

"I can honestly say we were shocked," Ginsburg told the Globe. "I can assure you we're going to make sure there is a thorough investigation."

Here is one in the Boston Herald:

They're going to make a movie about the Big Dig.

They'll call it "The Poseidon Adventure." Or maybe "15 Billion Dollars Under the Sea." Or "Voyage to the Bottom of the Tunnel."

Another day, another flood. And Wednesday was a dry day, too, as you well recall, if you were caught in the traffic jam for two or three hours. It hadn't rained in a week, but suddenly there was a flood. It was a small gusher, a Newton Lower Falls type of cascade. But you have to wonder, how long until we get a Niagara down there in the Liberty Tunnel?

... In case you've forgotten, the Big Dig cost \$14.6 billion.

And it leaks. It has more holes in it than a "60 Minutes" investigation.

Riding into the tunnel is like going through a car wash, only you can't get a wax job. The next time they have a grand opening ribbon-cutting down there, they should forget the elephants and invite SpongeBob SquarePants instead.

How many more times do we have to endure Fat Matt Amarillo, the bloated hack who runs the Big Dig, at a press conference, flopping like a fish, as SpongeBob would say? Talk about nautical nonsense.

To quote Fat Matt: "I'm not a happy customer."

"I didn't know he was a customer," said Christy Mihos, the former Pike board member. "I thought he was the boss."

Only when there's a ribbon to be cut.

I commend this article to all of my colleagues' reading. It is very entertaining. And since it is such a sad kind of a situation, maybe there is room—

Why don't we just rename the tunnel after SpongeBob SquarePants? Absorbent and yellow and porous is he—just like the tunnel.

I think that is pretty much of a high point or low point of my selective reading from articles from the Boston Globe and the Boston Herald and the Associated Press.

Mr. President, in summary, this is a serious situation. I do not believe the taxpayers of America should pay any more money in this effort. No funds have been recovered from Bechtel/Parsons Brinckerhoff, although the Turnpike Authority and the Commonwealth have filed suit against the joint venture.

I hope we can get this cleared up as soon as possible. I would assume next year the Commerce Committee will have additional oversight hearings on this issue. This is not a good day for the taxpayers of America.

#### FAMILY ENTERTAINMENT AND COPYRIGHT ACT OF 2004

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3021, which was introduced earlier today by Senators HATCH and LEAHY.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3021) to provide for the protection of intellectual property rights and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the McCain amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, and that any statements regarding this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4074) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The bill (S. 3021), as amended, was read the third time and passed, as follows:

#### S. 3021

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Family Entertainment and Copyright Act of 2004".

#### TITLE I—ARTISTS' RIGHTS AND THEFT PREVENTION

#### SEC. 101. SHORT TITLE.

This title may be cited as the "Artists' Rights and Theft Prevention Act of 2004" or the "ART Act".

#### SEC. 102. CRIMINAL PENALTIES FOR UNAUTHORIZED RECORDING OF MOTION PICTURES IN A MOTION PICTURE EXHIBITION FACILITY.

(a) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by adding after section 2319A the following new section:

#### "§ 2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility

"(a) OFFENSE.—Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall—

"(1) be imprisoned for not more than 3 years, fined under this title, or both; or

"(2) if the offense is a second or subsequent offense, be imprisoned for not more than 6 years, fined under this title, or both.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in any proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient to support a conviction of that person for such offense.

"(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.

"(c) AUTHORIZED ACTIVITIES.—This section does not prevent any lawfully authorized in-

vestigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting under a contract with the United States, a State, or a political subdivision of a State.

"(d) IMMUNITY FOR THEATERS.—With reasonable cause, the owner or lessee of a facility where a motion picture is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture being exhibited, or the agent or employee of such licensor—

"(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section for the purpose of questioning or summoning a law enforcement officer; and

"(2) shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).

"(e) VICTIM IMPACT STATEMENT.—

"(1) IN GENERAL.—During the preparation of the presentence report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

"(2) CONTENTS.—A victim impact statement submitted under this subsection shall include—

"(A) producers and sellers of legitimate works affected by conduct involved in the offense;

"(B) holders of intellectual property rights in the works described in subparagraph (A); and

"(C) the legal representatives of such producers, sellers, and holders.

"(f) STATE LAW NOT PREEMPTED.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

"(g) DEFINITIONS.—In this section, the following definitions shall apply:

"(1) TITLE 17 DEFINITIONS.—The terms 'audiovisual work', 'copy', 'copyright owner', 'motion picture', 'motion picture exhibition facility', and 'transmit' have, respectively, the meanings given those terms in section 101 of title 17.

"(2) AUDIOVISUAL RECORDING DEVICE.—The term 'audiovisual recording device' means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 18, United States Code, is amended by inserting after the item relating to section 2319A the following:

"2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility."

(c) DEFINITION.—Section 101 of title 17, United States Code, is amended by inserting after the definition of "Motion pictures" the following:

"The term 'motion picture exhibition facility' means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances."

**SEC. 103. CRIMINAL INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.**

(a) **PROHIBITED ACTS.**—Section 506(a) of title 17, United States Code, is amended to read as follows:

“(a) **CRIMINAL INFRINGEMENT.**—

“(1) **IN GENERAL.**—Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed—

“(A) for purposes of commercial advantage or private financial gain;

“(B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000; or

“(C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

“(2) **EVIDENCE.**—For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement of a copyright.

“(3) **DEFINITION.**—In this subsection, the term ‘work being prepared for commercial distribution’ means—

“(A) a computer program, a musical work, a motion picture or other audiovisual work, or a sound recording, if at the time of unauthorized distribution—

“(i) the copyright owner has a reasonable expectation of commercial distribution; and

“(ii) the copies or phonorecords of the work have not been commercially distributed; or

“(B) a motion picture, if at the time of unauthorized distribution, the motion picture—

“(i) has been made available for viewing in a motion picture exhibition facility; and

“(ii) has not been made available in copies for sale to the general public in the United States in a format intended to permit viewing outside a motion picture exhibition facility.”

