Keeping private data secure

Midwestern states among the vanguard when it comes to laws and measures to secure residents’ private electronic information

by Jan Davis (jdavis@csg.org)

From birth to death, states collect terabytes of personal information on their residents, all of which must be kept secure. One successful hack or one employee clicking on one link in one email could reveal personal information on hundreds, thousands or even millions of citizens.

Search the web for “information breach” and a state; you’ll find plenty of examples (not to mention myriad incidents in the private sector), but in 2018 alone:

• North Dakota officials last month disclosed that one-third of the state’s school districts had been attacked in February by “foreign entities” that installed malware (malicious software), which was eliminated from a state employee network within 30 to 45 days.

• The Illinois State Board of Elections acknowledged in February that federal officials had confirmed that 76,000 voters’ records had personal data compromised by Russian hackers in 2016.

• Michigan Medicine (part of the University of Michigan) notified 870 patients that their health information might have been exposed after an employee’s laptop was stolen.

• The Kansas Department for Aging and Disability Services notified the public in February of an incident in which an employee “sent an unauthorized email containing personal or protected health information to a group of current (department) business associates.”

According to the law firm Norton Rose Fulbright, which monitors data privacy laws, all 50 U.S. states have enacted breach-notification laws that require businesses to notify consumers if their personal information has been compromised.

And to secure their information systems against external threats, all 50 states also have chief information security officers. Only nine — including Indiana and Ohio — have taken the additional step of hiring a chief privacy officer whose job is to protect the privacy rights of the people whose information is held by the state, says Amy Glasscock, a senior policy analyst at the National Association of State Chief Information Officers.

“States collect a lot of personal information” such as driver’s license and Social Security numbers, tax information, mortgage and business filings, voting records, etc., Glasscock says. “And as citizens of a state, you don’t often get a lot of choice [about that].”

Rita Heims, general counsel and research director at the International Association of Privacy Professionals, says this position is common in the private sector. However, there is no single definition for it because privacy needs can be quite different from one company to the next. Generally, however, private-sector chief privacy officers ensure the company’s data-handling practices are in accordance with laws and privacy norms, Heims adds.

A focus on privacy protection

In Ohio, the position of chief privacy officer was created in 2007 by then-Gov. Ted Strickland and then codified by the General Assembly in 2008 (HB 46), following a data breach involving improper access to personal information by state employees.

Under the law, the Ohio Office of Information Technology must “employ a chief privacy officer” to advise the office and other state agencies on policies and procedures for handling personal information, and to develop education and training programs regarding the state’s data-security procedures.

Ted Cotterill, Indiana’s chief privacy officer, says Indiana’s Open Data Act (HB 1470, signed into law in May 2017) created a legal framework for executive agencies to share data; as interagency discussions about interaction and data-sharing cooperation evolved, so did the desire for a chief privacy officer.

The job was subsequently created by administrative fiat as a position within the Indiana Management Performance Hub, the state’s interagency data portal,
New Ohio law will change how teacher performance is evaluated

Effective of a national trend that has states re-examining how they evaluate the performance of teachers, Ohio is moving ahead with a revamped system that relies less on student test scores and places a greater emphasis on professional development.

SB 216 was signed into law this summer.

Legislative approval of the changes capped two years of work that began with a request from the state superintendent of public instruction. In the Buckeye State, such reviews are handled by the Educator Standards Board, a mix of teachers, school administrators, legislators and higher-education leaders established by the General Assembly 14 years ago.

The legislature, in turn, incorporated the board’s proposed recommendations into SB 216.

Among the changes is the elimination of a state requirement that 50 percent of a teacher’s evaluation be based on student academic growth.

“That growth data is still important, but we wanted to take a more holistic approach,” says Julia Simmerer, senior executive director of the Center for the Teaching Profession at the Ohio Department of Education. Instead of being a stand-alone criterion for teacher evaluations, student growth will be incorporated into other components of a teacher’s evaluation. Every teacher, too, must receive an individualized professional growth plan based on the evaluation.

As in many states, Ohio’s evaluation of teachers has received considerable legislative attention over the past decade and a half. Under the Obama administration, states were pushed (via a mix of federal grants and waivers) to make data on student academic growth a significant part of teacher evaluations. The result: Between 2009 and 2015, the number of states using measures of student growth in their evaluation systems jumped from 15 to 43, according to the Education Commission of States.

But more recently, with enactment of the U.S. Every Student Succeeds Act in 2015, these federal incentives and mandates are gone.

Kaitlin Pennington, a senior analyst with Bellwether Education Partners, says it makes sense for states to take a fresh look at their evaluation systems for teachers. But she adds that student growth should still be recognized in state policy as an important indicator of a teacher’s performance.

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Trade deals include changes that aim to help region's auto sector

Following more than a year of negotiations, and many days when it seemed as though talks would fail, Canada, Mexico and the United States reached agreement on a trilateral trade pact on Sept. 30. The deal has a new name — the United States-Mexico-Canada Agreement, or USMCA — and some new provisions, but also is notable for what it keeps in place.

“About 70 percent is the same [as the North American Free Trade Agreement],” notes Chad Hart, an associate professor of economics at Iowa State University. “This means that is the rules we have been playing under for the last 20-plus years have been reaffirmed, and this is good for the agricultural industry.”

Here is how some of the key sticking points in negotiations ultimately were resolved.

- **Domestic content for vehicles (“rules of origin”)** — Under the new agreement, 75 percent of an automobile’s content must come from North America in order for the vehicle to avoid tariffs (this is up from the 62.5 percent threshold under NAFTA). In addition, at least 40 percent of the vehicle must be made in a factory where the average worker’s wage is $16 per hour. Both of these changes were top priorities of the Trump administration.

- **Dispute settlement** — The Trump administration also wanted to do away with NAFTA rules that had allowed non-U.S. panels to decide trade disputes involving U.S. companies. This change was a “red line” for Canada, however, and the new agreement will continue to allow independent North American panels to resolve these disputes.

