Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

S. RES. 302

At the request of Mr. REID, his name was added as a cosponsor of S. Res. 302, a resolution honoring Ted Williams and extending the condolences of the Senate on his death.

At the request of Mr. BYRD, his name was added as a cosponsor of S. Res. 302, supra.

AMENDMENT NO. 4174

At the request of Mr. WELLSTONE, his name was added as a cosponsor of amendment No. 4174 proposed to S. 2673, an original bill to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN:

S. 2716. A bill to modify the authority of the Federal Energy Regulatory Commission to conduct investigations, to increase the criminal penalties for violations of the Federal Power Act and the Natural Gas Act, and to authorize the Chairman of the Federal Energy Regulatory Commission to contract for consultant services; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Madam President, I am pleased to introduce this bill today to strengthen the authority of the Federal Energy Regulatory Commission. In May, 2000 an energy crisis began in California and eventually spread to the other Western States. For about a year, FERC refused to execute its mandate to enforce the provisions of the Federal Power Act which required the Agency to enforce ''just and reasonable'' electricity prices.

In May, 2001 Pat Wood became the Chairman of the Commission and under his leadership the Commission has finally begun to aggressively investigate what went wrong in the California and Western energy markets.

However, there are still some weaknesses in FERC's authority to investigate problems in energy markets, solicit necessary information and punish wrongdoers. A report by the General Accounting Office, GAO, last month concluded that FERC does not have the necessary legal authority to police competitive energy markets.

This legislation is designed to bolster FERC's authority and allow the Agency to levy penalties that will hold market manipulators accountable for violations of the law. This legislation will go a long way toward providing FERC with the resources and legal authority it needs to protect consumers and ensure that energy prices are just and reasonable.

My legislation would do five things: 1. It would grant FERC the authority to use monetary penalties on companies that don't comply with requests for information. This is essentially the same authority that the Securities and Exchange Commission has; 2. It would make it easier for FERC to hire the necessary outside help they need including accountants, lawyers, and investigators for investigative purposes; 3. It would eliminate the requirement that FERC receive approval from the Office of Management and Budget before launching an investigation or price discovery of electricity or natural gas markets involving more than 10 companies; 4. It would increase the penalty amounts to $1 million instead of the current $5,000 for violations of the Federal Power Act and the Natural Gas Act; five years instead of the current two for violations of the statute; and, $50,000 per day per violation instead of the current $500 for violations of rules or orders under the Federal Power Act and the Natural Gas Act; and 5. It would increase the Commission's authority to impose civil penalties, it also broadened to all sections of Part II of the Federal Power Act and the penalty amount is increased from $10,000 to $50,000 per violation per day.

I continue to support FERC and Chairman Pat Wood in its efforts to stabilize energy prices, and ensure that our energy markets function properly although I believe that much more still needs to be done.

But even if FERC has the will, the GAO report correctly points out that it may not have all the necessary tools. It is my hope that this legislation will help by providing FERC the necessary authority to continue to aggressively monitor energy markets and investigate wrongdoing.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4182. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table.

SA 4183. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4184. Mr. GRAMM (for himself and Mr. SANTORUM) proposed an amendment to amendment SA 4174 proposed by Mr. DASCHLE (for Mr. LEAHY (for himself, Mr. MCCAIN, Mr. DASCHLE, Mr. DURBIN, Mr. HARKIN, Mr. CLELAND, Mr. LEVIN, Mr. KENNEDY, Mr. BIDEN, Mr. FEINGOLD, Mr. MILLER, Mr. EDWARDS, Mrs. BOXER, Mr. CORZINE, Mr. KERRY, Mr. SCHUMER, Mr. BROWNBACK, and Mr. NELSON of Florida)) to the bill (S. 2673) supra.

SA 4185. Mr. DASCHLE (for Mr. LEAHY (for himself, Mr. MCCAIN, Mr. DASCHLE, Mr. DURBIN, Mr. HARKIN, Mr. CLELAND, Mr. LEVIN, Mr. KENNEDY, Mr. BIDEN, Mr. FEINGOLD, Mr. MILLER, Mr. EDWARDS, Mrs. BOXER, Mr. CORZINE, Mr. KERRY, Mr. SCHUMER, Mr. BROWNBACK, Mr. NELSON of Florida, Mr. WELLSTONE, Ms. STABENOW, and Mr. JOHNSON)) proposed an amendment to the bill S. 2673, supra.

SA 4186. Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH)) proposed an amendment to the bill S. 2673, supra.

SA 4187. Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 2673, supra.

SA 4188. Mr. LOTT proposed an amendment to the bill S. 2673, supra.

SA 4189. Mr. GRAMM proposed an amendment to amendment SA 4188 proposed by Mr. LOTT to the bill (S. 2673) supra.

SA 4190. Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH)) proposed an amendment to amendment SA 4186 proposed by Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH)) to the bill (S . 2673) supra.

SA 4191. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4192. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4193. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4194. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4195. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4196. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4197. Mr. SHELBY (for himself and Mr. DURBIN) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4198. Mr. CLELAND submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4199. Mr. CLELAND submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4200. Mr. GRAMM (for Mr. MCCONNELL) proposed an amendment to amendment SA 4187 submitted by Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE) to the bill (S. 2673) supra.

SA 4201. Mrs. CARNAHAN (for herself and Mr. LEAHY) submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4202. Mrs. CARNAHAN (for herself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4203. Mr. MURKOWSKI (for himself, Mr. STEVENS, Mr. CRAIG, Mr. BURNS, Mr. CRAPO, Mr. SMITH of Oregon, and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4204. Mr. SMITH of New Hampshire (for himself, Mrs. BOXER, and Mr. BURNS) submitted an amendment which was ordered to lie on the table.

SA 4205. Mr. SMITH of New Hampshire (for himself, Mrs. BOXER, and Mr. BURNS) submitted an amendment intended to be proposed by him to the bill S. 2554, to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes; which was referred to the Committee on Commerce, Science, and Transportation.

SA 4206. Mr. MILLER proposed an amendment to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes.

SA 4207. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4208. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 2673, supra; which was ordered to lie on the table.

SA 4182. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert:

TITLE ____—PENSION PLAN PROTECTION

SEC. ___00. SHORT TITLE.

This title may be cited as the ''Pension Plan Protection Act''.

Subtitle A—Provisions To Promote Ensuring Pension Plan Asset Diversification

SEC. ___01. DIVERSIFICATION REQUIREMENTS FOR CERTAIN PLANS HOLDING EMPLOYER SECURITIES.

Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

''(e)(1) An applicable individual account plan shall meet the requirements of paragraphs (2), (3), and (4).

''(2) A plan meets the requirements of this paragraph if the plan provides participants and beneficiaries with at least 4 different investment options, including 3 options which do not involve the acquisition or holding of qualifying employer securities or qualifying employer real property.

''(3) A plan meets the requirements of this paragraph if the plan provides that no employee contribution or elective deferral may be required to be invested in qualifying employer securities or qualifying employer real property either—

''(A) pursuant to the terms of the plan, or

''(B) at the direction of a person other than the participant making the employee contribution or elective deferral or a beneficiary of the participant.

''(4)(A) A plan meets the requirements of this paragraph if each employee who has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions may, at any time after the 90th day following the allocation of any qualifying employer securities or qualifying employer real property to the employee under the plan, direct the plan to divest the employee's account of such securities or property and reinvest an equivalent amount in other assets.

''(B) The Secretary of the Treasury, in consultation with the Secretary, shall prescribe regulations under which an employee is given reasonable notice of the opportunity, and a reasonable period of time, to make the divestiture and reinvestment under subparagraph (A).

''(5) For purposes of this subsection—

''(A) The term 'applicable individual account plan' means any individual account plan, except that such term shall not include an employee stock ownership plan (within the meaning of section 4975(e)(7) of the Internal Revenue Code of 1986), or a plan which meets the requirements of section 409(a) of such Code, under which the only contributions which may be made are qualified nonelective contributions (as defined in section 401(m)(4)(C) of such Code).

''(B) ELECTIVE DEFERRALS.—The term 'elective deferrals' has the meaning given such term by section 402(g)(3) of such Code.

''(C) The terms 'qualifying employer securities' and 'qualifying employer real property' have the meanings given such terms by section 407(d).''

SEC. ___02. MANDATORY QUARTERLY STATEMENTS.

(a) IN GENERAL.—Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and

(2) by inserting after subsection (b) the following new subsection:

''(c)(1) The plan administrator of an applicable individual account plan shall, within a reasonable period of time following the close of each calendar quarter, provide to each participant or beneficiary a statement with respect to his or her individual account which includes—

''(A) the fair market value as of the close of such quarter of the assets in the account in each investment option,

''(B) the percentage as of such calendar quarter of assets which each investment option is of the total assets in the account,

''(C) any administrative and transaction fees incurred in connection with the account during such quarter, and

''(D) such other information as the Secretary of the Treasury may prescribe.