(b) **CRIMINAL PENALTIES.**—Section 2319 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “Whoever” and inserting “Any person who”; and

(B) by striking “and (c) of this section” and inserting “, (c), and (d)”;

(2) in subsection (b), by striking “section 506(a)(1)” and inserting “section 506(a)(1)(A)”;

(3) in subsection (c), by striking “section 506(a)(2) of title 17, United States Code” and inserting “section 506(a)(1)(B) of title 17”;

(4) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(5) by adding after subsection (c) the following:

“(d) Any person who commits an offense under section 506(a)(1)(C) of title 17—

“(1) shall be imprisoned not more than 3 years, fined under this title, or both;

“(2) shall be imprisoned not more than 5 years, fined under this title, or both, if the offense was committed for purposes of commercial advantage or private financial gain;

“(3) shall be imprisoned not more than 6 years, fined under this title, or both, if the offense is a second or subsequent offense; and

“(4) shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a second or subsequent offense under paragraph (2).”; and

(6) in subsection (f), as redesignated—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(3) the term ‘financial gain’ has the meaning given the term in section 101 of title 17; and

“(4) the term ‘work being prepared for commercial distribution’ has the meaning given the term in section 506(a) of title 17.”

**SEC. 104. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.**

(a) **PREREGISTRATION.**—Section 408 of title 17, United States Code, is amended by adding at the end the following:

“(f) **PREREGISTRATION OF WORKS BEING PREPARED FOR COMMERCIAL DISTRIBUTION.**—

“(1) **RULEMAKING.**—Not later than 180 days after the date of enactment of this subsection, the Register of Copyrights shall issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published.

“(2) **CLASS OF WORKS.**—The regulations established under paragraph (1) shall permit preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution.

“(3) **APPLICATION FOR REGISTRATION.**—Not later than 3 months after a the first publication of a work preregistered under this subsection, the applicant shall submit to the Copyright Office—

“(A) an application for registration of the work;

“(B) a deposit; and

“(C) the applicable fee.

“(4) **EFFECT OF UNTIMELY APPLICATION.**—An action under this chapter for infringement of a preregistered work, in a case in which the infringement commenced no later than 2 months after the first publication of the work shall be dismissed if the items described in paragraph (3) are not submitted to the Copyright Office in proper form within the earlier of—

“(A) 3 months after the first publication of the work; or

“(B) 1 month after the copyright owner has learned of the infringement.”

(b) **INFRINGEMENT ACTIONS.**—Section 411(a) of title 17, United States Code, is amended by inserting “preregistration or” after “shall be instituted until”.

(c) **EXCLUSION.**—Section 412 of title 17, United States Code, is amended by inserting “, an action for infringement of the copyright of a work that has been preregistered under section 408(f) before the commencement of the infringement and that has an effective date of registration not later than the earlier of 3 months after the first publication of the work or 1 month after the copyright owner has learned of the infringement,” after “section 106A(a)”.

**SEC. 105. FEDERAL SENTENCING GUIDELINES.**

(a) **REVIEW AND AMENDMENT.**—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes, including any offense under—

(1) section 506, 1201, or 1202 of title 17, United States Code; or

(2) section 2318, 2319, 2319A, 2319B, or 2320 of title 18, United States Code.

(b) **AUTHORIZATION.**—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

(c) **RESPONSIBILITIES OF UNITED STATES SENTENCING COMMISSION.**—In carrying out this section, the United States Sentencing Commission shall—

(1) take all appropriate measures to ensure that the Federal sentencing guidelines and policy statements described in subsection (a) are sufficiently stringent to deter, and adequately reflect the nature of, intellectual property rights crimes;

(2) determine whether to provide a sentencing enhancement for those convicted of the offenses described in subsection (a), if the conduct involves the display, performance, publication, reproduction, or distribution of a copyrighted work before it has been authorized by the copyright owner, whether in the media format used by the infringing party or in any other media format;

(3) determine whether the scope of “uploading” set forth in application note 3 of section 2B5.3 of the Federal sentencing guidelines is adequate to address the loss attributable to people who broadly distribute copyrighted works without authorization over the Internet; and

(4) determine whether the sentencing guidelines and policy statements applicable to the offenses described in subsection (a) adequately reflect any harm to victims from copyright infringement if law enforcement authorities cannot determine how many times copyright material has been reproduced or distributed.

**TITLE II—EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES**

**SEC. 201. SHORT TITLE.**

This title may be cited as the “Family Movie Act of 2004”.

**SEC. 202. EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES.**

(a) **IN GENERAL.**—Section 110 of title 17, United States Code, is amended—

(1) in paragraph (9), by striking “and” after the semicolon at the end;

(2) in paragraph (10), by striking the period at the end and inserting “; and”;

(3) by inserting after paragraph (10) the following:

“(11) the making imperceptible, by or at the direction of a member of a private household, of limited portions of audio or video content of a motion picture, during a performance in or transmitted to that household for private home viewing, from an authorized copy of the motion picture, or the creation or provision of a computer program or other technology that enables such making imperceptible and that is designed and marketed for such use at the direction of a member of a private household, if no fixed copy of the altered version of the motion picture is created by such computer program or other technology.”; and

(4) by adding at the end the following:

“For purposes of paragraph (11), the term ‘making imperceptible’ does not include the addition of audio or video content that is performed or displayed over or in place of existing content in a motion picture.

“Nothing in paragraph (11) shall be construed to imply further rights under section 106 of this title, or to have any effect on defenses or limitations on rights granted under any other section of this title or under any other paragraph of this section.”

(c) **EXEMPTION FROM TRADEMARK INFRINGEMENT.**—Section 32 of the Trademark Act of 1946 (15 U.S.C. 1114) is amended by adding at the end the following:

“(3)(A) Any person who engages in the conduct described in paragraph (11) of section 110 of title 17, United States Code, and who complies with the requirements set forth in that paragraph is not liable on account of

such conduct for a violation of any right under this Act. This subparagraph does not preclude liability, nor shall it be construed to restrict the defenses or limitations on rights granted under this Act, of a person for conduct not described in paragraph (11) of section 110 of title 17, United States Code, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

“(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such manufacture or license for a violation of any right under this Act, if such manufacturer, licensee, or licensor ensures that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance of the motion picture is altered from the performance intended by the director or copyright holder of the motion picture. The limitations on liability in subparagraph (A) and this subparagraph shall not apply to a manufacturer, licensee, or licensor of technology that fails to comply with this paragraph.