- **Sunset clause** — The Trump administration wanted to include a five-year sunset clause (NAFTA had no sunset clause at all). Negotiators ultimately settled on a 16-year sunset provision, with the three countries conducting a formal review of USMCA after six years to determine whether to extend the sunset date.

- **Canadian dairy policy** — While retaining its supply management system for dairy, Canada agreed to slight increases in market access for U.S. dairies and to end its “Class 7” program — a particular target of U.S. negotiators that said this recent Canadian policy on ultrafiltered milk products (used to make cheese and yogurt) had distorted trade and hurt U.S. dairy farmers in states such as Wisconsin.

- **Vehicle quotas** — The United States raised the number of vehicles produced in Canada and Mexico to be sold to resolve inheritance disputes.

The USMCA also adds to or updates the NAFTA agreement in several key areas: for example, improving border management, aligning the three countries’ regulatory structures, and including language on e-commerce and intellectual property.

“Some of the new intellectual-property rules agreed to by the three countries will serve to present common standards when negotiating with other countries, such as China,” Hart notes.

It’s not entirely clear what the new agreement will mean for the Midwest’s economy. The auto-related provisions could help maintain, and grow, jobs in this important regional sector. For example, under NAFTA, many suppliers had used components from plants outside of North America. This may change with a stronger domestic-content requirement now in place. In addition, the new $16-an-hour wage threshold means that Mexican companies will have to substantially raise salaries, making U.S.- and Canadian-based auto plants more competitive and viable.

For the Midwest’s agriculture sector, the USMCA is expected to maintain market access, and expand it for various commodities, including dairy, poultry and wheat.

The USMCA still must receive formal approval in all three countries. In the United States, Congress likely won’t vote on the new agreement until next year.

New Iowa law changes process for partitioning estates; goal is to help ‘save family farms’

It is too common a story line in farm country: The parents pass away, and the entire farm has to be sold to resolve inheritance disputes.

In many states, when heirs can’t agree on how to split the property, one common option for a judge is to order a “partition by sale,” with the money then proportionally divided among them.

But what if one of the family members would like to continue farming the land? “Partition by sale” doesn’t account for this desire among some heirs — a concern that led Iowa legislators to pass SF 2175 this year.

“It is a bill to save family farms,” Rep. Lee Hein says of the new law, which took effect in July.

Here is how the new partition process will work. First, when disagreements exist among heirs of an Iowa farm, a court-appointed “referee” will establish the value of the land. The determination of fair market value must be completed by three disinterested, knowledgeable appraisers. Each heir will then have 30 days to object to the appraisal, as well as have the chance to buy out other family members, without having to put the property up for sale.

SF 2175 was passed unanimously by the Iowa House and with only one dissenting vote in the Senate.

“It just made a lot of sense,” Hein says. “It allows families to equitably divide properties with an unbiased third party determining the value. It seems like a good way to compensate off-farm heirs, and allow the farm to move to the next generation.”

A 2016 state Supreme Court case in Iowa helped bring this “partition by sale” issue to the forefront. That case involved siblings and farmland that was not easily divided into equitable parcels. In their decision, the justices ruled that all of the property had to be sold, even though one of the family members wanted to continue farming the land.

Across the Midwest, the disposition of farm land will be an increasingly important issue for states as the nation’s population of agricultural producers gets older and older. Over the last 30 years, the average age of farmers has increased from 50 years old to 58.3, and during the next two decades, an estimated 70 percent of U.S. farmland will change hands, the U.S. Department of Agriculture estimates.

According to USDA and American Farmland Trust research, by 2030, older women may own 75 percent of transferred farmland, often serving as “non-operator family landlords” (see map for current figures from the Midwest on the prevalence, generally, of non-operator family landlords).

How that land is used and owned by future generations will depend in part on the direction that state legislatures give the courts.
5 trends and facts about voting in Midwest as Election Day nears

1. Fewer voters are waiting until Election Day to cast their ballots

Between 2004 and 2016, the number of people in the United States who voted prior to Election Day more than doubled — from 24.9 million to 57.2 million. These federal statistics include votes cast by mail, via absentee ballots and at state-authorized early voting centers.

The Midwest has been part of this national trend. Nearly every state in the region now allows people to cast ballots early, in person and/or by mail, without having to give a reason for not being able to vote on Election Day.

In 2016, more than one-quarter of the voters in Illinois and Kansas cast their ballots at early voting centers, according to the U.S. Election Assistance Commission. That same year, absentee ballot voting (either done by mail or in person) accounted for 41 percent of all of Iowa’s votes.

Early voting, however, remains much more prevalent in some states outside the Midwest. In 2016, it accounted for 50 percent or more of the votes cast in 16 states. Leading the way were Colorado, Oregon and Washington; in each of those states, all registered voters receive ballots by mail.

2. States are giving voters more choices on when and how to register

In 2016, online voter registration accounted for 18 percent of all voter registration applications in the United States. That is triple the rate from 2012.

Changes in state law have allowed this to occur. According to the Brennan Center for Justice, online registration is an option in every Midwestern state except Michigan and South Dakota. North Dakota is the only state in the country that does not require voter registration of any kind. (An online-registration bill was moving toward passage in Michigan as of September.)

The center notes, too, that 13 states now authorize “automatic voter registration”: Individuals who interact with a government agency are automatically registered to vote, unless they choose to opt out. Their registration information is then electronically submitted to state election officials. Illinois is the only state in the Midwest with automatic voter registration — the result of last year’s passage of SB 1933.

Another big difference in state voting laws is how to register. In states like Iowa and Wisconsin, voters can register in advance, on Election Day and cast a ballot. In contrast, voters must register in advance in Indiana, Kansas, Michigan, Nebraska, Ohio and South Dakota.

3. Four states in Midwest rank in top 10 for election administration

In a recent evaluation of how well elections are being administered around the country, several states in the Midwest ranked near the top. Only Vermont placed ahead of Wisconsin (second) and Minnesota (third). North Dakota (fifth) and Illinois (eighth) also were close behind.

Researchers at the Massachusetts Institute of Technology ranked states and the District of Columbia using 17 different indicators, including: the use of post-election audits, access to voting for the disabled, the number of rejected or unreturned mail ballots, the prevalence of registration or absentee ballot problems, and voters’ wait times.