''(2) If, as of the close of any calendar quarter, the aggregate fair market value of applicable securities held by a participant or beneficiary in an applicable individual account plan exceeds 25 percent of the aggregate value of all assets held by the participant or beneficiary in the plan, the plan administrator shall include with the statement under paragraph (1) a separate notice which—

''(A) notifies the participant or beneficiary of such percentage, and

''(B) reminds the participant or beneficiary of the right to diversify plan assets and recommends that the participant or beneficiary seek advice from a professional investment advisor as to the need for a reassessment of the participant's or beneficiary's investment diversification.

''(3) The Secretary of Labor may by regulation provide that this subsection shall not apply to plans with fewer than 100 participants, except that any such exception shall not apply for any requirement under this subsection to provide a statement and notice to a participant or beneficiary under the plan to whom paragraph (2) applies for any calendar quarter.

''(4) Any statement or notice under this subsection shall be written in a manner calculated to be understood by the average plan participant.

''(5) For purposes of this subsection—

''(A) the term 'applicable individual account plan' has the meaning given such term by section 404(e), and

''(B) the term 'applicable securities' means any securities described in subparagraph (A), (B), or (C) of section 407(d)(5) which are issued by the same person or an affiliate of, or related person to, such person.

''(6) For purposes of this subsection, all applicable individual account plans maintained by the same employer shall be treated as one employer.''

(b) ENFORCEMENT.—Section 502(c)(1) of such Act (29 U.S.C. 1132(c)(1)) is amended by striking ''or section 101(e)(1)'' and inserting '', section 101(e)(1), or section 104(c)''.

SEC. ___03. STUDY RELATING TO INDIVIDUAL ACCOUNT PLANS.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Securities and Exchange Commission, shall conduct a study relating to the investment of plan assets of individual account plans in stock or other securities.

(b) MATTERS TO BE STUDIED.—In conducting the study under subsection (a), the Secretary shall—

(1) consider the feasibility and likely effects of a statutory requirement that plan participants and beneficiaries be allowed to trade securities on a daily basis,

(2) consider the feasibility and likely effects of a mechanism to allow plan participants and beneficiaries to sell employer securities during a period of high market volatility if a blackout period is in effect,

(3) consider the feasibility and likely effects of establishing an insurance program to protect participants and beneficiaries from losses of their initial investment of employer and employee contributions in employer securities due to fraud, and

(4) consider such other matters as the Secretary determines appropriate to ensure the protection of participants or beneficiaries from insufficient diversification of plan assets.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall submit to each House of Congress a report setting forth the results of the study conducted under this section, including any statutory or administrative changes as the Secretary determines appropriate.

Subtitle B—Prohibited Transaction Exemption For the Provision of Investment Advice

SEC. ___11. PROHIBITED TRANSACTION EXEMPTION FOR THE PROVISION OF INVESTMENT ADVICE.

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29

U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

''(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

''(B) The transactions described in this subparagraph are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.''.

(b) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

''(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(iv) of the types of services provided by the fiduciary advisor in connection with the provision of investment advice by the fiduciary adviser, and

''(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice,

''(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(2) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(3) EXEMPTION CONDITIONED ON CONTINUED AVAILABILITY OF REQUIRED INFORMATION ON REQUEST FOR 1 YEAR.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

''(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

''(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

''(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

''(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4),

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 provided on or after January 1, 2002.

Subtitle C—General Provisions

SEC. ___21. EFFECTIVE DATE AND RELATED RULES.

(a) IN GENERAL.—Except as otherwise provided in this title, the amendments made by this title shall apply with respect to plan years beginning on or after January 1, 2002.

(b) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''January 1, 2002'' the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) January 1, 2003, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 2004.

(c) PLAN AMENDMENTS.—If the amendments made by this title require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 2004, if—

(1) during the period after such amendments made by this title take effect and before such first plan year, the plan is operated in accordance with the requirements of such amendments made by this title, and

(2) such plan amendment applies retroactively to the period after such amendments made by this title take effect and before such first plan year.

SA 4183. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 103, line 4, insert '', or any household member of the securities analyst,'' after ''analyst''.

SA 4184. Mr. GRAMM (for himself and Mr. SANTORUM) proposed an amendment to SA 4174 proposed by Mr. DASCHLE (for Mr. LEAHY (for himself, Mr. MCCAIN, Mr. DASCHLE, Mr. DURBIN, Mr. HARKIN, Mr. CLELAND, Mr. LEVIN, Mr. KENNEDY, Mr. BIDEN, Mr. FEINGOLD, Mr. MILLER, Mr. EDWARDS, Mrs. BOXER, Mr. CORZINE, Mr. KERRY, Mr. SCHUMER, Mr. BROWNBACK, and Mr. NELSON of Florida)) to the bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the division, insert the following new section:

''SEC. . EXEMPTION AUTHORITY.

''(1) CASE-BY-CASE WAIVERS.—Notwithstanding section 201(b) of this Act, the Board may, on a case-by-case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107.

''(2) SMALL BUSINESS EXEMPTION.—The Board may, by rule exempt any person, issuer or public accounting firm (or classes of such persons, issuers or public accounting firms) from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), based upon the small business nature of such person, issuer or public accounting firm, taking into consideration applicable factors such as total asset size, availability and cost of retaining multiple service providers, number of public company audits performed, and such other factors and conditions as the Board deems appropriate consistent with the purposes of this Act.''.

SA 4185. Mr. DASCHLE (for Mr. LEAHY (for himself, Mr. MCCAIN, Mr. DASCHLE, Mr. DURBIN, Mr. HARKIN, Mr. CLELAND, Mr. LEVIN, Mr. KENNEDY, Mr. BIDEN, Mr. FEINGOLD, Mr. MILLER, Mr. EDWARDS, Mrs. BOXER, Mr. CORZINE, Mr. KERRY, Mr. SCHUMER, Mr. BROWNBACK, Mr. NELSON of Florida, Mr. WELLSTONE, Ms. STABENOW, and Mr. JOHNSON)) proposed an amendment to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 117, strike Act and insert the following:

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

SEC. 801. SHORT TITLE.

This title may be cited as the ''Corporate and Criminal Fraud Accountability Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

''§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

''Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 10 years, or both.

''§ 1520. Destruction of corporate audit records

''(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

''(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies.

''(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 5 years, or both.

''(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation, imposed by Federal or State law or regulation, to maintain, or refrain from destroying, any document.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

''1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

''1520. Destruction of corporate audit records.''.

SEC. 803. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' after the semicolon;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end, the following:

''(19) that—

''(A) arises under a claim relating to—

''(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), any State securities laws, or any regulations or orders issued under such Federal or State securities laws; or

''(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

''(B) results, in relation to any claim described in subparagraph (A), from—

''(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

''(ii) any settlement agreement entered into by the debtor; or

''(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.''.

SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

(a) IN GENERAL.—Section 1658 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Except''; and

(2) by adding at the end the following:

''(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

''(1) Two years after the discovery of the facts constituting the violation; or

''(2) Five years after such violation.''.

(b) EFFECTIVE DATE.—The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act.

(c) NO CREATION OF ACTIONS.—Nothing in this section shall create a new, private right of action.

SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDELINES FOR OBSTRUCTION OF JUSTICE AND EXTENSIVE CRIMINAL FRAUD.

Pursuant to section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the Federal Sentencing Guidelines and related policy statements to ensure that—

(1) the base offense level and existing enhancements contained in United States Sentencing Guideline 2J1.2 relating to obstruction of justice are sufficient to deter and punish that activity;

(2) the enhancements and specific offense characteristics relating to obstruction of justice are adequate in cases where—

(A) documents and other physical evidence are actually destroyed, altered, or fabricated;

(B) the destruction, alteration, or fabrication of evidence involves—

(i) a large amount of evidence, a large number of participants, or is otherwise extensive;

(ii) the selection of evidence that is particularly probative or essential to the investigation; or

(iii) more than minimal planning; or

(C) the offense involved abuse of a special skill or a position of trust;

(3) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this title, are sufficient to deter and punish that activity;

(4) the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(5) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims; and

(6) the guidelines that apply to organizations in United States Sentencing Guidelines, chapter 8, are sufficient to deter and punish organizational criminal misconduct.

SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES WHO PROVIDE EVIDENCE OF FRAUD.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by inserting after section 1514 the following:

''§ 1514A. Civil action to protect against retaliation in fraud cases

''(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

''(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

''(A) a Federal regulatory or law enforcement agency;

''(B) any Member of Congress or any committee of Congress; or

''(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

''(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

''(b) ENFORCEMENT ACTION.—

''(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

''(A) filing a complaint with the Secretary of Labor; or

''(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

''(2) PROCEDURE.—

''(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

''(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

''(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

''(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

''(c) REMEDIES.—

''(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

''(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

''(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

''(B) the amount of back pay, with interest; and

''(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

''(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item:

''1514A. Civil action to protect against retaliation in fraud cases.''.

SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING SHAREHOLDERS OF PUBLICLY TRADED COMPANIES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Securities fraud

''Whoever knowingly executes, or attempts to execute, a scheme or artifice—

''(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); or

''(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

shall be fined under this title, or imprisoned not more than 10 years, or both.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

''1348. Securities fraud.''.

SA 4186. Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH)) proposed an amendment to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure,

to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

At the end, add the following:

TITLE VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS.

SEC. 801 SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking ''If two or more'' and all that follows through ''If, however,'' and inserting the following:

''(a) IN GENERAL.—If 2 or more persons—

''(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

''(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

''(b) MISDEMEANOR OFFENSE.—If, however,''.

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(1) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Failure of corporate officers to certify financial reports

''(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

''(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

''(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

''(1) any person who recklessly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

''(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Failure of corporate officers to certify financial reports.''.

SA 4187. Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE) submitted an amendment intended to be proposed to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

On page 108, line 15, insert before the end quotation marks the following:

''(c) RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.—Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of public companies, including a rule requiring an attorney to report evidence of a material violation of law by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof) and, if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the company, or to the board of directors.

SA 4188. Mr. LOTT proposed an amendment to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 is amended by striking ''five'' and inserting ''ten''.

(b) WIRE FRAUD.—Section 1343 is amended by striking ''five'' and inserting ''ten''.

SEC. . TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code is amended—

(a) by re-designating subsections (c), (d), (e), (f), (g), (h), and (i) as subsections (d), (e), (f), (g), (h), (i) and (j);

(b) by inserting after subsection (b) the following new subsection:

''(c) Whoever corruptly—

''(1) alters, destroys, mutilates or conceals a record, document or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

''(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so;

''shall be fined under this title or imprisoned not more than ten years, or both.''

SEC. . TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 is amended by inserting after section 21C(c)(2) (15 U.S.C. 78u-3(c)(2)) the following:

''(3) TEMPORARY FREEZE.—

''(A) Whenever during the course of a lawful investigation involving possible violations of the federal securities laws by an

issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days. Such an order shall be entered, if the court finds that the issuer is likely to make such extraordinary payments, only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest. A temporary order shall become effective immediately and shall be served upon the parties subject to it and, unless set aside, limited or suspended by court of competent jurisdiction, shall remain effective and enforceable for 45 days. The period of the order may be extended by the court upon good cause shown for not longer than 45 days, provided that the combined period of the order not exceed 90 days.

''(B) If the individual affected by such order is charged with violations of the federal securities laws by the expiration of the 45 days (or the expiration of any extended period), the escrow would continue, subject to court approval, until the conclusion of any legal proceedings. The issuer and the affected director, officer, partner, controlling person, agent or employee would have the right to petition the court for review of the order. If the individual affected by such order is not charged, the escrow will terminate at the expiration of the 45 days (or the expiration of any extended period), and the payments (with accrued interest) returned to the issuer.

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is amended by striking ''This'' and inserting ''Paragraph (1) of this''.

SEC. . AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Commission pursuant to paragraph (2) and any additional policy recommendations the Commission may have for combating offenses described in paragraph (1).

(b) OTHER.—In carrying out this section, the Sentencing Commission is requested to:

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 120 days after the date of the enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not yet expired.

SEC. . AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) In section 21C of the Exchange Act of 1934, add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

(b) In section 8A of the Securities Act add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

SA 4189. Mr. GRAMM proposed an amendment to amendment SA 4188 proposed by Mr. LOTT to the bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

Strike all after the first word, and insert the following:

SEC. . HIGHER MAXIMUM PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 is amended by striking ''five'' and inserting ''ten''.

(b) WIRE FRAUD.—Section 1343 is amended by striking ''five'' and inserting ''ten''.

SEC. . TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code is amended—

(a) by re-designating subsections (c), (d), (e), (f), (g), (h), and (i) as subsections (d), (e), (f), (g), (h), (i) and (j);

(b) by inserting after subsection (b) the following new subsection:

''(c) Whoever corruptly—

''(1) alters, destroys, mutilates or conceals a record, document or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

''(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so;

''shall be fined under this title or imprisoned not more than ten years, or both.''

SEC. . TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—The Securities Exchange Act of 1934 is amended by inserting after section 21C(c)(2) (15 U.S.C. 78u-3(c)(2)) the following:

''(3) TEMPORARY FREEZE.—

''(A) Whenever during the course of a lawful investigation involving possible violations of the federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days. Such an order shall be entered, if the court finds that the issuer is likely to make such extraordinary payments, only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest. A temporary order shall become effective immediately and shall be served upon the parties subject to it and, unless set aside, limited or suspended by court of competent jurisdiction, shall remain effective and enforceable for 45 days. The period of the order may be extended by the court upon good cause shown for not longer than 45 days, provided that the combined period of the order not exceed 90 days.

''(B) If the individual affected by such order is charged with violations of the federal securities laws by the expiration of the 45 days (or the expiration of any extended period), the escrow would continue, subject to court approval, until the conclusion of any legal proceedings. The issuer and the affected director, officer, partner, controlling person, agent or employee would have the right to petition the court for review of the order. If the individual affected by such order is not charged, the escrow will terminate at the expiration of the 46 days (or the expiration of any extended period), and the payments (with accrued interest) returned to the issuer.

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is amended by striking ''This'' and inserting ''Paragraph (1) of this''.

SEC. . AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code,

and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Commission pursuant to paragraph (2) and any additional policy recommendations the Commission may have for combating offenses described in paragraph (1).

(b) OTHER.—In carrying out this section, the Sentencing Commission is requested to:

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 120 days after the date of the enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not yet expired.

SEC. . AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) In section 21C of the Exchange Act of 1934, add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

(b) In section 8A of the Securities Act add at the end a new subsection as follows:

''( ) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of that Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.''

SA 4190. Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH) proposed an amendment to amendment SA 4186 proposed by Mr. DASCHLE (for Mr. BIDEN (for himself and Mr. HATCH)) to the bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

Strike all after the first word and insert the following:

VIII—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS.

SEC. 801 SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE UNITED STATES.

Section 371 of title 18, United States Code, is amended by striking ''If two or more'' and all that follows through ''If, however,'' and inserting the following:

''(a) IN GENERAL.—If 2 or more persons—

''(1) conspire to commit any offense against the United States, in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined or imprisoned, or both, as set forth in the specific substantive offense which was the object of the conspiracy; or

''(2) conspire to defraud the United States, or any agency thereof in any manner or for any purpose, and 1 or more of such persons do any act to effect the object of the conspiracy, each person shall be fined under this title, or imprisoned not more than 10 years, or both.

''(b) MISDEMEANOR OFFENSE.—If, however,''.

SEC. 803. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five years'' and inserting ''10 years''.

SEC. 804. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(1) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 805. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this title.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for violations of the sections amended by this title are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this title; and

(B) whether a specific offense characteristic should be added in United States Sentencing Guideline section 2B1.1 in order to provide for stronger penalties for fraud when the crime is committed by a corporate officer or director;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

SEC. 806. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Failure of corporate officers to certify financial reports

''(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chairman of the board, chief executive officer, and chief financial officer (or equivalent thereof) of the issuer.

''(b) CONTENT.—The statement required under subsection (a) shall certify the appropriateness of the financial statements and disclosures contained in the periodic report or financial report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer.

''(c) CRIMINAL PENALTIES.—Notwithstanding any other provision of law—

''(1) any person who recklessly violates any provision of this section shall upon conviction be fined not more than $500,000, or imprisoned not more than 5 years, or both; or

''(2) any person who willfully violates any provision of this section shall upon conviction be fined not more than $1,000,000, or imprisoned not more than 10 years, or both.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The section analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Failure of corporate officers to certify financial reports.''.

This section shall take effect one day after date of this bill's enactment.

SA 4191. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strenghten the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes, which was ordered to lie on the table; as follows:

On page 78, strike lines 15 through 24, and insert the following:

In supervising public accounting firms that are not registered by the Board and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act could create undue burdens and costs if applied without independent consideration to nonpublic accounting companies and other accounting firms that provide services to small business clients.

SA 4192. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysis, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . STOCK OPTIONS MUST BE BOOKED AS EXPENSE WHEN GRANTED.

Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

SA 4193. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysis, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, strike line 8 and all that follows through page 70, line 19, and insert ''any non-audit service.''.

SA 4194. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 82, strike lines 19 through 24 and insert the following:

(b) CONTENT.—The chief executive officer and chief financial officer—

(1) shall certify, under penalty of perjury, that the reports and statements described in subsection (a) fairly present, in all material respects, the operations and financial condition of the issuer; and

(2) shall include a brief narrative of the basis for the decision to so certify, including a discussion of any questionable accounting treatment.