“(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology manufactured after the end of the 180-day period beginning on the date of the enactment of the Family Movie Act of 2004.

“(D) Any failure by a manufacturer, licensee, or licensor of technology to qualify for the exemption under subparagraphs (A) and (B) shall not be construed to create an inference of liability for trademark infringement for any such party that engages in conduct described in paragraph (11) of section 110 of title 17, United States Code.”.

(d) DEFINITION.—In this section, the term “Trademark Act of 1946” means the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (15 U.S.C. 1051 et seq.).

### TITLE III—NATIONAL FILM PRESERVATION

#### Subtitle A—Reauthorization of the National Film Preservation Board

##### SEC. 301. SHORT TITLE.

This subtitle may be cited as the “National Film Preservation Act of 2004”.

##### SEC. 302. REAUTHORIZATION AND AMENDMENT.

(a) DUTIES OF THE LIBRARIAN OF CONGRESS.—Section 103 of the National Film Preservation Act of 1996 (2 U.S.C. 179m) is amended—

(1) in subsection (b)—

(A) by striking “film copy” each place that term appears and inserting “film or other approved copy”;

(B) by striking “film copies” each place that term appears and inserting “film or other approved copies”;

(C) in the third sentence, by striking “copyrighted” and inserting “copyrighted, mass distributed, broadcast, or published”;

and

(2) by adding at the end the following:

“(c) COORDINATION OF PROGRAM WITH OTHER COLLECTION, PRESERVATION, AND ACCESSIBILITY ACTIVITIES.—In carrying out the comprehensive national film preservation program for motion pictures established under the National Film Preservation Act of 1992, the Librarian, in consultation with the Board established pursuant to section 104, shall—

“(1) carry out activities to make films included in the National Film registry more broadly accessible for research and educational purposes, and to generate public

awareness and support of the Registry and the comprehensive national film preservation program;

“(2) review the comprehensive national film preservation plan, and amend it to the extent necessary to ensure that it addresses technological advances in the preservation and storage of, and access to film collections in multiple formats; and

“(3) wherever possible, undertake expanded initiatives to ensure the preservation of the moving image heritage of the United States, including film, videotape, television, and born digital moving image formats, by supporting the work of the National Audio-Visual Conservation Center of the Library of Congress, and other appropriate nonprofit archival and preservation organizations.”.

(b) NATIONAL FILM PRESERVATION BOARD.—Section 104 of the National Film Preservation Act of 1996 (2 U.S.C. 179n) is amended—

(1) in subsection (a)(1) by striking “20” and inserting “22”;

(2) in subsection (a) (2) by striking “three” and inserting “5”;

(3) in subsection (d) by striking “11” and inserting “12”;

(4) by striking subsection (e) and inserting the following:

“(e) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.”.

(c) NATIONAL FILM REGISTRY.—Section 106 of the National Film Preservation Act of 1996 (2 U.S.C. 179p) is amended by adding at the end the following:

“(e) NATIONAL AUDIO-VISUAL CONSERVATION CENTER.—The Librarian shall utilize the National Audio-Visual Conservation Center of the Library of Congress at Culpeper, Virginia, to ensure that preserved films included in the National Film Registry are stored in a proper manner, and disseminated to researchers, scholars, and the public as may be appropriate in accordance with—

“(1) title 17, United States Code; and

“(2) the terms of any agreements between the Librarian and persons who hold copyrights to such audiovisual works.”.

(d) USE OF SEAL.—Section 107 (a) of the National Film Preservation Act of 1996 (2 U.S.C. 179q(a)) is amended—

(1) in paragraph (1), by inserting “in any format” after “or any copy”;

(2) in paragraph (2), by striking “or film copy” and inserting “in any format”.

(e) EFFECTIVE DATE.—Section 113 of the National Film Preservation Act of 1996 (2 U.S.C. 179w) is amended by striking “7” and inserting “12”.

#### Subtitle B—Reauthorization of the National Film Preservation Foundation

##### SEC. 311. SHORT TITLE.

This subtitle may be cited as the “National Film Preservation Foundation Reauthorization Act of 2004”.

##### SEC. 312. REAUTHORIZATION AND AMENDMENT.

(a) BOARD OF DIRECTORS.—Section 151703 of title 36, United States Code, is amended—

(1) in subsection (b)(2)(A), by striking “nine” and inserting “12”;

(2) in subsection (b)(4), by striking the second sentence and inserting “There shall be no limit to the number of terms to which any individual may be appointed.”.

(b) POWERS.—Section 151705 of title 36, United States Code, is amended in subsection (b) by striking “District of Columbia” and inserting “the jurisdiction in which the principal office of the corporation is located”.

(c) PRINCIPAL OFFICE.—Section 151706 of title 36, United States Code, is amended by inserting “, or another place as determined by the board of directors” after “District of Columbia”.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 151711 of title 36, United States Code, is amended by striking subsections (a) and (b) and inserting the following:

“(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Library of Congress amounts necessary to carry out this chapter, not to exceed \$530,000 for each of the fiscal years 2004 through 2008. These amounts are to be made available to the corporation to match any private contributions (whether in currency, services, or property) made to the corporation by private persons and State and local governments.

“(b) LIMITATION RELATED TO ADMINISTRATIVE EXPENSES.—Amounts authorized under this section may not be used by the corporation for management and general or fundraising expenses as reported to the Internal Revenue Service as part of an annual information return required under the Internal Revenue Code of 1986.”.

### TITLE IV—PRESERVATION OF ORPHAN WORKS

#### SEC. 401. SHORT TITLE.

This title may be cited as the “Preservation of Orphan Works Act”.

#### SEC. 402. REPRODUCTION OF COPYRIGHTED WORKS BY LIBRARIES AND ARCHIVES.

Section 108(i) of title 17, United States Code, is amended by striking “(b) and (c)” and inserting “(b), (c), and (h)”.

