictures, data, sounds or other symbols from place to place." The system will be for the exclusive use of state agencies, schools and state universities, non-commercial television and radio companies, political subdivisions, other users specified in the statute. The Commission was created in response to the increasing telecommunications requirements of various Indiana state agencies. Act of Mar. 7, 1986, Pub. L. No. 54-1986, 1986 Ind. Acts 847 (to be codified at IND. CODE ANN. § 5-21 (West 1986)).

C. Taxation of Telecommunications

Connecticut A six and a half percent tax has been imposed on gross receipts earned from providing competitive telecommunications services. Equipment used to provide competitive services is also subjected to the local personal property tax. Under prior law, all telecommunications companies were subject to a nine percent tax and their equipment was exempt from property tax. Under this statute, the nine percent tax and the personal property tax exemption continue only for rate-regulated monopoly services and equipment.

Regulated telecommunications companies are required to pay two-ninths of their nine percent gross receipts tax on monopoly services directly to the towns in which they operate. Payments are to be apportioned according to each town's share of the company's total number of resident and business basic telephone exchange lines. The statute also sets up a procedure for apportioning among towns the taxable personal property of a company which provides both competitive and monopoly telecommunications services. Finally, the Act makes conforming and clarifying changes in the law imposing the gross receipts tax on telephone, telegraph, cable express, and cable television companies.

The Act is intended to address recent advances in telecommunications technology, the divestiture of AT&T, and the entry of competition into the telecommunications field. The law is also intended to stop the multiple taxation of carrier access charges and any other charges unique to interconnecting the local telecommunications companies with long distance carriers. These charges were previously taxed twice, once in the earnings of the long distance carriers and again in the earnings of the local telecommunications companies. Act of June 4, 1986, Pub. Act No. 86-410, 1986 Conn. Legis. Serv. 357 (West) (codified as amended at CONN. GEN. STAT. §§ 12-255(a)-(s), 12-256(a)-(c), 12-258, 12-268(j) (1986)).

- Louisiana** Previous law relating to the lease-procurement of telecommunications equipment has been amended and re-enacted to provide that the terms of such procurement shall not exceed ten years. Previously, such terms were not to exceed five years. The amendments were intended to maximize the state's tax flexibility and were enacted in response to the useful working life schedules of the Internal Revenue Service imposed upon equipment procured by the state, which often exceeded five years. Act of July 10, 1986, No. 778, 1986 La. Sess. Law Serv. 643 (West) (codified as amended at LA. REV. STAT. ANN. §§ 39:1752(3), 39:1753(C)(3) (West 1986)).
- Maine** New law requires that every person providing telecommunications services pay an annual excise tax. The Act defines telecommunications services to include the transmission of any interactive, two-way electromagnetic communication, including voice, image and data transmissions made via wires, cables, optical waves, light waves, or any combination of these or similar media. Telecommunications services include telegraph services, but they do not include value-added non-voice services in which computer processing applications are used to act on the form, content, code, and protocol of the information to be transmitted (unless those services are provided under tariff approved by the Public Utilities Commission). The Act, is intended to modernize the state's excise tax by extending the tax to MCI, SPRINT, and the other telecommunications companies that have entered the market since the AT&T divestiture. Previously, the excise tax applied only to AT&T and NET. Act of Apr. 11, 1986, ch. 651, 1986 Me. Legis. Serv. 1 (codified at ME. REV. STAT. ANN. tit. 36, §§ 2691-2696 (1986)).
- New York** Equipment used in the transmission of news wire services is excluded from real property tax. Such equipment will now be treated in the same manner as equipment used in the transmission of television, cable television, or news and entertainment radio signals. Act of May 21, 1986, ch. 822, 1986 N.Y. Laws 1946 (codified as amended at N.Y. REAL PROP. TAX LAW § 102.12(i) (McKinney Supp. 1986)).

V. CONSUMER PROTECTION AND ELECTRONIC EQUIPMENT

A. Sales and Warranties of Electronic Equipment

Connecticut To protect consumers from "gray market merchandise," retailers and mail-order businesses who knowingly sell such goods must disclose that their merchandise is *not* (1) accompanied by a manufacturer's warranty, (2) eligible for a rebate offered by a manufacturer, or (3) accompanied by instructions in English if such is the case. Violation of the Act is deemed an unfair or deceptive trade practice under Connecticut law and entitles a consumer to return unused and undamaged goods for a refund within twenty days of purchase. "Gray market merchandise" is defined as any brand-name consumer product normally accompanied by a valid warranty which is imported through channels other than the manufacturer's authorized distributor and which may not be accompanied by a valid manufacturer's warranty. Retailers who provide written warranties offering equal or greater protection than the manufacturer's warranty and backed by a financially sound warrantor are exempt from the law. Act of May 2, 1986, Pub. Act No. 86-302, 1986 Conn. Acts 302 (codified at CONN. GEN. STAT. § 42-210 (1986)).

B. Regulation of Electronic Repair Dealers

California The Electronic and Appliance Repair Dealer Registration Law was amended to include dealers who install and replace electronic devices such as computers or satellite receiving equipment. The amendments also require that estimates be made for all repair work or installation of electronic devices and appliances before such work begins. Act of June 26, 1986, ch. 207, 1986 Cal. Legis. Serv. 66 (West) (codified as amended at CAL. BUS. & PROF. CODE §§ 9801, 9806, 9841, 9842, 9844, 9844.5, 9852; and codified as amended at CAL. BUS. & PROF. CODE § 9844.1 (West 1986)).