Here is how the other Midwestern states fared in MIT’s Elections Performance Index: Nebraska, 11th; Iowa, 15th; Ohio, 21st; Michigan, 24th; Indiana, 26th; South Dakota, 45th; and Kansas, 48th.

4. Minnesota, Iowa and Wisconsin are near top for voter turnout

Voter turnout can vary considerably from one state to the next. In Minnesota, 75.3 percent of the state’s civilian voting-age population voted in 2016. That was second only to Colorado (76.9 percent), and Iowa, on the other hand, had the lowest turnout rate among the Midwest’s 11 states (59.0 percent).

In addition to Minnesota, Wisconsin (69.7 percent) and Iowa (69.2 percent) have among the nation’s highest turnout rates. There also are striking disparities in participation among different demographic groups. For example, according to the U.S. Elections Project, the turnout rate two years ago among people ages 60 and over was about 70 percent; that compares to a little over 40 percent among 18- to 29-year-olds.

During the nation’s last non-presidential election year, 2014, the overall turnout rate fell to its lowest level in nearly 75 years.

5. Over past 10 years, GOP has dominated Midwest’s legislative elections

Since 2008, Republicans have picked up more than 200 seats in the Midwest’s 20 partisan legislative chambers. The GOP currently has control over every chamber in the region outside of Illinois.

As of September, Governing magazine did not expect any partisan flips to occur as the result of the November 2018 elections, though Democrats appeared to have the best chance of winning majorities in the Michigan House and Wisconsin Senate.

Nine of the region’s 13 states also have governor’s races this fall: Iowa, Kansas, Ohio and Wisconsin were listed in late September by The Cook Political Report as “tossups”; Nebraska as “solid Republican”; South Dakota as “likely Republican”; Illinois and Minnesota as “likely Democrat”; and Michigan as “leaning Democrat.”

Article written by Tim Anderson, CSG Midwest publications manager. He can be reached at tanderson@csig.org.
Today, grand juries are viewed mostly as a tool for prosecutors, a means of gathering evidence and seeking indictments. But they have long had a second important function as well — to control the government and its power to prosecute.

Six states, including Kansas, Nebraska and North Dakota in the Midwest, have laws on the books that put a twist on this government-checking role: Allow local citizens to form grand juries. The target of these state statutes is not overzealous prosecutors, but inactive ones.

“Prosecutors typically have discretion on where to direct their investigations and resources, on what cases to pursue,” notes Richard Levy, the J.B. Smith Distinguished Professor of Constitutional Law at the University of Kansas.

Not so with citizen-initiated grand juries, Levy says, adding that these state laws raise a question: “Should citizens themselves be given this investigatory tool?”

Since 1887, the answer in Kansas has been “yes.”

The adoption of citizen-initiated grand juries in that state came with the rise of the temperance movement. Local officials didn’t want to prosecute saloon owners under Kansas’ newly adopted prohibition law; some local residents did. And with the signatures of 200 county taxpayers, the people themselves could summon a grand jury.

As soon as the first grand jury met, every whisky joint, about 75 in the county, and every drug store selling without a license had disappeared,” one Kansas state senator noted at the time about the effects of the new law.

Kansas’ law on citizen-initiated grand juries has been altered over the years, including a change in the signature requirements. Under the current statute, 2 percent of electors in a county, plus 200, must sign the petition.

This threshold, however, is still lower than it is in the two other Midwestern states that allow for citizen-initiated grand juries — 10 percent of a county’s registered voters in Nebraska and 25 percent in North Dakota (the number of required signatures cannot exceed 5,000 in North Dakota).

Compared to other states, too, the use of citizen-initiated grand juries in Kansas has received considerable attention in recent years. Over the past decade-and-a-half, for example, petitions have led to the formation of grand juries to investigate Planned Parenthood, adult bookstores and late-term-abortion provider George Tiller. Indictments have rarely come out of these citizen-initiated juries, Slate magazine noted in a 2013 article on this trend in Kansas.

Most recently, a group of citizens in the Kansas county of Douglas signed a petition for a grand jury to investigate Secretary of State (and current gubernatorial candidate) Kris Kobach. This petition was filed by Steve Davis, a Democrat who ran for Kansas House seat in 2016 and who is running again this year. He alleges that Kobach, a Republican, committed election crimes based on the handling of voter registration information.

Kobach has said the allegations are baseless, the Lawrence Journal-World reports, and “relate to a short period of time in 2016 when certain online voter registration systems were malfunctioning.”

In June, the Kansas Court of Appeals ruled that a grand jury should be summoned, noting that Davis’ petition met the necessary statutory requirements — that it include “the subject matter of the prospective grand jury, a reasonably specific identification of areas to be inquired into and sufficient general allegations.”

In her written decision, Judge Karen Arnold-Burger said the court was “making no judgment regarding the validity of the claims made by Davis.” She also noted the “serious personal and professional consequences” faced by individuals who have grand juries formed to investigate them “without probable cause” and “without the guiding hand of a professional prosecutor.”

“But the Kansas Legislature has determined that it wants to provide for citizen-initiated grand juries,” she concluded, “and it wants them to have broad powers to investigate possible criminal activity.”

Capital Closeup is an ongoing series of articles focusing on institutional issues in state governments and legislatures. Previous articles are available at csgmidwest.org. Information on the history of Kansas’ law on citizen-initiated grand juries came from the June decision of the state Court of Appeals.
he adds. “If you’re going to have a chief privacy officer, and it is a legitimate statewide role, at least in Indiana we haven’t had to rely on legislative action,” Cotterill says.

Either way, Glasscock says CPOs “take an enterprise view of privacy protections in the state, and in state agencies.”

For example, she adds, they often work to educate state employees on best practices for handling data and reducing the risk of a data breach.

“When you think about privacy as opposed to data security, you think about how that information is used” as opposed to how it’s stored and secured, she says.