### TITLE V—ANTICOUNTERFEITING PROVISIONS AND FRAUDULENT ONLINE IDENTITY SANCTIONS

#### Subtitle A—Anticounterfeiting Provisions

##### SEC. 501. SHORT TITLE.

This subtitle may be cited as the “Anticounterfeiting Act of 2004”.

##### SEC. 502. PROHIBITION AGAINST TRAFFICKING IN COUNTERFEIT COMPONENTS.

(a) IN GENERAL.—Section 2318 of title 18, United States Code, is amended—

(1) by striking the section heading and inserting the following:

“§2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging”;

(2) by striking subsection (a) and inserting the following:

“(a) Whoever, in any of the circumstances described in subsection (c), knowingly traffics in—

“(1) a counterfeit label or illicit label affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany—

“(A) a phonorecord;

“(B) a copy of a computer program;

“(C) a copy of a motion picture or other audiovisual work;

“(D) a copy of a literary work;

“(E) a copy of a pictorial, graphic, or sculptural work;

“(F) a work of visual art; or

“(G) documentation or packaging; or

“(2) counterfeit documentation or packaging, shall be fined under this title or imprisoned for not more than 5 years, or both.”;

(3) in subsection (b)—

(A) in paragraph (2), by striking “and” after the semicolon;

(B) in paragraph (3)—

(i) by striking “and ‘audiovisual work’ have” and inserting the following: “‘audiovisual work’, ‘literary work’, ‘pictorial, graphic, or sculptural work’, ‘sound recording’, ‘work of visual art’, and ‘copyright owner’ have”;

(ii) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(4) the term ‘illicit label’ means a genuine certificate, licensing document, registration card, or similar labeling component—

“(A) that is used by the copyright owner to verify that a phonorecord, a copy of a computer program, a copy of a motion picture or other audiovisual work, a copy of a literary work, a copy of a pictorial, graphic, or sculptural work, a work of visual art, or documentation or packaging is not counterfeit or infringing of any copyright; and

“(B) that is, without the authorization of the copyright owner—

“(i) distributed or intended for distribution not in connection with the copy, phonorecord, or work of visual art to which such labeling component was intended to be affixed by the respective copyright owner; or

“(ii) in connection with a genuine certificate or licensing document, knowingly falsified in order to designate a higher number of licensed users or copies than authorized by the copyright owner, unless that certificate or document is used by the copyright owner solely for the purpose of monitoring or tracking the copyright owner's distribution channel and not for the purpose of verifying that a copy or phonorecord is non-infringing;

“(5) the term ‘documentation or packaging’ means documentation or packaging, in physical form, for a phonorecord, copy of a computer program, copy of a motion picture or other audiovisual work, copy of a literary work, copy of a pictorial, graphic, or sculptural work, or work of visual art; and

“(6) the term ‘counterfeit documentation or packaging’ means documentation or packaging that appears to be genuine, but is not.”;

(4) in subsection (c)—

(A) by striking paragraph (3) and inserting the following:

“(3) the counterfeit label or illicit label is affixed to, encloses, or accompanies, or is designed to be affixed to, enclose, or accompany—

“(A) a phonorecord of a copyrighted sound recording or copyrighted musical work;

“(B) a copy of a copyrighted computer program;

“(C) a copy of a copyrighted motion picture or other audiovisual work;

“(D) a copy of a literary work;

“(E) a copy of a pictorial, graphic, or sculptural work;

“(F) a work of visual art; or

“(G) copyrighted documentation or packaging; or”;

(B) in paragraph (4), by striking “for a computer program”; and

(5) in subsection (d)—

(A) by inserting “or illicit labels” after “counterfeit labels” each place it appears; and

(B) by inserting before the period at the end the following: “, and of any equipment, device, or material used to manufacture, reproduce, or assemble the counterfeit labels or illicit labels”.

(b) CIVIL REMEDIES.—Section 2318 of title 18, United States Code, is further amended by adding at the end the following:

“(f) CIVIL REMEDIES.—

“(1) IN GENERAL.—Any copyright owner who is injured, or is threatened with injury, by a violation of subsection (a) may bring a civil action in an appropriate United States district court.

“(2) DISCRETION OF COURT.—In any action brought under paragraph (1), the court—

“(A) may grant 1 or more temporary or permanent injunctions on such terms as the court determines to be reasonable to prevent or restrain a violation of subsection (a);

“(B) at any time while the action is pending, may order the impounding, on such terms as the court determines to be reason-

able, of any article that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation of subsection (a); and

“(C) may award to the injured party—

“(i) reasonable attorney fees and costs; and

“(ii) (I) actual damages and any additional profits of the violator, as provided in paragraph (3); or

“(II) statutory damages, as provided in paragraph (4).

“(3) ACTUAL DAMAGES AND PROFITS.—

“(A) IN GENERAL.—The injured party is entitled to recover—

“(i) the actual damages suffered by the injured party as a result of a violation of subsection (a), as provided in subparagraph (B) of this paragraph; and

“(ii) any profits of the violator that are attributable to a violation of subsection (a) and are not taken into account in computing the actual damages.

“(B) CALCULATION OF DAMAGES.—The court shall calculate actual damages by multiplying—

“(i) the value of the phonorecords, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging; by

“(ii) the number of phonorecords, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging.

“(C) DEFINITION.—For purposes of this paragraph, the ‘value’ of a phonorecord, copy, or work of visual art is—

“(i) in the case of a copyrighted sound recording or copyrighted musical work, the retail value of an authorized phonorecord of that sound recording or musical work;

“(ii) in the case of a copyrighted computer program, the retail value of an authorized copy of that computer program;

“(iii) in the case of a copyrighted motion picture or other audiovisual work, the retail value of an authorized copy of that motion picture or audiovisual work;

“(iv) in the case of a copyrighted literary work, the retail value of an authorized copy of that literary work;

“(v) in the case of a pictorial, graphic, or sculptural work, the retail value of an authorized copy of that work; and

“(vi) in the case of a work of visual art, the retail value of that work.