SA 4195. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 86, line 8, strike ''during'' and all that follows through page 89, line 20 and insert the following: ''at any time during the term of employment of that person by the issuer, or service to that issuer as a director or executive officer, or during the 90-day period following the date of termination of such employment or service.

''(b) EXCEPTION.—Nothing in subsection (a) shall be construed to prohibit the purchase, sale, acquisition, or other transfer of equity securities of the issuer for the purpose of avoiding expiration of stock options, but only to the extent necessary to pay the option price of the securities and any applicable taxes or to satisfy a court ordered judgment.

''(c) REMEDY.—

''(1) IN GENERAL.—Any profit realized by a director or executive officer referred to in subsection (a) from any purchase, sale, or other acquisition or transfer in violation of this section shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

''(2) ACTIONS TO RECOVER PROFITS.—An action to recover profits in accordance with this section may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter.

''(d) RULEMAKING AUTHORIZED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.by the issuer.''.

SA 4196. MR. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 82, line 9, strike the quotation marks and the final period and insert the following:

''(n) STANDARDS RELATING TO BOARDS OF DIRECTORS.—

''(1) COMMISSION RULES.—

''(A) IN GENERAL.—Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (2).

''(B) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

''(2) INDEPENDENCE.—

''(A) IN GENERAL.—Each member of the board of directors of the issuer (other than the chief executive officer) shall be independent.

''(B) CRITERIA.—In order to be considered independent for purposes of this paragraph, a member of a board of directors of an issuer may not, other than in his or her capacity as a member of that board of directors—

''(i) accept any consulting, advisory, or other compensatory fee from the issuer;

''(ii) be an affiliated person of the issuer or any subsidiary thereof; or

''(iii) otherwise maintain any other material relationship with the issuer or the management thereof.

''(C) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to members of a board of directors, as the Commission determines appropriate in light of the circumstances.''.

SA 4197. Mr. SHELBY (for himself and Mr. DURBIN) submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. LITIGATION PROVISIONS.

(a) COMMISSION AUTHORITY.—Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended by striking ''knowingly'' and inserting ''recklessly''.

(b) PRIVATE LITIGATION.—Section 21D of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4) is amended—

(1) in subsection (f)(10)(B), by inserting ''notwithstanding subsection (g),'' before ''reckless''; and

(2) by adding at the end the following:

''(g) PERSONS THAT AID OR ABET VIOLATIONS.—Any person that recklessly provides substantial assistance to another person in violation of a provision of this title, or of any rule or regulation issued under this title, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.''.

SA 4198. Mr. CLELAND submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 84, strike lines 12 through 15, and insert the following: ''executive officer, chief financial officer, and any other officer or director of the corporation with knowledge, at the time of the misconduct, of the material noncompliance of the issuer shall reimburse the issuer for—

''(1) any bonus, compensation derived from a severance agreement, or other incentive-based or equality-based compensation received by that person''.

SA 4199. Mr. CLELAND submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC._____. INDIVIDUAL ACCOUNT PLANS REQUIRED TO GIVE PARTICIPANTS ADEQUATE INFORMATION TO ASSIST THEM IN DIVERSIFYING PENSION ASSETS.

(a) IN GENERAL.—Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and

(2) by inserting after subsection (b) the following new subsection:

''(c)(1) The plan administrator of an applicable individual account plan shall, within a reasonable period of time following the close of each calendar quarter, provide to each participant or beneficiary a statement with respect to his or her individual account which includes—

''(A) the fair market value as of the close of such quarter of the assets in the account in each investment option,

''(B) the percentage as of such calendar quarter of assets which each investment option is of the total assets in the account,

''(C) the percentage of the investment in employer securities which came from employer contributions other than elective deferrals (and earnings thereon) and which came from employee contributions and elective deferrals (and earnings thereon), and

''(D) such other information as the Secretary may prescribe.

''(2)(A) Each statement shall also include a separate statement which is prominently displayed and which reads as follows:

'Under commonly accepted principles of good investment advice, a retirement account should be invested in a broadly diversified portfolio of stocks and bonds. It is unwise for employees to hold significant concentrations of employer stock in an account that is meant for retirement savings'.

''(B) The plan administrator of an applicable individual account plan shall provide the separate statement described in subparagraph (A) to an individual at the time the individual first becomes a participant in the plan.

''(3) Any statement or notice under this subsection shall be written in a manner calculated to be understood by the average plan participant.

''(4) For purposes of this subsection—

''(A) The term 'applicable individual account plan' means an individual account plan to which section 404(c)(1) applies.

''(B) The term 'elective deferrals' has the meaning given such term by section 402(g)(3) of such Code.

''(C) The term 'employer securities' has the meaning given such term by section 407(d)(1).''

(b) ENFORCEMENT.—Section 502(c)(1) of such Act (29 U.S.C. 1132(c)(1)) is amended by striking ''or section 101(e)(1)'' and inserting '', section 101(e)(1), or section 104(c)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar quarters beginning on and after January 1, 2003.

SA 4200. Mr. GRAMM (for Mr. MCCONNELL) proposed an amendment to amendment SA 4187 submitted by Mr. EDWARDS (for himself, Mr. ENZI, and Mr. CORZINE) to the bill (S. 2673) to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

On page 2, line 17, strike ''directors,'' and insert the following:

directors.

SEC. ___. ATTORNEY PRACTICES RELATING TO CLIENTS.

(a) DEFINITIONS.—In this section:

(1) AGENCY.—The term ''agency'' means any agency or department of the United States or State government including a local government.

(2) ATTORNEY.—The term ''attorney'' means any natural person, professional law association, corporation, or partnership authorized under applicable law to practice law.

(3) ATTORNEY SERVICES.—The term ''attorney services''—

(A) means the professional advice or counseling of or representation by an attorney; and

(B) shall not include services requiring out-of-pocket expenses in connection with providing attorney services, such as travel expenses, witness fees, copying, messengers, postage, phone, or preparation by a person other than the attorney of any study, analysis, report, or test.

(4) CLASS ACTION.—

(A) IN GENERAL.—The term ''class action'' means—

(i) any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action; or

(ii) any civil action in which—

(I) the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or

(II) monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.

(B) CLASS TREATMENT.—In any civil action described under subparagraph (A)(ii), the persons who allegedly were injured shall be

treated as members of a proposed plaintiff class and the monetary relief that is sought shall be treated as the claims of individual class members.

(5) CONTINGENT FEE.—The term ''contingent fee''—

(A) means the cost or price of attorney services determined by applying a specified percentage, which may be a firm fixed percentage, a graduated or sliding percentage, or any combination thereof, to the amount of the settlement or judgment obtained or otherwise allowing the attorney to share in the proceeds of a settlement or judgment obtained which the defendant was required to make payment in order to satisfy an obligation to the plaintiff; and

(B) includes any fees a defendant pays directly to an attorney retained by a plaintiff outside the terms of a settlement or judgment.

(6) HOURLY FEE.—The term ''hourly fee'' means the cost or price per hour of attorney services.

(7) LOCAL GOVERNMENT.—The term ''local government''—

(A) means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty; and

(B) includes—

(i) a local public authority;

(ii) a special district;

(iii) an intrastate district;

(iv) a council of governments;

(v) a sponsor group representative organization; or

(vi) any other instrumentality of a local government.

(8) PAYMENT.—The term ''payment'' means any gift, subscription, loan, advance, or deposit of money or anything of value.

(9) PERSON.—The term ''person'' includes—

(A) an individual, corporation, company, association, authority, firm, partnership, or society, regardless of whether such entity is operated for profit or not for profit; and

(B) the Federal Government or any State or local government.

(10) PLAINTIFF.—The term ''plaintiff'' means a person who retains an attorney to represent that person in asserting or bringing a civil claim or civil action.

(11) RETAIN.—The term ''retain'' means the act of a plaintiff in obtaining attorney services, whether by express or implied agreement, by seeking and obtaining attorney services.

(12) STATE.—The term ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) APPLICABILITY.—

(1) IN GENERAL.—This section shall apply to any cause of action brought in Federal court or under Federal law, including any related settlement.

(2) NONAPPLICABILITY.—

(A) CERTAIN CONTRACTS.—Except in the case of class actions, this section does not apply to agreements to provide attorney services if the person who enters into such an agreement is represented at that time by another attorney who is retained for the purpose of negotiating a contingency fee contract on behalf of that person.

(B) GOVERNMENT ATTORNEYS.—This section does not apply to attorneys who are classified as employees of the United States Government, a State, or an agency thereof.

(c) DISCLOSURES BY ATTORNEY.—

(1) WRITTEN DISCLOSURE.—

(A) IN GENERAL.—Before an attorney is retained by a plaintiff, the attorney shall disclose in writing to the potential plaintiff the plaintiff's rights under this section, including the right to receive a written statement of the information described in this subsection and subsection (e).

