

THE

Real Spelce

AUSTIN LETTER

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Dear Client:

With all the Texas-bashing going on at the national level, Americans must think people can't get out of the state fast enough.

Shhhhhh! Don't tell them Houston was selected as the **most popular city in the United States for employee relocations** in 1999. The Cendant Mobility study cites the Bayou City for its low after-tax cost of living, which is 5% below the national average, its relatively inexpensive housing, and its large concentration of international corporate headquarters. And this is the town some are calling "disgusting" and dangerous to public health. (Maybe they're referring to the Houston Astros!) By the way, Dallas finished third in the same survey.

Also, don't let them know that according to Waco economist **Ray Perryman**, the state in which no one should live, now boasts the **second largest labor force in the country** -- 10.4 million workers strong. Single-family **home sales** for the first quarter of 2000 likewise rank **second in the US**, as does the number of residential **home permits** issued through May of this year. Texas ranks in the top three in total personal income and 28th in per capita income.

Others have characterized Texas as a "third world country." We don't want to let them know this third world country now has the **second highest number of high-tech workers** in the decidedly first world USA. Again according to Perryman, Texas added 132,000 high-tech jobs between 1993 and 1998, and now employs more than 411,000 workers in 12,228 high-tech companies statewide.

The backward Texas economy also exports about \$25 billion per year in technology-related goods and services, and pays its workers almost \$425 billion annually. It ranks second in semiconductor manufacturing, as well as computer and office equipment manufacturing, and third in defense electronics manufacturing. **You have to wonder if it safe for the country's armed forces to rely so heavily on this third world country** for our defense and technology needs!

Finally, things have gotten so bad in Texas that it's now the **second most popular tourist destination** in the US, right behind the "first-world" California. You know they'll say it's just because people like to rubberneck at a traffic accident or watch a fire burn down a building -- there's just something inherently fascinating about a disaster. Oh well, as Bre'r Rabbit says: "Please don't throw me in that briar patch!"

Washington pundits Robert Novak and Rowland Evans are giving Governor George W. Bush an overwhelming advantage in their latest survey of the Electoral College. They put Bush ahead of Vice President Al Gore 355-183 in the only contest that really matters: the battle for each state's allocation of presidential "electors."

In case your memories of high school government class are a little hazy, the presidential campaign will not be decided by the popular vote, but by a majority vote of the Electoral College. As we've told you before, it takes 270 electoral votes to win a majority of 538, and the winner of the popular vote in each state gets that state's entire complement of electoral votes. It is, of course, possible for a candidate to win the popular vote, but lose the electoral vote and, consequently, the presidency. This actually happened (as you history buffs are sure to remember) in the 1876 election, in which Democrat **Samuel J. Tilden** polled 200,000 more votes than Republican **Rutherford B. Hayes**, but lost the electoral vote 185-184.

And, if there ever were a serious third party candidate (**Ralph Nader** and **Pat Buchanan** probably don't qualify as "serious" at this point), one could imagine a repeat of the presidential election of 1800. **Thomas Jefferson** and **Aaron Burr** received 73 electoral votes each, followed by **John Adams** (65), South Carolinian **Charles C. Pinckney** (64), and **John Jay** (1). A tie in the electoral college throws the election to the House of Representatives, which in 1800 elected Jefferson on the 36th ballot after seven days of voting; Burr had to settle for the vice presidency.

Incidentally, Vice President Burr was so angry with **Alexander Hamilton** for his role in Jefferson's victory in the House, as well as his effort to defeat Burr for Governor of New York four years later, that he killed Hamilton in their famous duel. The duel not only killed Hamilton, but also Burr's political career. However, it didn't prevent him from resuming his law practice (after a brief exile in Europe) in New York and New Jersey, where he died peacefully in 1836. It seems that our founding fathers took their politics very seriously, indeed.

Clearly, the Bush-Gore contest isn't nearly as interesting as the 1800 election and its aftermath, especially if Evans and Novak are right and Governor Bush is headed for a landslide victory. But, be careful of polls like this one: it gives Bush all of the **key Rust Belt and Midwest states that Clinton-Gore won in 1996**. Unless Gore completely implodes or in desperation challenges Bush to a duel, the race is **deadlocked**.

Software developers are squaring off against the rest of the business community in a little-known, but potentially far-reaching, attempt to rewrite licensing and copyright laws as they relate to computer software. And that battle may soon be coming to Texas.