“(4) STATUTORY DAMAGES.—The injured party may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for each violation of subsection (a) in a sum of not less than \$2,500 or more than \$25,000, as the court considers appropriate.

“(5) SUBSEQUENT VIOLATION.—The court may increase an award of damages under this subsection by 3 times the amount that would otherwise be awarded, as the court considers appropriate, if the court finds that a person has subsequently violated subsection (a) within 3 years after a final judgment was entered against that person for a violation of that subsection.

“(6) LIMITATION ON ACTIONS.—A civil action may not be commenced under this subsection unless it is commenced within 3 years after the date on which the claimant discovers the violation of subsection (a).”.

(c) CONFORMING AMENDMENT.—The item relating to section 2318 in the table of sections for chapter 113 of title 18, United States Code, is amended to read as follows:

“2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging.”.

#### SEC. 503. OTHER RIGHTS NOT AFFECTED.

(a) CHAPTERS 5 AND 12 OF TITLE 17; ELECTRONIC TRANSMISSIONS.—The amendments made by this subtitle—

(1) shall not enlarge, diminish, or otherwise affect any liability or limitations on liability under sections 512, 1201, or 1202 of title 17, United States Code; and

(2) shall not be construed to apply—

(A) in any case, to the electronic transmission of a genuine certificate, licensing document, registration card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this subtitle; and

(B) in the case of a civil action under section 2318(f) of title 18, United States Code, to the electronic transmission of a counterfeit label or counterfeit documentation or packaging defined in paragraph (1) or (6) of section 2318(b) of title 18, United States Code.

(b) FAIR USE.—The amendments made by this subtitle shall not affect the fair use, under section 107 of title 17, United States Code, of a genuine certificate, licensing document, registration card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this subtitle.

#### Subtitle B—Fraudulent Online Identity Sanctions

##### SEC. 511. SHORT TITLE.

This subtitle may be cited as the “Fraudulent Online Identity Sanctions Act”.

##### SEC. 512. AMENDMENT TO TRADEMARK ACT OF 1946.

Section 35 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”; 15 U.S.C. 1117), is amended by adding at the end the following new subsection:

“(e) In the case of a violation referred to in this section, it shall be a rebuttable presumption that the violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation. Nothing in this subsection limits what may be considered a willful violation under this section.”.

##### SEC. 513. AMENDMENT TO TITLE 17, UNITED STATES CODE.

Section 504(c) of title 17, United States Code, is amended by adding at the end the following new paragraph:

“(3) (A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

“(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

“(C) For purposes of this paragraph, the term ‘domain name’ has the meaning given that term in section 45 of the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes’

approved July 5, 1946 (commonly referred to as the ‘Trademark Act of 1946’; 15 U.S.C. 1127).’.

**SEC. 514. AMENDMENT TO TITLE 18, UNITED STATES CODE.**

(a) SENTENCING ENHANCEMENT.—Section 3559 of title 18, United States Code, is amended by adding at the end the following:

“(f)(1) If a defendant who is convicted of a felony offense (other than offense of which an element is the false registration of a domain name) knowingly falsely registered a domain name and knowingly used that domain name in the course of that offense, the maximum imprisonment otherwise provided by law for that offense shall be doubled or increased by 7 years, whichever is less.

“(2) As used in this subsection—

“(A) the term ‘falsely registers’ means registers in a manner that prevents the effective identification of or contact with the person who registers; and

“(B) the term ‘domain name’ has the meaning given that term in section 45 of the Act entitled ‘An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes’ approved July 5, 1946 (commonly referred to as the ‘Trademark Act of 1946’) (15 U.S.C. 1127).’.

**(b) UNITED STATES SENTENCING COMMISSION.—**

(1) DIRECTIVE.—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 shall review and amend the sentencing guidelines and policy statements to ensure that the applicable guideline range for a defendant convicted of any felony offense carried out online that may be facilitated through the use of a domain name registered with materially false contact information is sufficiently stringent to deter commission of such acts.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall provide sentencing enhancements for anyone convicted of any felony offense furthered through knowingly providing or knowingly causing to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation.

(3) DEFINITION.—For purposes of this subsection, the term “domain name” has the meaning given that term in section 45 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”); 15 U.S.C. 1127).

**SEC. 515. CONSTRUCTION.**

(a) FREE SPEECH AND PRESS.—Nothing in this subtitle shall enlarge or diminish any rights of free speech or of the press for activities related to the registration or use of domain names.

(b) DISCRETION OF COURTS IN DETERMINING RELIEF.—Nothing in this subtitle shall restrict the discretion of a court in determining damages or other relief to be assessed against a person found liable for the infringement of intellectual property rights.

(c) DISCRETION OF COURTS IN DETERMINING TERMS OF IMPRISONMENT.—Nothing in this subtitle shall be construed to limit the discretion of a court to determine the appropriate term of imprisonment for an offense under applicable law.

**TITLE VI—COOPERATIVE RESEARCH AND TECHNOLOGY ENHANCEMENT**

**SEC. 601. SHORT TITLE.**

This title may be cited as the “Cooperative Research and Technology Enhancement (CREATE) Act of 2004”.

**SEC. 602. COLLABORATIVE EFFORTS ON CLAIMED INVENTIONS.**

Section 103(c) of title 35, United States Code, is amended to read as follows:

“(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

“(2) For purposes of this subsection, subject matter developed by another person and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person if—

“(A) the claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made;

“(B) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

“(C) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

“(3) For purposes of paragraph (2), the term ‘joint research agreement’ means a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.”.

**SEC. 603. EFFECTIVE DATE.**

(a) IN GENERAL.—The amendments made by this title shall apply to any patent granted on or after the date of the enactment of this Act.

(b) SPECIAL RULE.—The amendments made by this title shall not affect any final decision of a court or the United States Patent and Trademark Office rendered before the date of the enactment of this Act, and shall not affect the right of any party in any action pending before the United States Patent and Trademark Office or a court on the date of the enactment of this Act to have that party’s rights determined on the basis of the provisions of title 35, United States Code, in effect on the day before the date of the enactment of this Act.