(B) CONTENTS OF DISCLOSURE.—Specifically, the attorney shall provide a written statement to the potential plaintiff containing—

(i) the estimated number of hours of attorney services that will be spent—

(I) settling or attempting to settle the claim or action; and

(II) handling the claim or action through trial or appeal;

(ii) the attorney's hourly fee or fees for services in pursuing the claim or action and any conditions, limitations, restrictions, or other qualifications on the fee including likely expenses and the plaintiff's obligation for those expenses;

(iii) the attorney's contingent fee for services in pursuing the claim or action and any conditions, limitations, restrictions, or other qualifications on the fee, including likely expenses and the plaintiff's obligation for those expenses;

(iv) the probability of a successful outcome in the case (which may be expressed as a percentage);

(v) the estimated recovery reasonably expected in the case (which may be expressed as a range);

(vi) the estimated costs or expenses that the plaintiff will bear; and

(vii) all fee agreements to be made concerning the case, including the amount to be paid to any cocounsel associated with the case or to refer the plaintiff to another attorney in exchange for a referral fee.

(2) MONTHLY STATEMENT.—In addition to the requirements under paragraph (1), the attorney shall render monthly statements to the plaintiff containing a description of the amount of time expended and expenses incurred in the pursuit of the plaintiff's claim or action by each attorney assigned to the plaintiff's matter.

(d) AGREEMENT ON COMPENSATION.—

(1) CONTINGENT FEE.—An attorney who has been retained on a contingent fee basis may not be paid a contingent fee greater than the attorney's contingent fee rate disclosed under subsection (c).

(2) HOURLY FEE.—An attorney representing a plaintiff in connection with the claim or action may not be paid an hourly fee greater than the attorney's hourly fee or fees disclosed under subsection (c) multiplied by the total number of hours spent by the attorney in connection with the claim or action.

(3) EXCEPTIONS.—

(A) OTHER REQUIREMENTS.—A plaintiff may not be given the option of choosing to compensate the attorney on a contingent fee basis for claims or actions where it would be a violation of an applicable Code of Professional Responsibility or otherwise illegal for an attorney to be compensated on a contingent fee basis.

(B) GOVERNMENT ATTORNEYS.—This section does not authorize the United States or any State or subdivision thereof to retain an attorney on a contingent fee basis.

(e) INFORMATION ABOUT SETTLEMENT OFFERS, SETTLEMENT, OR ADJUDICATION.—

(1) SETTLEMENT OFFERS.—An attorney retained by a plaintiff shall immediately transmit to the plaintiff—

(A) all written settlement offers to the plaintiff with an estimate of the likelihood of achieving a more or less favorable resolution to the claim or action;

(B) the likely timing of such resolution; and

(C) the likely attorney's fees and expenses required to obtain such a resolution.

(2) SETTLEMENT OR ADJUDICATION.—An attorney retained by a plaintiff shall, within a reasonable time not later than 30 days after the date on which the claim or action is finally settled or adjudicated, provide a written statement to the plaintiff containing—

(A) in a case in which an attorney is compensated with an hourly fee—

(i) the actual number of hours expended by each attorney on behalf of the plaintiff in connection with the claim or action and such attorney's hourly rate, as set forth in the written disclosure statement required to be provided under subsection (c); and

(ii) the total amount of the hourly fees;

(B) in a case in which an attorney is compensated with a contingent fee—

(i) the contingent fee rate, as set forth in the written disclosure statement required to be provided under subsection (c);

(ii) the total amount of the contingent fee;

(iii) the number of hours expended in the case; and

(iv) the effective hourly rate, determined by dividing the total amount of the contingent fee by the number of hours expended in the case; and

(C) the expenses to be charged to the plaintiff under the agreement for attorney services consistent with this section.

(f) REASONABLENESS OF ATTORNEYS FEES.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, an attorney to whom this section applies may not charge an unreasonable or excessive fee.

(2) RIGHT TO REVIEW.—A plaintiff may request an objective review of his attorney's fee by a court of competent jurisdiction to assure that it is reasonable and fair in light of the circumstances, based on such factors as whether liability was contested, whether the amount of damages was clear, and how much actual time a lawyer reasonably spent on the case.

(g) CLASS ACTIONS.—

(1) IN GENERAL.—An attorney representing a class in a civil action shall make the disclosures, transmittals, and provisions of information required under this section to the presiding judge. The presiding judge shall determine, upon certifying the action as a class action, the appropriate hourly fee or fees and the maximum percentage of the recovery to be paid in attorney's fees. Notwithstanding any other provision of law or agreement to the contrary, the presiding judge shall award attorneys fees consistent with this section.

(2) LIMITATION.—Attorneys fees described under paragraph (1) may not exceed a reasonable fee, based on—

(A) the number of hours of nonduplicative, professional quality legal work, provided by the attorney of material value to the outcome of the representation of the class; and

(B) reasonable hourly rates for the individuals performing such work, based on hourly rates charged by other attorneys for the rendition of comparable services including rates charged by adversary defense counsel in the class action.

(3) ADJUSTMENT FACTOR.—To the extent that items are not taken into account in establishing the reasonable hourly rates referred to in this subsection, an appropriate adjustment factor, including reasonable multipliers, to compensate the attorney for risks of nonpayment of fees and, when clearly established, for exceptionally skillful or innovative services provided during such periods of risk, may be employed, except that—

(A) in no case shall the appropriate adjustment factor be greater than 6; and

(B) in all cases, the appropriate adjustment factor shall be determined in accordance with the strict standards established by the Federal courts for permissible lodestar multipliers.

(h) RESIGNATION OR DISCHARGE.—If an attorney who is retained on a contingent fee

basis is discharged or resigns, any fee owed to that attorney shall be based on that attorney's contribution to the plaintiff's ultimate success.

(i) UNSOLICITED COMMUNICATIONS DURING BEREAVEMENT PERIOD.—

(1) IN GENERAL.—In the event of a death or personal injury resulting in bodily harm, no unsolicited communication concerning a potential civil action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual injured in that event, or to a relative of an individual killed or injured in that event, before the 45th day following the date of the death or injury.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to authorize a communication otherwise prohibited by Federal or State or local government law or a rule or standard of any bar association or similar entity.

(j) ENFORCEMENT.—

(1) IN GENERAL.—The Attorney General of the United States may file a civil action in an appropriate district court of the United States to enforce this section.

(2) CIVIL PENALTY.—A person violating this section is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

SA 4201. Mrs. CARNAHAN (for herself and Mr. LEAHY) submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. FAIR TREATMENT OF COMPENSATION IN BANKRUPTCY.

(a) INCREASED PRIORITY CLAIM AMOUNT FOR EMPLOYEE WAGES AND BENEFITS.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3), by striking ''$4,000'' and inserting ''$13,500''; and

(2) in paragraph (4), by striking ''$4,000'' and inserting ''$13,500''.

(b) RECOVERY OF EXCESSIVE COMPENSATION.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

''(h) The court, on motion of a party of interest, may avoid any transfer of compensation made to a member of the board of directors or an employee of the debtor on or within 90 days before the date of the filing of the petition that the court finds, after notice and a hearing, to be—

''(1) out of the ordinary course of business; or

''(2) unjust enrichment.''.

SA 4202. Mrs. CARNAHAN (for herself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 89, after line 20, insert the following:

SEC. 307. PUBLIC COMPANY COMPENSATION COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

''(n) STANDARDS RELATING TO COMPENSATION COMMITTEES.—

''(1) COMMISSION RULES.—

''(A) IN GENERAL.—Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

''(B) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

''(2) INDEPENDENCE.—

''(A) IN GENERAL.—Each member of the compensation committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

''(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee—

''(i) accept any consulting, advisory, or other compensatory fee from the issuer; or

''(ii) be an affiliated person of the issuer or any subsidiary thereof.

''(C) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to compensation committee members, as the Commission determines appropriate in light of the circumstances.

''(3) COMPENSATION COMMITTEE.—For purposes of this subsection, the term 'compensation committee' means—

''(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the establishment of compensation for employees of the issuer; and

''(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.''.

SA 4203. Mr. MURKOWSKI (for himself, Mr. STEVENS, Mr. CRAIG, Mr. BURNS, Mr. CRAPO, Mr. SMITH of Oregon, and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ___. NINTH CIRCUIT COURT OF APPEALS REORGANIZATION.

(a) SHORT TITLE.—This section may be cited as the ''Ninth Circuit Court of Appeals Reorganization Act of 2002''.

(b) NUMBER AND COMPOSITION OF CIRCUITS.—Section 41 of title 28, United States Code, is amended—

(1) in the matter before the table, by striking ''thirteen'' and inserting ''fourteen''; and

(2) in the table—

(A) by striking the item relating to the ninth circuit and inserting the following:

''Ninth	Arizona, California, Nevada.'';

and

(B) by inserting after the item relating to the eleventh circuit the following:

''Twelfth	Alaska, Guam, Hawaii, Idaho, Montana, Northern Mariana Islands, Oregon, Washington.''.