Daren Arnold, Ohio’s CPO, agrees. His job is more operational than policymaking, more “fundamentalizing privacy at the IT level”; meaning he doesn’t just oversee annual privacy training and awareness programs, but also helps agencies to understand how the information is to be used and to think through the privacy implications of those uses, Arnold says.

“State government serves in a unique place in terms of personal information; we create [people’s] identities with birth certificates and end their identities with death certificates” and collect all manner of information in between, from education data to tax, benefits eligibility, child support, adoptions, Medicaid records and more, he says.

“State governments collect a huge amount of personal information on people, even more than the federal government,” he adds. “There’s significant value in having someone who looks at privacy from a systems-implementation perspective.”

How do Midwest states score on data privacy?

In Kansas, legislators approved the Kansas Cybersecurity Act (SB 56), signed by Gov. Jeff Colyer in May, which creates an “Executive Branch Chief Information Security Officer” to coordinate cybersecurity efforts among executive branch agencies.

In April 2017, Indiana Gov. Eric Holcomb signed SB 549, which allows the state attorney general to sue health care providers whose negligent or reckless handling of health records leads to a data security breach. SB 549 also removes exemptions from database owners who follow federal HIPAA (Health Insurance Portability and Accountability Act) guidelines, unless they implement and maintain “reasonable procedures” to protect health care records.

In March 2017, South Dakota Gov. Dennis Daugaard signed SB 62, which allows companies handling data to create a “rapid response” team to help municipalities, schools, nonprofits or business organizations when needed under a gubernatorial declaration of a “cyber-emergency.” Volunteers undergo criminal background checks and are (mostly) immune from civil liability while on deployment.

The Minnesota Legislature in 2014 created a Legislative Commission on Data Practices and Personal Data Privacy. Composed of four representatives and four senators, the commission: 1) researches and analyzes emerging issues related to government data practices and security, as well as personal data privacy; 2) reviews and makes recommendations on legislation amending the Minnesota Government Data Practices Act; and 3) reviews and advises on legislation regarding personal data privacy rights, data security and related issues.

In February, Iowa Gov. Kim Reynolds signed SF 1106, which includes virtual networks and systems in the state’s definition of “critical infrastructure” and “cyber attacks” to its definition of “breach,” and HB 5611, which allows the state attorney general to sue health care providers whose negligent or reckless handling of health records leads to a data security breach; it also allows agency directors to require criminal background checks every five years of people (including contractors) who handle or have access to personal information. State agencies will now only be required to have information security programs in place, and to conduct annual assessments of them.

In 2016, North Dakota Gov. Doug Burgum signed HB 1104, which requires state residents to implement and maintain “reasonable security measures” appropriate to the nature and sensitivity of the information — similar to requirements under the state’s Credit Report Protection Act. It also requires third-party contractors to do likewise. LB 757 also bars companies from charging customers a fee for those security measures.

In May 2017, Iowa Gov. Kim Reynolds signed SF 2354, which bans the operation of school-related websites or apps from using school district data to create profiles of students or to target advertising to students. The new law also bans these operators from “knowingly selling” such information. In addition, they must maintain “reasonable security precautions” and must delete student data upon the request of a school district.

Iowa Gov. Kim Reynolds signed the Cybersecurity Act (SB 56) into law in May. It creates a new officer and position within the executive branch to implement risk-management programs for state agencies. The law also allows agency directors to require criminal背景 checks every five years of people who handle or have access to personal information. State agencies will now be required to have information security programs in place, and to conduct annual assessments of them.

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with their own vision ... everyone's going their own way," he adds. "It felt it was important to codify."

Under a separate measure signed into law in August 2017 (HB 2371), Illinois now requires its state employees to take part in annual cybersecurity training.

"The biggest problem we have is phishing, or human error in clicking on the link," Andrade says. "No matter how many times we say, 'Don't click on the link,' human error still does it."

Private sector, private information

All states require businesses to notify consumers if their personal information has been compromised. Illinois and California have each gone one step beyond in separate trailblazing fashions.

Illinois' Biometrics Information Privacy Act, signed into law in 2008, is still deemed by the Electronic Frontier Foundation as "the gold standard for biometric privacy protection nationwide." It covers the use of body-based identifying information such as fingerprints or retinal/ocular geography scans, and requires private entities

- to obtain consent from a person before collecting or disclosing their biometric identifiers;
- to securely store such identifiers; and
- to destroy them in a timely manner, if collected, when the purpose of collection ends and/or after three years have passed since last contact with the subject.

The law also allows parties injured by violations of these rules to file lawsuits to hold businesses accountable.

Texas and Washington have since enacted similar laws, but Illinois is the only state that allows individuals to sue over violations. (Facebook is fighting such a lawsuit over its photo-tagging function.) A federal judge granted the suit class-action status in May, but a U.S. Appeals Court subsequently agreed to review that decision.

In Michigan, HB 5019 was introduced in September 2017 and is similar to Illinois' law, but it remains in the House Commerce and Trade Committee.

California's new Consumer Privacy Act (AB 375), which comes into force on Jan. 1, 2020, might have the larger national impact, however:

It gives the people the right to know what data about them is being collected, and why. It also gives the people the right to request deletion of their personal information and to opt out of the sale of that information.

The California law's definition of personal information includes a person's personal identifiers, geolocation, biometric data, internet browsing history, psychometric data, and inferences a company might make about the consumer.

The state attorney general is charged with enforcing protections over this data, but consumers maintain a private right of action if companies fail to maintain reasonable security practices, resulting in unauthorized access to the personal data. Among the California law's other provisions:

- Businesses must have a verification process, so consumers can prove they are who they say they are when they request deletion of their data.
- Organizations must disclose to whom they sell data, and businesses must put a special "Do Not Sell My Personal Information" button on their websites to make it easy for consumers to object.
- The sale of children's data will require express opt-in, either by the child, if between ages 13 and 16, or by the parent if younger.
- While organizations can't discriminate against a consumer for exercising his or her rights under the law, they may offer higher tiers of service or product in exchange for more data as long as they're not "unjust" or "unreasonable."