**TITLE VII—PROFESSIONAL BOXING SAFETY**

**SEC. 701. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This title may be cited as the “Professional Boxing Amendments Act of 2004”.

(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:

- Sec. 701. Short title; table of contents.
- Sec. 702. Amendment of Professional Boxing Safety Act of 1996.
- Sec. 703. Definitions.
- Sec. 704. Purposes.
- Sec. 705. United States Boxing Commission approval, or ABC or commission sanction, required for matches.
- Sec. 706. Safety standards.
- Sec. 707. Registration.
- Sec. 708. Review.
- Sec. 709. Reporting.
- Sec. 710. Contract requirements.
- Sec. 711. Coercive contracts.
- Sec. 712. Sanctioning organizations.

Sec. 713. Required disclosures by sanctioning organizations.

Sec. 714. Required disclosures by promoters and broadcasters.

Sec. 715. Judges and referees.

Sec. 716. Medical registry.

Sec. 717. Conflicts of interest.

Sec. 718. Enforcement.

Sec. 719. Repeal of deadwood.

Sec. 720. Recognition of tribal law.

Sec. 721. Establishment of United States Boxing Commission.

Sec. 722. Study and report on definition of promoter.

Sec. 723. Effective date.

**SEC. 702. AMENDMENT OF PROFESSIONAL BOXING SAFETY ACT OF 1996.**

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Professional Boxing Safety Act of 1996 (15 U.S.C. 6301 et seq.).

**SEC. 703. DEFINITIONS.**

(a) IN GENERAL.—Section 2 (15 U.S.C. 6301) is amended to read as follows:

**“SEC. 2. DEFINITIONS.**

**“In this Act:**

“(1) COMMISSION.—The term ‘Commission’ means the United States Boxing Commission.

“(2) BOUT AGREEMENT.—The term ‘bout agreement’ means a contract between a promoter and a boxer that requires the boxer to participate in a professional boxing match for a particular date.

“(3) BOXER.—The term ‘boxer’ means an individual who fights in a professional boxing match.

“(4) BOXING COMMISSION.—The term ‘boxing commission’ means an entity authorized under State or tribal law to regulate professional boxing matches.

“(5) BOXER REGISTRY.—The term ‘boxer registry’ means any entity certified by the Commission for the purposes of maintaining records and identification of boxers.

“(6) BOXING SERVICE PROVIDER.—The term ‘boxing service provider’ means a promoter, manager, sanctioning body, licensee, or matchmaker.

“(7) CONTRACT PROVISION.—The term ‘contract provision’ means any legal obligation between a boxer and a boxing service provider.

“(8) INDIAN LANDS; INDIAN TRIBE.—The terms ‘Indian lands’ and ‘Indian tribe’ have the meanings given those terms by paragraphs (4) and (5), respectively, of section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703).

“(9) LICENSEE.—The term ‘licensee’ means an individual who serves as a trainer, corner man, second, or cut man for a boxer.

“(10) MANAGER.—The term ‘manager’ means a person other than a promoter who, under contract, agreement, or other arrangement with a boxer, undertakes to control or administer, directly or indirectly, a boxing-related matter on behalf of that boxer, including a person who is a booking agent for a boxer.

“(11) MATCHMAKER.—The term ‘matchmaker’ means a person that proposes, selects, and arranges for boxers to participate in a professional boxing match.

“(12) PHYSICIAN.—The term ‘physician’ means a doctor of medicine legally authorized to practice medicine by the State in which the physician performs such function or action and who has training and experience in dealing with sports injuries, particularly head trauma.

“(13) PROFESSIONAL BOXING MATCH.—The term ‘professional boxing match’ means a

boxing contest held in the United States between individuals for financial compensation. The term 'professional boxing match' does not include a boxing contest that is regulated by a duly recognized amateur sports organization, as approved by the Commission.

“(14) PROMOTER.—The term ‘promoter’—

“(A) means the person primarily responsible for organizing, promoting, and producing a professional boxing match; but

“(B) does not include a hotel, casino, resort, or other commercial establishment hosting or sponsoring a professional boxing match unless—

“(i) the hotel, casino, resort, or other commercial establishment is primarily responsible for organizing, promoting, and producing the match; and

“(ii) there is no other person primarily responsible for organizing, promoting, and producing the match.

“(15) PROMOTIONAL AGREEMENT.—The term ‘promotional agreement’ means a contract, for the acquisition of rights relating to a boxer's participation in a professional boxing match or series of boxing matches (including the right to sell, distribute, exhibit, or license the match or matches), with—

“(A) the boxer who is to participate in the match or matches; or

“(B) the nominee of a boxer who is to participate in the match or matches, or the nominee is an entity that is owned, controlled or held in trust for the boxer unless that nominee or entity is a licensed promoter who is conveying a portion of the rights previously acquired.

“(16) STATE.—The term ‘State’ means each of the 50 States, Puerto Rico, the District of Columbia, and any territory or possession of the United States, including the Virgin Islands.

“(17) SANCTIONING ORGANIZATION.—The term ‘sanctioning organization’ means an organization, other than a boxing commission, that sanctions professional boxing matches, ranks professional boxers, or charges a sanctioning fee for professional boxing matches in the United States—

“(A) between boxers who are residents of different States; or

“(B) that are advertised, otherwise promoted, or broadcast (including closed circuit television) in interstate commerce.

“(18) SUSPENSION.—The term ‘suspension’ includes within its meaning the temporary revocation of a boxing license.

“(19) TRIBAL ORGANIZATION.—The term ‘tribal organization’ has the same meaning as in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(1)).”.

(b) CONFORMING AMENDMENT.—Section 21 (15 U.S.C. 6312) is amended to read as follows:

**“SEC. 21. PROFESSIONAL BOXING MATCHES CONDUCTED ON INDIAN LANDS.**

“(a) IN GENERAL.—Notwithstanding any other provision of law, a tribal organization may establish a boxing commission to regulate professional boxing matches held on Indian land under the jurisdiction of that tribal organization.