VI. TECHNOLOGY AND GOVERNMENT SERVICES

A. Technology and Education

New Mexico An appropriation has been made from the general fund, to be matched by funds from private corporations and participating school districts, to support Project Uplift. The project will expose high school students in the state to "high technology preparedness training," career information, and site visitations. Act of Mar. 3, 1986, ch. 59, 1986 N.M. Laws 901.

B. Government Procurement

New Mexico The Information Systems Act was enacted to coordinate state agency information systems and to provide an organized purchasing and recording system. Under the Act, the Information Systems Council has the duty to develop an annual master plan specifying the policy and direction with which state agencies must comply to various automated systems development and support standards and data base management standards. The Council will serve as the central purchasing agent for information systems resources. Also, the new law creates revolving funds under the auspices of the state treasury for the purpose of acquiring and replacing data processing and communications equipment. Finally, state agencies and other users of state data processing and communications equipment must pay monthly depreciation and replacement fees for the use of such equipment. The Information Systems Act, ch. 81, 1986 N.M. Laws 993 (codified at N.M. STAT. ANN. §§ 15-1-1 to -1-13 (1986)) (repealing N.M. STAT. ANN. §§ 15-1-1 to -1-10, 15-2-6, 15-2-7 (1978)).

South Carolina The Tax Commission is now authorized to contract for computer and other electronic data processing services. Also, information contained in or produced from any tax return, document, or tape must not be published or disclosed, except to the commission or as provided by law. The Act provides penalties for violating the latter provisions. Act of Mar. 7, 1986, 1986 S.C. Acts 2032

(codified at S.C. CODE ANN. § 12-3-260 (Law. Co-op Supp. 1986)).

C. Electronic Voting

New York Voting machines which have removable electronic or computerized devices which record the total votes cast on such machines may now be used after the close of polls to provide unofficial primary or general election tally results. Act of July 1, 1986, ch. 262, 1986 N.Y. Laws 447 (codified as amended at N.Y. ELEC. LAW §§ 1-104(29)-(31), 3-222, 7-104(4)(b), 7-104(7), 7-200 to -208, 9-102, 9-120, 9-126 (McKinney Supp. 1986)). Furthermore, the state Board of Elections must promulgate rules and regulations setting minimum standards for computerized record keeping systems maintained by the Board of Elections in each county in order to facilitate compatibility between the systems used by the various county and state Boards. Act of July 17, 1986, ch. 425, 1986 N.Y. Laws 877 (codified as amended at N.Y. ELEC. LAW § 3-103 (McKinney Supp. 1986)). *See also* Act of July 21, 1986, ch. 425, 1986 N.Y. Laws 877 (codified as amended at N.Y. ELEC. LAW §§ 3-220(6), 4-134(2), 5-506, 8-304(1)-(2), 8-306(3) (McKinney Supp. 1986)).

VII. TAXATION²

A. Sales, Use and Property Taxation

Idaho The definition of tangible personal property subject to sales and use taxes has been expanded to include computer software. However, custom computer programs are considered intangible personal property and are excepted from this provision. A custom computer program is defined as software written or modified specifically for the owner. The change is enacted to avoid the extended litigation that has affected other states concerning the taxation of software. Act of Apr. 2, 1986, ch. 192, 1986

2. *See also supra* at *Legislative Update* § I(D) (Taxation of Telecommunications).

Idaho Sess. Laws 488 (codified as amended at IDAHO CODE § 63-3616(b) (Supp. 1986)).

**South
Carolina**

From July 1, 1986 to June 30, 1991, the maximum sales or use tax to be levied on each item of machinery purchased for research and development purposes is \$300. Such machinery must be used directly and exclusively for experimental and laboratory purposes in developing new products, designing new uses for existing products, or improving existing products. The machinery must also be located in a separate facility devoted to research and development.

In addition, the facilities of all new enterprises engaged in research and development and all additions to existing facilities of research and development enterprises valued at \$50,000 or more are now exempt from *ad valorem* taxation. This exemption is applied in the same manner as the existing exemption to new manufacturing establishments: the exemption includes machinery and equipment installed in the facility, but it does not include exemptions from school or municipal taxes. Eligibility for this exemption is conditioned upon meeting the same limitations outlined above concerning sales and use taxes. Act of Mar. 7, 1986, 198 S.C. Acts 550.

B. Corporate Income Tax Incentives

Louisiana

The State Board of Commerce and Industry is now empowered to offer a \$5,000 tax credit to aviation and aerospace industries in the state for each new job created. This credit is in lieu of the \$2,500 tax credit per net new employee given to companies in other industries. The aviation and aerospace industry tax credit may be applied to any state income or franchise tax liability within the next ten years. The purpose of the legislation is to provide the Board with another incentive to attract aviation and aerospace industries into the state. Act of July 8, 1986, No. 701, 1986 La. Sess. Law Serv. 443 (West) (codified as amended at LA. REV. STAT.

ANN. §§ 51:1787(A)(2), 51:1787(C)(2) (West Supp. 1986)).

Mississippi Mississippi's Advanced Technology Initiative Act of 1984 has been amended and expanded to embrace high technology businesses. The Act, which provides sales and use tax exemptions, employment based tax credits, and industrial revenue bond finance assistance, originally applied only to certain enumerated industries. It now covers any new or existing business expanding into an area which has been determined by the state's Board of Economic Development to be of an advanced technology nature. Act of Mar. 24, 1986, ch. 376, 1986 Miss. Laws 144 (codified as amended at MISS. CODE ANN. § 57-54-5 (Supp. 1986)).