Another new California law (SB 327), also taking effect on Jan. 1, 2020, is the first state law to directly regulate the "Internet of Things." (Often abbreviated "IoT," it's the network of devices, appliances, vehicles and other items like Amazon's Echo or Google's Home, which are capable of collecting and sharing data.)

The new law will make it illegal to manufacture or sell internet-connected "smart" devices — any device that connects to the internet, directly or indirectly (like a "smart" appliance), and has an IP address or Bluetooth address — that aren't equipped with a unique password, or a feature that forces the consumer to set a personal password when the device is first used.

### Federal data privacy legislation: Legislation abounds but, so far, is going nowhere

In April 2017 President Trump repealed broadband privacy regulations adopted under President Obama that would have required internet service providers to obtain users' permission before using their web browsing history, geolocation and other personal information to create targeted advertisements. (The regulations from the Federal Communications Commission had not yet gone into effect before Trump signed the repeal.)

In the U.S. Congress, several bills have been introduced during the current session, but none have advanced beyond an initial committee assignment.

- U.S. Sen. Amy Klobuchar of Minnesota co-sponsored the Social Media Privacy Protection and Consumer Rights Act (S 2728), introduced in April. The legislation aims to protect the privacy of consumers' online data by improving transparency, strengthening consumer recourse options when a data breach occurs, and ensuring that companies are compliant with consumer-protection privacy policies. The bill would give consumers the right to opt out and keep their information private by disabling data tracking and collection. It would ensure users can see what information about them has already been collected and shared, require that online platforms have a privacy program in place, and require terms of service agreements to be in plain language.

- The IoT Cybersecurity Improvement Act of 2017 (S 1691) would set minimum security standards for connected devices purchased by the government, but not electronics in general.

- The IoT Consumer TIPS Act of 2017 (S 2234) would direct the Federal Trade Commission to develop voluntary educational resources for consumers and their use of connected devices.

- U.S. Rep. Bobby Rush of Illinois co-sponsored the Do Not Track Kids Act (HR 5930), introduced in May, which would prohibit targeted advertising to children and bar internet companies from collecting personal and location information from anyone under 13 without parental consent, as well as anyone between 13 and 15 years old without the user's consent. The bill also would: 1) establish a "Digital Marketing Bill of Rights for Minors" that limits the collection of personal information of minors, including geolocation information; 2) require companies to permit users to eliminate publicly available personal information content submitted by the child, when technologically feasible (known as an "eraser button"); 3) prohibit the sale of targeted ads to children and teens to prominently display on the packaging a privacy dashboard detailing the extent to which information is collected, transmitted, retained, used and protected; 4) establish a "Digital Marketing Bill of Rights for Minors" that limits the collection of personal information of minors, including geolocation information; 2) require companies to permit users to eliminate publicly available personal information content submitted by the child, when technologically feasible (known as an "eraser button"); 3) prohibit the sale of targeted ads to children and teens to prominently display on the packaging a privacy dashboard detailing the extent to which information is collected, transmitted, retained, used and protected. (Often abbreviated "IoT," Internet of Things refers to the network of devices, appliances, vehicles and other items that are capable of collecting and sharing data.)

Also in 2017, at least three "Internet of Things"-related bills were introduced in Congress, but none has yet made it to a vote. (Often abbreviated "IoT," Internet of Things refers to the network of devices, appliances, vehicles and other items that are capable of collecting and sharing data.)

- The IoT Cybersecurity Improvement Act of 2017 (S 1691) would set minimum security standards for connected devices purchased by the government, but not electronics in general.

- The IoT Consumer TIPS Act of 2017 (S 2234) would direct the Federal Trade Commission to develop voluntary educational resources for consumers and their use of connected devices.
Nebraska Sen. John Stinner

A former community banker, he has helped lead the state through a difficult fiscal period — and more challenges await in 2019

by Tim Anderson (tanderson@csg.org)

Before joining the Nebraska unicameral legislature, John Stinner had successfully built and run a community bank in the westernmost part of the state.

Today, he’s left those banking duties behind and taken on a new challenge — helping build, and balance, the state’s nearly $9 billion biennial budget.

Stinner became chair of the legislature’s Appropriations Committee in 2017, only two years into his tenure and during a time of slumping revenues and widening projected budget deficits.

In many ways, this key legislative leadership position was a natural fit for Stinner. Not only had he been the CEO of a bank, and navigated his institution through difficult periods such as the financial crisis of 2008, Stinner worked for years as a certified public accountant.

The real education for him came outside the numbers.

“A lot of it was the politics, learning about coalition-building, and then trying to really understand the depth of our state agencies and the programs that are out there,” Stinner says.

“Thank the first time I took over [as Appropriations chair], I was there at the Capitol at 3 or 4 o’clock in the morning, trying to get ahead of the day. Because once the day starts, you’re just buried.”

Early mornings and long evenings helped the legislature close a $1.2 billion revenue shortfall in what Stinner calls “a fair and balanced way.”

More challenges await with the coming 2019 legislative session. Voters may approve an expansion of Medicaid, while demand for property tax relief remains high. Stinner, meanwhile, has other legislative priorities as well: improve the state’s economic development incentives, bolster mental health services for young people, and find a funding source for early-childhood education.

A successful re-election bid this fall would give Stinner four more years to reach those goals before term limits require him to leave office.

The same term-limits law gave Stinner the chance to become a state senator in the first place.

In 2014, a seat had opened up in his far-western Nebraska district, and when local leaders looked for someone to run, Stinner was an obvious pick: a respected businessman who also had served on the local school board.

“When you’re a community banker, you get deeply involved in the community, and you get an understanding of the challenges that the people in the town are going through,” Stinner says.

Starting and running that bank, he adds, turned out to be a “labor of love” — the chance to “help someone start a business, help people buy a first car.”

“The first year I was in the Legislature, I tried to run the bank and do the legislative work,” he adds. “I found out that I couldn’t do either one very well by trying to do both.”

A merger with another community bank allowed Stinner to retire and focus on his legislative duties. He discussed his experiences in a recent CSG Midwest interview.