“(b) STANDARDS AND LICENSING.—A tribal organization that establishes a boxing commission shall, by tribal ordinance or resolution, establish and provide for the implementation of health and safety standards, licensing requirements, and other requirements relating to the conduct of professional boxing matches that are at least as restrictive as—

“(1) the otherwise applicable requirements of the State in which the Indian land on which the professional boxing match is held is located; or

“(2) the guidelines established by the United States Boxing Commission.

“(c) APPLICATION OF ACT TO BOXING MATCHES ON TRIBAL LANDS.—The provisions of this Act apply to professional boxing matches held on tribal lands to the same extent and in the same way as they apply to professional boxing matches held in any State.”.

**SEC. 704. PURPOSES.**

Section 3(2) (15 U.S.C. 6302(2)) is amended by striking “State”.

**SEC. 705. UNITED STATES BOXING COMMISSION APPROVAL, OR ABC OR COMMISSION SANCTION, REQUIRED FOR MATCHES.**

(a) IN GENERAL.—Section 4 (15 U.S.C. 6303) is amended to read as follows:

**“SEC. 4. APPROVAL OR SANCTION REQUIREMENT.**

“(a) IN GENERAL.—No person may arrange, promote, organize, produce, or fight in a professional boxing match within the United States unless the match—

“(1) is approved by the Commission; and

“(2) is held in a State, or on tribal land of a tribal organization, that regulates professional boxing matches in accordance with standards and criteria established by the Commission.

“(b) APPROVAL PRESUMED.—

“(1) IN GENERAL.—For purposes of subsection (a), the Commission shall be presumed to have approved any match other than—

“(A) a match with respect to which the Commission has been informed of an alleged violation of this Act and with respect to which it has notified the supervising boxing commission that it does not approve;

“(B) a match advertised to the public as a championship match;

“(C) a match scheduled for 10 rounds or more; or

“(D) a match in which 1 of the boxers has—

“(i) suffered 10 consecutive defeats in professional boxing matches; or

“(ii) has been knocked out 5 consecutive times in professional boxing matches.

“(2) DELEGATION OF APPROVAL AUTHORITY.—Notwithstanding paragraph (1), the Commission shall be presumed to have approved a match described in subparagraph (B), (C), or (D) of paragraph (1) if—

“(A) the Commission has delegated in writing its approval authority with respect to that match to a boxing commission; and

“(B) the boxing commission has approved the match.

“(3) KNOCKED-OUT DEFINED.—Except as may be otherwise provided by the Commission by rule, in paragraph (1)(D)(ii), the term ‘knocked out’ means knocked down and unable to continue after a count of 10 by the referee or stopped from continuing because of a technical knockout.”.

(b) CONFORMING AMENDMENT.—Section 19 (15 U.S.C. 6310) is repealed.

**SEC. 706. SAFETY STANDARDS.**

Section 5 (15 U.S.C. 6304) is amended—

(1) by striking “requirements or an alternative requirement in effect under regulations of a boxing commission that provides equivalent protection of the health and safety of boxers;” and inserting “requirements;”;

(2) by adding at the end of paragraph (1) “The examination shall include testing for infectious diseases in accordance with standards established by the Commission.”;

(3) by striking paragraph (2) and inserting the following:

“(2) An ambulance continuously present on site.”;

(4) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and inserting after paragraph (2) the following:

“(3) Emergency medical personnel with appropriate resuscitation equipment continuously present on site.”; and

(5) by striking “match.” in paragraph (5), as redesignated, and inserting “match in an amount prescribed by the Commission.”.

**SEC. 707. REGISTRATION.**

Section 6 (15 U.S.C. 6305) is amended—

(1) by inserting “or Indian tribe” after “State” the second place it appears in subsection (a)(2);

(2) by striking the first sentence of subsection (c) and inserting “A boxing commission shall, in accordance with requirements established by the Commission, make a health and safety disclosure to a boxer when issuing an identification card to that boxer.”;

(3) by striking “should” in the second sentence of subsection (c) and inserting “shall, at a minimum.”; and

(4) by adding at the end the following:

“(d) COPY OF REGISTRATION AND IDENTIFICATION CARDS TO BE SENT TO COMMISSION.—A boxing commission shall furnish a copy of each registration received under subsection (a), and each identification card issued under subsection (b), to the Commission.”.

**SEC. 708. REVIEW.**

Section 7 (15 U.S.C. 6306) is amended—

(1) by striking “that, except as provided in subsection (b), no” in subsection (a)(2) and inserting “that no”;

(2) by striking paragraphs (3) and (4) of subsection (a) and inserting the following:

“(3) Procedures to review a summary suspension when a hearing before the boxing commission is requested by a boxer, licensee, manager, matchmaker, promoter, or other boxing service provider which provides an opportunity for that person to present evidence.”;

(3) by striking subsection (b); and

(4) by striking “(a) PROCEDURES.—”.

**SEC. 709. REPORTING.**

Section 8 (15 U.S.C. 6307) is amended—

(1) by striking “48 business hours” and inserting “2 business days”;

(2) by striking “boxing” and inserting “boxing”;

(3) by striking “each boxer registry.” and inserting “the Commission.”.

**SEC. 710. CONTRACT REQUIREMENTS.**

Section 9 (15 U.S.C. 6307a) is amended to read as follows:

**“SEC. 9. CONTRACT REQUIREMENTS.**

“(a) IN GENERAL.—The Commission, in consultation with the Association of Boxing Commissions, shall develop guidelines for minimum contractual provisions that shall be included in each bout agreement, boxer-manager contract, and promotional agreement. Each boxing commission shall ensure that these minimal contractual provisions are present in any such agreement or contract submitted to it.

“(b) FILING AND APPROVAL REQUIREMENTS.—

“(1) COMMISSION.—A manager or promoter shall submit a copy of each boxer-manager contract and each promotional agreement between that manager or promoter and a boxer to the Commission, and, if requested, to the boxing commission with jurisdiction over the bout.

“(2) BOXING COMMISSION.—A boxing commission may not approve a professional boxing match unless a copy of the bout agreement related to that match has been filed with it and approved by it.