(c) NUMBER OF CIRCUIT JUDGES.—The table in section 44(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

''Ninth	20'';

and

(2) by inserting after the item relating to the eleventh circuit the following:

''Twelfth	8''.

(d) PLACES OF CIRCUIT COURT.—The table in section 48(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

''Ninth	San Francisco, Los Angeles.'';

and

(2) by inserting after the item relating to the eleventh circuit the following:

''Twelfth	Portland, Seattle.''.

(e) ASSIGNMENT OF CIRCUIT JUDGES.—Each circuit judge in regular active service of the former ninth circuit whose official station on the day before the effective date of this section—

(1) is in Arizona, California, or Nevada is assigned as a circuit judge of the new ninth circuit; and

(2) is in Alaska, Guam, Hawaii, Idaho, Montana, Northern Mariana Islands, Oregon, or Washington is assigned as a circuit judge of the twelfth circuit.

(f) ELECTION OF ASSIGNMENT BY SENIOR JUDGES.—Each judge who is a senior judge of the former ninth circuit on the day before the effective date of this section may elect to be assigned to the new ninth circuit or to the twelfth circuit and shall notify the Director of the Administrative Office of the United States Courts of such election.

(g) SENIORITY OF JUDGES.—The seniority of each judge—

(1) who is assigned under subsection (e); or

(2) who elects to be assigned under subsection (f);

shall run from the date of commission of such judge as a judge of the former ninth circuit.

(h) APPLICATION TO CASES.—The provisions of the following paragraphs of this subsection apply to any case in which, on the day before the effective date of this section, an appeal or other proceeding has been filed with the former ninth circuit:

(1) If the matter has been submitted for decision, further proceedings in respect of the matter shall be had in the same manner and with the same effect as if this section had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which the matter would have been submitted had this section been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this section, or submitted before the effective date of this section and decided on or after the effective date as provided in paragraph (1), shall be treated in the same manner and with the same effect as though this section had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this section had not been enacted.

(i) DEFINITIONS.—In this section, the term—

(1) ''former ninth circuit'' means the ninth judicial circuit of the United States as in existence on the day before the effective date of this section;

(2) ''new ninth circuit'' means the ninth judicial circuit of the United States established by the amendment made by subsection (b)(2); and

(3) ''twelfth circuit'' means the twelfth judicial circuit of the United States established by the amendment made by subsection (b)(3).

(j) ADMINISTRATION.—The court of appeals for the ninth circuit as constituted on the day before the effective date of this section may take such administrative action as may be required to carry out this section and the amendments made by this section. Such court shall cease to exist for administrative purposes on July 1, 2004.

(k) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 60 days after the date of enactment of this Act.

SA 4204. Mr. SMITH of New Hampshire (for himself, Mrs. BOXER, and Mr. BURNS) submitted an amendment which was ordered to lie on the table; as follows:

At the appropriate place, insert the following new title:

TITLE ____—FLIGHT AND CABIN SECURITY ON PASSENGER AIRCRAFT

SECTION ___1. SHORT TITLE.

This title may be cited as the ''Arming Pilots Against Terrorism and Cabin Defense Act of 2002''.

SEC. ___2. FINDINGS.

Congress makes the following findings:

(1) Terrorist hijackers represent a profound threat to the American people.

(2) According to the Federal Aviation Administration, between 33,000 and 35,000 commercial flights occur every day in the United States.

(3) The Aviation and Transportation Security Act (public law 107–71) mandated that air marshals be on all high risk flights such as those targeted on September 11, 2001.

(4) Without air marshals, pilots and flight attendants are a passenger's first line of defense against terrorists.

(5) A comprehensive and strong terrorism prevention program is needed to defend the Nation's skies against acts of criminal violence and air piracy. Such a program should include—

(A) armed Federal air marshals;

(B) other Federal agents;

(C) reinforced cockpit doors;

(D) properly-trained armed pilots;

(E) flight attendants trained in self-defense and terrorism prevention; and

(F) electronic communications devices, such as real-time video monitoring and hands-free wireless communications devices to permit pilots to monitor activities in the cabin.

SEC. ___3. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''§ 44921. Federal flight deck officer program

''(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish a program to deputize qualified pilots of commercial cargo or passenger aircraft who volunteer for the program as Federal law enforcement officers to defend the flight decks of commercial aircraft of air carriers engaged in air transportation or intrastate air transportation against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'. The program shall be administered in connection with the Federal air marshal program.

''(b) QUALIFIED PILOT.—Under the program described in subsection (a), a qualified pilot is a pilot of an aircraft engaged in air transportation or intrastate air transportation who—

''(1) is employed by an air carrier;

''(2) has demonstrated fitness to be a Federal flight deck officer in accordance with regulations promulgated pursuant to this title; and

''(3) has been the subject of an employment investigation (including a criminal history record check) under section 44936(a)(1).

''(c) TRAINING, SUPERVISION, AND EQUIPMENT.—The Under Secretary of Transportation for Security shall provide or make arrangements for training, supervision, and equipment necessary for a qualified pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot. The Under Secretary may approve private training programs which meet the Under Secretary's specifications and guidelines. Air carriers shall make accommodations to facilitate the training of their pilots as Federal flight deck officers and shall facilitate Federal flight deck officers in the conduct of their duties under this program.

''(d) DEPUTIZATION.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall train and deputize, as a Federal flight deck officer under this section, any qualified pilot who submits to the Under Secretary a request to be such an officer.

''(2) INITIAL DEPUTIZATION.—Not later than 120 days after the date of enactment of this section, the Under Secretary shall deputize not fewer than 500 qualified pilots who are former military or law enforcement personnel as Federal flight deck officers under this section.

''(3) FULL IMPLEMENTATION.—Not later than 24 months after the date of enactment of this section, the Under Secretary shall deputize any qualified pilot as a Federal flight deck officer under this section.

''(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer.

''(f) AUTHORITY TO CARRY FIREARMS.—The Under Secretary of Transportation for Security shall authorize a Federal flight deck officer under this section to carry a firearm to defend the flight deck of a commercial passenger or cargo aircraft while engaged in providing air transportation or intrastate air transportation. No air carrier may prohibit a Federal flight deck officer from carrying a firearm in accordance with the provisions of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), a Federal flight deck officer may use force (including lethal force) against an individual in the defense of a commercial aircraft in air transportation or intrastate air transportation if the officer reasonably believes that the security of the aircraft is at risk.

''(h) LIMITATION ON LIABILITY.—

''(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the air carrier employing a pilot of an aircraft who is a Federal flight deck officer under this section or out of the acts or omissions of the pilot in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

''(3) EMPLOYEE STATUS OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall be considered an 'employee of the Government while acting within the scope of his office or employment' with respect to any act or omission of the officer in defending an aircraft against acts of criminal violence or air piracy, for purposes of sections 1346(b), 2401(b), and 2671 through 2680 of title 28 United States Code.

''(i) REGULATIONS.—Not later than 90 days after the date of enactment of this section, the Under Secretary of Transportation for Security, in consultation with the Firearms Training Unit of the Federal Bureau of Investigation, shall issue regulations to carry out this section.

''(j) PILOT DEFINED.—In this section, the term 'pilot' means an individual who is responsible for the operation of an aircraft, and includes a co-pilot or other member of the flight deck crew.''.

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter 449 is amended by inserting after the item relating to section 44920 the following new item:

''44921. Federal flight deck officer program.''.

(2) EMPLOYMENT INVESTIGATIONS.—Section 44936(a)(1)(B) is amended—

(A) by aligning clause (iii) with clause (ii);

(B) by striking ''and'' at the end of clause (iii);

(C) by striking the period at the end of clause (iv) and inserting ''; and''; and

(D) by adding at the end the following:

''(v) qualified pilots who are deputized as Federal flight deck officers under section 44921.''.

(3) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (49 U.S.C. 44903 note) is repealed.

SEC. ___4. CABIN SECURITY.

(a) TECHNICAL AMENDMENTS.—Section 44903, of title 49, United States Code, is amended—

(1) by redesignating subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons, as added by section 126(b) of public law 107–71) as subsection (j); and

(2) by redesignating subsection (h) (relating to limitation on liability for acts to thwart criminal violence or aircraft piracy, as added by section 144 of public law 107–71) as subsection (k).

(b) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Section 44918 of title 49, United States Code, is amended—

(1) by striking subsection (a) and inserting the following new subsection:

''(a) IN GENERAL.—

''(1) REQUIREMENT FOR AIR CARRIERS.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, shall prescribe detailed requirements for an air carrier cabin crew training program, and for the instructors of that program as described in subsection (b) to prepare crew members for potential threat conditions. In developing the requirements, the Under Secretary shall consult with appropriate law enforcement personnel who have expertise in self-defense training, security experts, and terrorism experts, and representatives of air carriers and labor organizations representing individuals employed in commercial aviation.