Q: What have been some of the aspects about the state budget that have been most eye-opening to you, that maybe you didn’t fully grasp before joining the Legislature?

A: There is a general conception that we can cut everything we want. What I’ve found is that in this budget, there really isn’t that much flexibility. The [state] Constitution directs us to do different things, like fund our K-12 schools. We also have passed statutes and rules over the years that dictate the work of state agencies. Then you work in the “have-to’s” of federal laws and mandates. By that point, even though there are a lot of moving parts, there is a lot of inflexibility as well.

Q: So your options are limited, and two years ago, you find yourself having to fix a $1.2 billion revenue shortfall. How do you go about finding consensus to balance the budget?

A: For starters, it helps to have a really good group of members of the Appropriations Committee, which we have. Then we have strong fiscal staff with lots of experience — an average of 25 years of experience, so we leverage [them] pretty heavily. From there, what we tried to do was be fair and balanced in our approach. ...

When you’re having to cut that much, you first lay down what your priorities are. So for us, that meant funding our K-12 schools and providing property tax relief. The committee made justice reinvestment a priority as well, and then you start to work around those priorities. Everybody gave it their best to understand the situation, and I thought the agencies did a very good job of understanding the predicament and being helpful in the process. It was a team effort.

Q: Beyond the budget, you’ve also taken an interest in issues related to mental and behavioral health. You had a bill (LB 801) this past year to implement a local pilot program called Panhandle Beginnings. What led you to work in this area?

A: As a legislator, you talk to a lot of people, and just about all of them have expressed concern to me that we have an issue with mental and behavioral health, and that it starts at the school level, at the early school level.

Some local leaders here [in western Nebraska] came up with the idea for Panhandle Beginnings. It’s a proposed pilot project for a day center for troubled youths — young people who might normally get thrown out of school or need specialized attention. There is a component that deals with the clinical side, while also providing young people with the educational services they need. If we could get some funding for the pilot program, all 21 schools in the [area] have said they would support this.

It’s an issue not just here in the Panhandle, but across the state and across the country. This is an attempt to come up with something unique and focused on meeting the mental and behavioral health needs of young people.
A dose of medicine in legislatures

Retired physician, and current Kansas lawmaker, believes the medical principles used to treat patients can inform, improve state policymaking

by Kansas Sen. Barbara Bollier (Barbara.Bollier@ksenate.ks.gov)

Are pain medications, particularly opioids, being overprescribed? Who should decide? Is this a legislative issue, or an issue to be decided at the practitioner level? Is scope-of-practice a “turf issue,” or a matter of public safety? What is the definition of palliative care, and who should determine that definition?

These are but a few of the issues that I have faced as a legislator in Kansas. I am Barbara Bollier, a retired anesthesiologist, former state representative, and now a sitting state senator.

“How did you switch from practicing medicine to a career in politics?” is a question that is asked of me with amazing frequency.

People are perplexed by the thought of me spending years and years going to school, completing a residency, and then practicing anesthesia — only to stop and instead seek elected office.

While on first blush it may appear to be two paths that are light years apart, for me, the two are amazingly similar and deeply related in their opportunity to serve others.

After stopping my active practice of anesthesia to stay home with our two children, I became heavily involved with The Center for Practical Bioethics, an organization whose mission is to call attention to ethical issues and to develop programs, policies and publications that address them. The center's unique approach of putting practical solutions into action exposed me to the need for those who “know” medical issues to be at the table writing health policy.

Excellent template for policy work

Once elected, I was appointed to the Kansas House Health and Human Services Committee. In that capacity, I was immediately able to incorporate the thought process used to care for patients into my capacity, I was immediately able to incorporate the ethical issues and to develop programs, policies and publications that address them. The center's unique approach of putting practical solutions into action exposed me to the need for those who “know” medical issues to be at the table writing health policy.

“SOAP” format to write a progress report on our patients:

• Subjective — What is the problem at hand?
• Objective — What are the facts of the patient’s condition?
• Assessment — What is the diagnosis and how is the patient faring?
• Plan — How will you treat the patient to address the problem?

SOAP not only provides a foundation for good care at the hospital; its principles can help us make sound policy in state legislatures. A perfect example of how I’ve used this approach (as well as my medical knowledge) involves the question of whether to expand Medicaid.

The problem of 150,000 people continuing to lack affordable access to health insurance was a clear and urgent issue for my state — from the actual health impacts on those individuals that lack access to preventive medicine, to the economic impact of caring for those people without compensation (due to the lack of insurance), to the overall societal costs of people being unable to work because of health problems.

The diagnosis could be looked at on an individual level (for example, the effects of diabetes or high blood pressure or cancer on a single person) or on a more global level (for example, failing rural hospitals unable to be compensated for the emergency-room care that they must provide under federal law).

After careful review, the “P” in my “SOAP” note was to advocate for passage of Medicaid expansion in Kansas. Unfortunately, I then discovered where the practice of medicine and public policy diverges — politics.

In medicine, there is a health care “team.” Even though there may be differing opinions on the diagnosis or treatment plan, those issues are always addressed, and a course of action is reached. The patient is never abandoned.

In politics, the team is often split between Republicans and Democrats. In medicine, we are taught that the patient's ethics trump our own. In politics, one group's ideology is deemed “right” or “wrong”; consensus is often not the goal, and the issue is all too often left to another legislative session. But the problem does not go away.

For me, the ways of politics have occasioned — only to stop and instead seek elected office. — to stop and instead seek elected office. — to stop and instead seek elected office. — to stop and instead seek elected office.

Both types of work require supporting and maintaining what is good; identifying what is not working or causing harm; reviewing the data; and, ultimately, effecting change.

Submissions welcome

This page is designed to be a forum for legislators and constitutional officers. The opinions expressed on this page do not reflect those of the Council of State Governments or the Midwestern Legislative Conference. Responses to any FirstPerson article are welcome, as are pieces written on other topics. For more information, contact Tim Anderson at 630-925-1922 or tanderson@csg.org.
Region’s legislators have ambitious agenda in place to protect Great Lakes

CSG Midwest provides staff support to binational, nonpartisan group

During its Annual Meeting in September, the binational, nonpartisan Great Lakes-St. Lawrence Legislative Caucus took major steps forward by electing new leaders, adopting a policy agenda, and voting to change the organization’s name, among other developments.