It's called the Uniform Computer Information Transaction Act (UCITA). Its purpose, according to the Business Software Alliance (BSA), is to "harmonize and clarify" the law that applies to software and other information products and services available on the Internet. The goal is to introduce it in all 50 states. But, check out the next story to see who's against it.

A broad-based coalition of computer and information technology consumers is forming to oppose the Uniform Computer Information Technology Act (UCITA), both in Texas and other states. That coalition, dubbed “4Cite — For a Competitive Information and Technology Economy,” includes libraries, financial institutions, insurers, businesses, and consumer groups. UCITA is also coming under fire from state attorneys general, the Federal Trade Commission, and legal scholars.

What’s all the fuss about? Without getting into a quagmire of legal questions, the problem appears to be whether UCITA properly balances the **interests of software companies**, who license software products, and the **people who buy and use the software**. Consumers complain that UCITA allows the software makers to avoid liability for software defects, permits software producers to legally track and collect confidential information about personal and business activities, unduly restricts the terms and conditions of the buyer’s use of software products, and allows software to be disabled without notification to the buyer.

On the other hand, proponents of UCITA argue that a single uniform software contract would make it **easier and more efficient to do business** (by dispensing with the expensive and time-consuming process of negotiating license agreements), protect intellectual property, and ensure the predictability and consistency of legal standards in multi-state transactions (much as the UCC has). Keep an eye on this issue. **It could be a sleeper** in the next couple of years.

State Comptroller Carole Keeton Rylander’s E-Commerce and Technology Advisory Group (E-TAG) is nearing approval of a package of recommendations for next spring’s legislative session.

As we have reported to you for the past several months, the advisory group has been working on tax policy ideas in three issue areas: Internet infrastructure, Internet applications and intermediaries, and electronic commerce. The major questions revolve around whether **certain goods and services should be subject to the state sales tax**, such as telecommunications and cable equipment, Internet access charges, data processing and information services, digital goods and services, and remote purchases of otherwise taxable tangible property (e-tail goods).

At its 8/9/00 meeting, E-TAG adopted a series of recommended policy positions for further consideration, in an attempt to begin finalizing a policy statement for submission to Comptroller Rylander in September. The idea is for the industry and local governmental entities represented on the panel to develop a consensus policy for the 77th Legislature, and for the Comptroller to present the policy to the legislature as her “**official**” recommendation. E-TAG is slated to vote on the final proposals 8/28/00.

Going into the meeting, the group has apparently agreed on the following, at least in principle. First, **Internet access charges and data processing and information services should be exempted from the sales tax**. Second, **digital goods (e.g., books, CDs) should be taxed** the same way as their tangible counterparts. And third, the Comptroller should study ways to simplify telecommunications taxes. Even if E-TAG agrees and the Comptroller goes along, the ultimate outcome of the issue depends on whether state **budget-writers will part with the cash** next spring. Remember, the next legislative session will be very cost conscious.

If you thought Y2K compliance costs were out of sight, there is yet another bonanza for software engineers and programmers on the horizon that could make the erstwhile computer bug feel like a minor head cold.

A few weeks ago we told you about some proposed rules issued by the US Department of Health and Human Services, which implement the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Those rules require health insurance plans, health care providers, and health information clearinghouses to **implement new computer systems** and business procedures designed to protect the privacy of personally identifiable medical records.

According to information from USDHHS, about 20,000 health plans and several hundred thousand providers (mostly physicians and hospitals) will face HIPAA implementation costs. The department estimates provider costs for the software upgrades, necessary to comply with the new requirements, will top \$5.8 billion by 2002.

The cost of HIPAA compliance comes at a **bad time for the health care system**, which is already reeling under the pressure to do something about skyrocketing costs. But at the same time, Congress and state legislatures are demanding health insurers and health care providers do a better job of protecting the privacy of medical records. Unfortunately for policymakers, HIPAA attempts to accomplish the latter at the risk of exacerbating the former. In fact, HIPAA is so controversial USDHHS received *150,000 comments* from health plans and providers about its proposed rules. You can't get that many people interested in the presidential campaign.

Whatever happens in the coming months on the HIPAA rules, it's clear that **millions of lines of new code will have to be written** in doctor's offices, hospital administrations, and health insurance claims centers all over the United States. **It's Y2K all over again**, and a boon for the people who make computers safe for democracy.

Dr. Louis Overholster warns you to be wary when politicians get involved in things high tech. As he put it: "They think fiber optics means pulling the wool over your eyes!"

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Sincerely



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