''(2) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish an Aviation Crew Self-Defense Division within the Transportation Security Administration. The Division shall develop and administer the implementation of the requirements described in this section. The Under Secretary shall appoint a Director of the Aviation Crew Self-Defense Division who shall be the head of the Division. The Director shall report to the Under Secretary. In the selection of the Director, the Under Secretary shall solicit recommendations from law enforcement, air carriers, and labor organizations representing individuals employed in commercial aviation. The Director shall have a background in self-defense training, including military or law enforcement training with an emphasis in teaching self-defense and the appropriate use force. Regional training supervisors shall be under the control of the Director and shall have appropriate training and experience in teaching self-defense and the appropriate use of force.'';

(2) by striking subsection (b), and inserting the following new subsection:

''(b) PROGRAM ELEMENTS.—

''(1) IN GENERAL.—The requirements prescribed under subsection (a) shall include, at a minimum, 28 hours of self-defense training that incorporates classroom and situational training that contains the following elements:

''(A) Determination of the seriousness of any occurrence.

''(B) Crew communication and coordination.

''(C) Appropriate responses to defend oneself, including a minimum of 16 hours of hands-on training, with reasonable and effective requirements on time allotment over a 4 week period, in the following levels of self-defense:

''(i) awareness, deterrence, and avoidance;

''(ii) verbalization;

''(iii) empty hand control;

''(iv) intermediate weapons and self-defense techniques; and

''(v) deadly force.

''(D) Use of protective devices assigned to crewmembers (to the extent such devices are approved by the Administrator or Under Secretary).

''(E) Psychology of terrorists to cope with hijacker behavior and passenger responses.

''(F) Live situational simulation joint training exercises regarding various threat conditions, including all of the elements required by this section.

''(G) Flight deck procedures or aircraft maneuvers to defend the aircraft.

''(2) PROGRAM ELEMENTS FOR INSTRUCTORS.—The requirements prescribed under subsection (a) shall contain program elements for instructors that include, at a minimum, the following:

''(A) A certification program for the instructors who will provide the training described in paragraph (1).

''(B) A requirement that no training session shall have fewer than 1 instructor for every 12 students.

''(C) A requirement that air carriers provide certain instructor information, including names and qualifications, to the Aviation Crew Member Self-Defense Division within 30 days after receiving the requirements described in subsection (a).

''(D) Training course curriculum lesson plans and performance objectives to be used by instructors.

''(E) Written training bulletins to reinforce course lessons and provide necessary progressive updates to instructors.

''(3) RECURRENT TRAINING.—Each air carrier shall provide the training under the program every 6 months after the completion of the initial training.

''(4) INITIAL TRAINING.—Air carriers shall provide the initial training under the program within 24 months of the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(5) COMMUNICATION DEVICES.—The requirements described in subsection (a) shall include a provision mandating that air carriers provide flight and cabin crew with a discreet, hands-free, wireless method of communicating with the flight deck.

''(6) REAL-TIME VIDEO MONITORING.—The requirements described in subsection (a) shall include a program to provide flight deck crews with real-time video surveillance of the cabins of commercial airline flights. In developing this program, the Under Secretary shall consider—

''(A) maximizing the security of the flight deck;

''(B) enhancing the safety of the flight deck crew;

''(C) protecting the safety of the passengers and crew;

''(D) preventing acts of criminal violence or air piracy;

''(E) the cost of the program;

''(F) privacy concerns; and

''(G) the feasibility of installing such a device in the flight deck.''; and

(3) by adding at the end the following new subsections:

''(f) RULEMAKING AUTHORITY.—Notwithstanding subsection (j) (relating to authority to arm flight deck crew with less than-lethal weapons) of section 44903, of this title, within 180 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, in consultation with persons described in subsection (a)(1), shall prescribe regulations requiring air carriers to—

''(1) provide adequate training in the proper conduct of a cabin search and allow adequate duty time to perform such a search; and

''(2) conduct a preflight security briefing with flight deck and cabin crew and, when available, Federal air marshals or other authorized law enforcement officials.

''(g) LIMITATION ON LIABILITY.—

''(1) AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the air carrier's training instructors or cabin crew using reasonable and necessary force in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) TRAINING INSTRUCTORS AND CABIN CREW.—An air carrier's training instructors or cabin crew shall not be liable for damages in any action brought in a Federal or State court arising out of an act or omission of a training instructor or a member of the cabin crew regarding the defense of an aircraft against acts of criminal violence or air piracy unless the crew member is guilty of gross negligence or willful misconduct.''.

(c) NONLETHAL WEAPONS FOR FLIGHT ATTENDANTS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to determine whether possession of a nonlethal weapon by a member of an air carrier's cabin crew would aid the flight deck crew in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security shall prepare and submit to Congress a report on the study conducted under paragraph (1).

SA 4205. Mr. SMITH of New Hampshire (for himself, Mrs. BOXER, and Mr. BURNS) submitted an amendment intended to be proposed by him to the bill S. 2554, to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes; which was referred to the Committee on Commerce, Science, and Transportation; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Arming Pilots Against Terrorism and Cabin Defense Act of 2002''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Terrorist hijackers represent a profound threat to the American people.

(2) According to the Federal Aviation Administration, between 33,000 and 35,000 commercial flights occur every day in the United States.

(3) The Aviation and Transportation Security Act (public law 107–71) mandated that air marshals be on all high risk flights such as those targeted on September 11, 2001.

(4) Without air marshals, pilots and flight attendants are a passenger's first line of defense against terrorists.

(5) A comprehensive and strong terrorism prevention program is needed to defend the Nation's skies against acts of criminal violence and air piracy. Such a program should include—

(A) armed Federal air marshals;

(B) other Federal agents;

(C) reinforced cockpit doors;

(D) properly-trained armed pilots;

(E) flight attendants trained in self-defense and terrorism prevention; and

(F) electronic communications devices, such as real-time video monitoring and hands-free wireless communications devices to permit pilots to monitor activities in the cabin.

SEC. 3. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

"§ 44921. Federal flight deck officer program

''(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish a program to deputize qualified pilots of commercial cargo or passenger aircraft who volunteer for the program as Federal law enforcement officers to defend the flight decks of commercial aircraft of air carriers engaged in air transportation or intrastate air transportation against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'. The program shall be administered in connection with the Federal air marshal program.

''(b) QUALIFIED PILOT.—Under the program described in subsection (a), a qualified pilot is a pilot of an aircraft engaged in air transportation or intrastate air transportation who—

''(1) is employed by an air carrier;

''(2) has demonstrated fitness to be a Federal flight deck officer in accordance with regulations promulgated pursuant to this title; and

''(3) has been the subject of an employment investigation (including a criminal history record check) under section 44936(a)(1).

''(c) TRAINING, SUPERVISION, AND EQUIPMENT.—The Under Secretary of Transportation for Security shall provide or make arrangements for training, supervision, and equipment necessary for a qualified pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot. The Under Secretary may approve private training programs which meet the Under Secretary's specifications and guidelines. Air carriers shall make accommodations to facilitate the training of their pilots as Federal flight deck officers and shall facilitate Federal flight deck officers in the conduct of their duties under this program.

''(d) DEPUTIZATION.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall train and deputize, as a Federal flight deck officer under this section, any qualified pilot who submits to the Under Secretary a request to be such an officer.

''(2) INITIAL DEPUTIZATION.—Not later than 120 days after the date of enactment of this section, the Under Secretary shall deputize not fewer than 500 qualified pilots who are former military or law enforcement personnel as Federal flight deck officers under this section.

''(3) FULL IMPLEMENTATION.—Not later than 24 months after the date of enactment of this section, the Under Secretary shall deputize any qualified pilot as a Federal flight deck officer under this section.

''(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer.

''(f) AUTHORITY TO CARRY FIREARMS.—The Under Secretary of Transportation for Security shall authorize a Federal flight deck officer under this section to carry a firearm to defend the flight deck of a commercial passenger or cargo aircraft while engaged in providing air transportation or intrastate air transportation. No air carrier may prohibit a Federal flight deck officer from carrying a firearm in accordance with the provisions of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), a Federal flight deck officer may use force (including lethal force) against an individual in the defense of a commercial aircraft in air transportation or intrastate air transportation if the officer reasonably believes that the security of the aircraft is at risk.

''(h) LIMITATION ON LIABILITY.—

''(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the air carrier employing a pilot of an aircraft who is a Federal flight deck officer under this section or out of the acts or omissions of the pilot in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

''(3) EMPLOYEE STATUS OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall be considered an 'employee of the Government while acting within the scope of his office or employment' with respect to any act or omission of the officer in defending an aircraft against acts of criminal violence or air piracy, for purposes of sections 1346(b), 2401(b), and 2671 through 2680 of title 28 United States Code.