The group’s meeting in Erie, Pa., also featured a site visit to the Tom Ridge Environmental Center and a look at the successful cleanup of the Presque Isle Bay Area of Concern, along with policy sessions on:

- state strategies to protect drinking water,
- federal activities related to Great Lakes protection,
- the impact of climate change on the lakes, and
- the use of green infrastructure to better manage stormwater and prevent polluted runoff.

CSG Midwest provides staff support to the caucus and its activities. Here are details on key takeaways from the 2018 Annual Meeting.

New leadership team elected


At the meeting, caucus members also elected Illinois Rep. Robin Gabel as incoming vice chair and chose a new Executive Committee of state and provincial legislators. This bipartisan committee, which directs the GLLC’s activities, includes legislators from all 10 states and provinces in the Great Lakes basin.

Policy agenda, objectives established

The caucus’s new four-year policy agenda focuses on five areas related to Great Lakes protection and use: 1) water consumption, 2) aquatic invasive species, 3) toxic substances, 4) nutrient pollution, and 5) coastal communities. Some of the specific objectives include:

- assuring the availability of safe, clean, affordable drinking water;
- encouraging infrastructure improvements to reduce nutrient runoff, including the installation of green infrastructure; and
- supporting the sustainable economic development of Great Lakes and St. Lawrence coastal communities, including the restoration and preservation of habitat.

First Great Lakes policy institute held

A select group of GLLC members gathered before the Annual Meeting to take part in a first-of-its-kind Great Lakes-St. Lawrence Policy Institute. The goal of this institute is to examine a select issue and create a plan for regionwide action.

For this year’s pilot institute, lawmakers explored state strategies to eliminate lead as a contaminant in drinking water. The GLLC will now lead efforts in 2019 and beyond to identify and advance measures that address this public health threat. Members have identified nutrient pollution as the topic of their next policy institute.

The caucus also formally adopted a name for future institutes: The Patricia Birkholz Institute for Great Lakes-St. Lawrence Policy, in honor of the former Michigan senator who founded the GLLC.

Caucus gets new name

To better reflect the binational nature of the caucus, GLLC members voted to rename the organization the Great Lakes-St. Lawrence Legislative Caucus, a change that took effect immediately (“St. Lawrence” was added to the name).

Caucus OKs four resolutions on Great Lakes policy

In addition to some of the new initiatives being undertaken by the Great Lakes-St. Lawrence Legislative Caucus (see story to the left), this binational group continues to serve as a voice for the region on policies related to Great Lakes protection and restoration. GLLC members adopted four resolutions in September calling for specific actions by the federal, state and provincial governments.

**#1: Move ahead with Asian carp plan**

The GLLC is urging that a study on how to keep Asian carp out of the Great Lakes be completed by January. The U.S. Army Corps of Engineers is specifically looking to better control the movement of invasive species at the Brandon Road Lock and Dam in Illinois. In their resolution, caucus members call on the U.S. Congress to fully fund new control technologies at Brandon Road.

**#2: Oppose nuclear waste site**

The potential siting of an underground nuclear waste site near Lake Huron led to a second GLLC resolution. Caucus members are urging the governments of Canada and Ontario to reject Ontario Power Generation’s proposal, and they also want the Trump administration to seek participation in the matter by the International Joint Commission.

**#3: Support nutrient-reduction plan**

The GLLC voiced its support for an agreement between Michigan, Ohio and Ontario to reduce phosphorus runoff in the western Lake Erie basin by 40 percent.

**#4: Reduce exposure to lead in water**

The GLLC committed to leading regional collaborations that reduce lead in drinking water.

Other resolutions honored the legacy of the late Patricia Birkholz, the Michigan state senator who founded the GLLC, and recognized departing Michigan Sen. Darwin Booher for his many years of service and leadership to the caucus. The GLLC also pledged to work on establishing a Great Lakes-St. Lawrence Appreciation Day.

The Council of State Governments was founded in 1933 as a national, nonpartisan organization to assist and advance state government. The headquarters office, in Lexington, Ky., is responsible for a variety of national programs and services, including research, reference publications, innovations transfer, suggested state legislation and interstate consulting services. The Midwest office supports several groups of state officials, including the Midwestern Legislative Conference, an association of all legislators in 11 states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. The Canadian provinces of Alberta, Manitoba, Ontario and Saskatchewan are MLC affiliate members.
Leading the way: 10 legislators, two state officials from Midwest graduate from CSG’s national Henry Toll Fellowship Program

Bottom row (left to right): Indiana Sen. Randall Head; Illinois Rep. Laura Fine; Courtney N. Phillips, chief executive officer of the Nebraska Department of Health and Human Services; and Illinois Rep. André M. Thapedi


CSG, Department of Defense partnering again to help overseas voters, including military personnel

CSG is once again joining forces with the U.S. Department of Defense to aid the nation’s military and overseas citizen voters, as well as the election officials who serve them.

Continuation of this partnership was announced earlier this year. Under the new five-year, $3.9 million cooperative agreement, CSG and the Department of Defense’s Federal Voting Assistance Program will identify challenges related to military and overseas voting, develop possible solutions, and raise awareness among state policymakers.

Twenty-five state and local officials are serving as members of CSG’s Overseas Voting Initiative Policy Working Group. They recently met to begin developing new strategies for the five-year partnership.

The initial CSG Overseas Voting Initiative ran from 2013 to 2017. Its work led to a series of recommendations for state action, such as improved voter outreach and online voter-registration opportunities.

The initiative’s co-chairs are Vermont Secretary of State Jim Condos and Washington Secretary of State Kim Wyman.

According to the Federal Voting Assistance Program, 5.5 million U.S. citizens live overseas, and 3 million of them are of voting age. Citizens living stateside are 10 times more likely to vote than those living abroad.

CSG National Conference begins Dec. 6 in Kentucky

Discounted registration for the CSG 2018 National Conference is available for state legislators and other officials through Nov. 7. This year’s meeting begins on Dec. 6 and will be held over three days in the Northern Kentucky/Greater Cincinnati area. Online registration can be completed at csg.org. This year’s featured speakers include New York Times best-selling author J.D. Vance and NASA scientist-astronaut Story Musgrave.

Throughout the conference, attendees will be able to participate in policy sessions covering a wide range of topics — for example, interstate compacts, workforce development, the nation’s electricity grid infrastructure, marijuana policy and its impact on state budgets, early childhood and child care, and election security.

In addition, CSG will hold policy academies at the meeting (open to all attendees) on how to address the nation’s addiction crisis, the future of sports gambling laws, the intersection of innovation and infrastructure, and science-based policymaking.

On the final day of the conference, Dec. 8, CSG’s Midwestern Legislative Conference Executive Committee will meet.

3 million U.S. citizens live overseas and are eligible to vote: Here are the top-10 countries for this population

<table>
<thead>
<tr>
<th>Country</th>
<th># of voting-age Americans</th>
</tr>
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<tbody>
<tr>
<td>Canada</td>
<td>622,492</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>329,274</td>
</tr>
<tr>
<td>Mexico</td>
<td>201,415</td>
</tr>
<tr>
<td>France</td>
<td>169,037</td>
</tr>
<tr>
<td>Japan</td>
<td>125,779</td>
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<tr>
<td>Australia</td>
<td>115,405</td>
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<tr>
<td>Israel</td>
<td>313,651</td>
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<tr>
<td>Germany</td>
<td>94,777</td>
</tr>
<tr>
<td>Italy</td>
<td>70,465</td>
</tr>
<tr>
<td>South Korea</td>
<td>62,698</td>
</tr>
</tbody>
</table>

Source: U.S. Federal Voting Assistance Program
Michigan adopts law — for now — ensuring workers paid sick time

Michigan is the first state in the Midwest with a law requiring employers to offer paid sick time to their workers. But after the legislative vote, it was unclear how long the new measure would stay on the books.

The Earned Sick Time Act began as an initiative petition and was scheduled to be on the November ballot. However, the Michigan Constitution gives the Legislature the opportunity to consider proposed ballot initiatives. Legislative approval of paid sick time came in early September — meaning no statewide vote on the measure.

According to The Detroit News, the Legislature could return later this year and “gut” the Earned Sick Time Act. Amending a voter-approved ballot measure, on the other hand, would have been much more difficult.

For now, though, under the new law, an individual will receive one hour of paid sick time for every 30 hours worked. In a given year, a worker will be able to use up to 72 hours of sick time — paid at his or her normal hourly wage. This cap falls to 40 hours per year for workers at businesses with nine or fewer employees.

According to the National Partnership for Women & Families, 10 states outside the Midwest already have laws mandating paid sick days.

South Dakota takes final steps to collect taxes from online sales

In September, South Dakota lawmakers met in special session to finalize a policy change that Gov. Dennis Daugaard said was “50 years in the making.”

He signed two bills that allow the state to act on its new legal authority to collect taxes from remote and online sales. Under SB 1, which takes effect on Nov. 1, South Dakota will enforce sales tax collections from online retailers who have at least $100,000 in sales or 200 transactions a year. A second bill approved in the recent special session (SB 2) requires online marketplace providers such as Amazon to attain a sales tax license and remit sales taxes on behalf of sellers that use their services.

Earlier this year, in its South Dakota v. Wayfair decision, the U.S. Supreme Court overturned previous rulings (Quill Corp. v. North Dakota in 1992 and Hess v. Illinois in 1967) that had barred states from requiring a vendor with no physical presence within their border to collect sales taxes.

According to the Tax Foundation, Illinois, Indiana, Michigan, Minnesota, North Dakota and Wisconsin were among the states whose new laws on online sales taxes took effect Oct. 1. Other Midwestern states will begin collections in a few months.

Illinois seeks better hospital care for victims of sexual assault

By 2022, every hospital emergency room in Illinois must have staff that can provide specialized care to victims of sexual assault. This new requirement is the result of HB 5245, a bill passed unanimously by the General Assembly and signed into law this summer.

Under the law, a trained provider will have to be present in the emergency room within 90 minutes of the patient arriving in the hospital. According to the Illinois attorney general’s office, few hospitals currently provide specialized care for sexual assault victims.

One option for hospitals to meet this new requirement is to have existing staff become sexual assault nurse examiners. These nurses receive training on how to collect physical evidence, respond to the medical and psychological needs of a survivor, and testify in court. The attorney general’s office already offers these training services. Supporters of HB 5245 told the Chicago Tribune it will reduce trauma among victims and improve government prosecutions of sex crimes.

Another provision in the Illinois law ensures that sexual abuse survivors under the age of 13 can undergo any necessary medical forensic exams at a pediatric health care facility, which must ensure that these young victims are treated by specially trained providers.

Indiana allows increase in tolls to boost spending on state’s infrastructure

Indiana’s highways, largest airport, commuter rail lines, recreational trails and broadband infrastructure are set to get a $1 billion funding boost. According to the governor’s office, an amended agreement between the state and the private company that runs the Indiana Toll Road will generate the money needed for this new infrastructure investment. (In 2006, Indiana entered into a 75-year agreement to lease the toll road to private investors.)

In exchange for the $1 billion, the state is allowing the Indiana Toll Road Concession Company, LLC, to increase toll rates on heavy vehicles by 35 percent.

Most of the new money will go to road projects, but dollars also will be earmarked for improvements to Indianapolis International Airport, a new water port along the Ohio River, and double-tracking projects to improve rail service in northwest Indiana. In addition, Indiana will spend $100 million on grants to expand broadband services to underserved areas and another $90 million to connect hiking and biking trails.

The state’s latest infrastructure investment comes only one year after lawmakers raised the gas tax by 10 cents per gallon and increased vehicle fees in order to invest more in roads and bridges. Iowa, Michigan, Nebraska and South Dakota also have raised their state gas taxes over the past five years.