''(i) REGULATIONS.—Not later than 90 days after the date of enactment of this section, the Under Secretary of Transportation for Security, in consultation with the Firearms Training Unit of the Federal Bureau of Investigation, shall issue regulations to carry out this section.

''(j) PILOT DEFINED.—In this section, the term 'pilot' means an individual who is responsible for the operation of an aircraft, and includes a co-pilot or other member of the flight deck crew.''.

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter 449 is amended by inserting after the item relating to section 44920 the following new item:

''44921. Federal flight deck officer program.''.

(2) EMPLOYMENT INVESTIGATIONS.—Section 44936(a)(1)(B) is amended—

(A) by aligning clause (iii) with clause (ii);

(B) by striking ''and'' at the end of clause (iii);

(C) by striking the period at the end of clause (iv) and inserting ''; and''; and

(D) by adding at the end the following:

''(v) qualified pilots who are deputized as Federal flight deck officers under section 44921.''.

(3) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (49 U.S.C. 44903 note) is repealed.

SEC. 4. CABIN SECURITY.

(a) TECHNICAL AMENDMENTS.—Section 44903, of title 49, United States Code, is amended—

(1) by redesignating subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons, as added by section 126(b) of public law 107–71) as subsection (j); and

(2) by redesignating subsection (h) (relating to limitation on liability for acts to thwart criminal violence or aircraft piracy, as added by section 144 of public law 107–71) as subsection (k).

(b) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Section 44918 of title 49, United States Code, is amended—

(1) by striking subsection (a) and inserting the following new subsection:

''(a) IN GENERAL.—

''(1) REQUIREMENT FOR AIR CARRIERS.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, shall prescribe detailed requirements for an air carrier cabin crew training program, and for the instructors of that program as described in subsection (b) to prepare crew members for potential threat conditions. In developing the requirements, the Under Secretary shall consult with appropriate law enforcement personnel who have expertise in self-defense training, security experts, and terrorism experts, and representatives of air carriers and labor organizations representing individuals employed in commercial aviation.

''(2) AVIATION CREWMEMBER SELF-DEFENSE DIVISION.—Not later than 60 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security shall establish an Aviation Crew Self-Defense Division within the Transportation Security Administration. The Division shall develop and administer the implementation of the requirements described in this section. The Under Secretary shall appoint a Director of the Aviation Crew Self-Defense Division who shall be the head of the Division. The Director shall report to the Under Secretary. In the selection of the Director, the Under Secretary shall solicit recommendations from law enforcement, air carriers, and labor organizations representing individuals employed in commercial aviation. The Director shall have a background in self-defense training, including military or law enforcement training with an emphasis in teaching self-defense and the appropriate use force. Regional training supervisors shall be under the control of the Director and shall have appropriate training and experience in teaching self-defense and the appropriate use of force.'';

(2) by striking subsection (b), and inserting the following new subsection:

''(b) PROGRAM ELEMENTS.—

''(1) IN GENERAL.—The requirements prescribed under subsection (a) shall include, at a minimum, 28 hours of self-defense training that incorporates classroom and situational training that contains the following elements:

''(A) Determination of the seriousness of any occurrence.

''(B) Crew communication and coordination.

''(C) Appropriate responses to defend oneself, including a minimum of 16 hours of hands-on training, with reasonable and effective requirements on time allotment over a 4 week period, in the following levels of self-defense:

''(i) awareness, deterrence, and avoidance;

''(ii) verbalization;

''(iii) empty hand control;

''(iv) intermediate weapons and self-defense techniques; and

''(v) deadly force.

''(D) Use of protective devices assigned to crewmembers (to the extent such devices are approved by the Administrator or Under Secretary).

''(E) Psychology of terrorists to cope with hijacker behavior and passenger responses.

''(F) Live situational simulation joint training exercises regarding various threat conditions, including all of the elements required by this section.

''(G) Flight deck procedures or aircraft maneuvers to defend the aircraft.

''(2) PROGRAM ELEMENTS FOR INSTRUCTORS.—The requirements prescribed under subsection (a) shall contain program elements for instructors that include, at a minimum, the following:

''(A) A certification program for the instructors who will provide the training described in paragraph (1).

''(B) A requirement that no training session shall have fewer than 1 instructor for every 12 students.

''(C) A requirement that air carriers provide certain instructor information, including names and qualifications, to the Aviation Crew Member Self-Defense Division within 30 days after receiving the requirements described in subsection (a).

''(D) Training course curriculum lesson plans and performance objectives to be used by instructors.

''(E) Written training bulletins to reinforce course lessons and provide necessary progressive updates to instructors.

''(3) RECURRENT TRAINING.—Each air carrier shall provide the training under the program every 6 months after the completion of the initial training.

''(4) INITIAL TRAINING.—Air carriers shall provide the initial training under the program within 24 months of the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002.

''(5) COMMUNICATION DEVICES.—The requirements described in subsection (a) shall include a provision mandating that air carriers provide flight and cabin crew with a discreet, hands-free, wireless method of communicating with the flight deck.

''(6) REAL-TIME VIDEO MONITORING.—The requirements described in subsection (a) shall include a program to provide flight deck crews with real-time video surveillance of the cabins of commercial airline flights. In developing this program, the Under Secretary shall consider—

''(A) maximizing the security of the flight deck;

''(B) enhancing the safety of the flight deck crew;

''(C) protecting the safety of the passengers and crew;

''(D) preventing acts of criminal violence or air piracy;

''(E) the cost of the program;

''(F) privacy concerns; and

''(G) the feasibility of installing such a device in the flight deck.''; and

(3) by adding at the end the following new subsections:

''(f) RULEMAKING AUTHORITY.—Notwithstanding subsection (j) (relating to authority to arm flight deck crew with less than-lethal weapons) of section 44903, of this title, within 180 days after the date of enactment of the Arming Pilots Against Terrorism and Cabin Defense Act of 2002, the Under Secretary of Transportation for Security, in consultation with persons described in subsection (a)(1), shall prescribe regulations requiring air carriers to—

''(1) provide adequate training in the proper conduct of a cabin search and allow adequate duty time to perform such a search; and

''(2) conduct a preflight security briefing with flight deck and cabin crew and, when available, Federal air marshals or other authorized law enforcement officials.

''(g) LIMITATION ON LIABILITY.—

''(1) AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the air carrier's training instructors or cabin crew using reasonable and necessary force in defending an aircraft of the air carrier against acts of criminal violence or air piracy.

''(2) TRAINING INSTRUCTORS AND CABIN CREW.—An air carrier's training instructors or cabin crew shall not be liable for damages in any action brought in a Federal or State court arising out of an act or omission of a training instructor or a member of the cabin crew regarding the defense of an aircraft against acts of criminal violence or air piracy unless the crew member is guilty of gross negligence or willful misconduct.''.

(c) NONLETHAL WEAPONS FOR FLIGHT ATTENDANTS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to determine whether possession of a nonlethal weapon by a member of an air carrier's cabin crew would aid the flight deck crew in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security shall prepare and submit to Congress a report on the study conducted under paragraph (1).

SA 4206. Mr. MILLER proposed an amendment to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; as follows:

At the end add the following new title:

TITLE VIII—CORPORATE TAX RETURNS

SEC. 801. SENSE OF THE SENATE REGARDING THE SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICERS.

It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

SA 4207. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

On page 101, line 25, insert after ''dealers'' the following: '', or who have conducted advisory assignments with respect to mergers and acquisitions, divestitures, corporate defense activities, restructurings, or spin-offs on behalf of the issuer,''.

SA 4208. Mr. WELLSTONE submitted an amendment intended to be proposed by him to the bill S. 2673, to improve quality and transparency in financial reporting and independent audits and accounting services for public companies, to create a Public Company Accounting Oversight Board, to enhance the standard setting process for accounting practices, to strengthen the independence of firms that audit public companies, to increase corporate responsibility and the usefulness of corporate financial disclosure, to protect the objectivity and independence of securities analysts, to improve Securities and Exchange Commission resources and oversight, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . ADMINISTRATIVE SUBPOENAS.

(a) CIVIL MONEY PENALTIES.—Section 21(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(c)) is amended by inserting before the final period '', and the court may impose civil money penalties pursuant to subsection (d)(3)''.

(b) FAILURE TO COMPLY WITHOUT JUST CAUSE.—Section 21(d)(3)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(A)) is amended by inserting ''or without just cause, has failed or refused to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Commission,'' after ''pursuant to section 21A,''.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. HARKIN. Mr. President, I would like to announce that the Committee on Agriculture, Nutrition, and Forestry will conduct a hearing on July 10, 2002 in SD–106 at 10:00 a.m. The purpose of this hearing will be to discuss energy derivatives.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, July 18, at 9:30 a.m. in room 366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the effectiveness and sustainability of U.S. technology transfer programs for energy efficiency, nuclear, fossil and renewable energy; and to identify necessary changes to those programs to support U.S. competitiveness in the global marketplace.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, ATTN Democratic Staff,