“(c) BOND OR OTHER SURETY.—A boxing commission may not approve a professional boxing match unless the promoter of that match has posted a surety bond, cashier's check, letter of credit, cash, or other security with the boxing commission in an amount acceptable to the boxing commission.”.

**SEC. 711. COERCIVE CONTRACTS.**

Section 10 (15 U.S.C. 6307b) is amended—



(1) by striking paragraph (3) of subsection (a);

(2) by inserting "OR ELIMINATION" after "MANDATORY" in the heading of subsection (b); and

(3) by inserting "or elimination" after "mandatory" in subsection (b).

#### SEC. 712. SANCTIONING ORGANIZATIONS.

(a) IN GENERAL.—Section 11 (15 U.S.C. 6307c) is amended to read as follows:

##### "SEC. 11. SANCTIONING ORGANIZATIONS.

"(a) OBJECTIVE CRITERIA.—Within 1 year after the date of enactment of the Professional Boxing Amendments Act of 2004, the Commission shall develop guidelines for objective and consistent written criteria for the rating of professional boxers based on the athletic merits and professional record of the boxers. Within 90 days after the Commission's promulgation of the guidelines, each sanctioning organization shall adopt the guidelines and follow them.

"(b) NOTIFICATION OF CHANGE IN RATING.—A sanctioning organization shall, with respect to a change in the rating of a boxer previously rated by such organization in the top 10 boxers—

"(1) post a copy, within 7 days after the change, on its Internet website or home page, if any, including an explanation of the change, for a period of not less than 30 days;

"(2) provide a copy of the rating change and a thorough explanation in writing under penalty of perjury to the boxer and the Commission;

"(3) provide the boxer an opportunity to appeal the ratings change to the sanctioning organization; and

"(4) apply the objective criteria for ratings required under subsection (a) in considering any such appeal.

"(c) CHALLENGE OF RATING.—If, after disposing with an appeal under subsection (b)(3), a sanctioning organization receives a petition from a boxer challenging that organization's rating of the boxer, it shall (except to the extent otherwise required by the Commission), within 7 days after receiving the petition—

"(1) provide to the boxer a written explanation under penalty of perjury of the organization's rating criteria, its rating of the boxer, and the rationale or basis for its rating (including a response to any specific questions submitted by the boxer); and

"(2) submit a copy of its explanation to the Association of Boxing Commissions and the Commission for their review."

(b) CONFORMING AMENDMENTS.—Section 18(e) (15 U.S.C. 6309(e)) is amended—

(1) by striking "FEDERAL TRADE COMMISSION," in the subsection heading and inserting "UNITED STATES BOXING COMMISSION"; and

(2) by striking "Federal Trade Commission," in paragraph (1) and inserting "United States Boxing Commission,".

#### SEC. 713. REQUIRED DISCLOSURES BY SANCTIONING ORGANIZATIONS.

Section 12 (15 U.S.C. 6307d) is amended—

(1) by striking the matter preceding paragraph (1) and inserting "Within 7 days after a professional boxing match of 10 rounds or more, the sanctioning organization, if any, for that match shall provide to the Commission, and, if requested, to the boxing commission in the State or on Indian land responsible for regulating the match, a written statement of—";

(2) by striking "will assess" in paragraph (1) and inserting "has assessed, or will assess,"; and

(3) by striking "will receive" in paragraph (2) and inserting "has received, or will receive,".

#### SEC. 714. REQUIRED DISCLOSURES BY PROMOTERS AND BROADCASTERS.

Section 13 (15 U.S.C. 6307e) is amended—

(1) by striking "PROMOTERS." in the section caption and inserting "PROMOTERS AND BROADCASTERS.";

(2) by striking so much of subsection (a) as precedes paragraph (1) and inserting the following:

"(a) DISCLOSURES TO BOXING COMMISSIONS AND THE COMMISSION.—Within 7 days after a professional boxing match of 10 rounds or more, the promoter of any boxer participating in that match shall provide to the Commission, and, if requested, to the boxing commission in the State or on Indian land responsible for regulating the match—";

(3) by striking "writing," in subsection (a)(1) and inserting "writing, other than a bout agreement previously provided to the commission,";

(4) by striking "all fees, charges, and expenses that will be" in subsection (a)(3)(A) and inserting "a written statement of all fees, charges, and expenses that have been, or will be,";

(5) by inserting "a written statement of" before "all" in subsection (a)(3)(B);

(6) by inserting "a statement of" before "any" in subsection (a)(3)(C);

(7) by striking the matter in subsection (b) following "BOXER.—" and preceding paragraph (1) and inserting "Within 7 days after a professional boxing match of 10 rounds or more, the promoter of the match shall provide to each boxer participating in the bout or match with whom the promoter has a bout or promotional agreement a statement of—";

(8) by striking "match;" in subsection (b)(1) and inserting "match, and that the promoter has paid, or agreed to pay, to any other person in connection with the match;"; and

(9) by adding at the end the following:

"(d) REQUIRED DISCLOSURES BY BROADCASTERS.—

"(1) IN GENERAL.—A broadcaster that owns the television broadcast rights for a professional boxing match of 10 rounds or more shall, within 7 days after that match, provide to the Commission—

"(A) a statement of any advance, guarantee, or license fee paid or owed by the broadcaster to a promoter in connection with that match;

"(B) a copy of any contract executed by or on behalf of the broadcaster with—

"(i) a boxer who participated in that match; or

"(ii) the boxer's manager, promoter, promotional company, or other representative or the owner or representative of the site of the match; and

"(C) a list identifying sources of income received from the broadcast of the match.

"(2) COPY TO BOXING COMMISSION.—Upon request from the boxing commission in the State or Indian land responsible for regulating a match to which paragraph (1) applies, a broadcaster shall provide the information described in paragraph (1) to that boxing commission.

"(3) CONFIDENTIALITY.—The information provided to the Commission or to a boxing commission pursuant to this subsection shall be confidential and not revealed by the Commission or a boxing commission, except that the Commission may publish an analysis of the data in aggregate form or in a manner which does not disclose confidential information about identifiable broadcasters.

"(4) TELEVISION BROADCAST RIGHTS.—In paragraph (1), the term 'television broadcast rights' means the right to broadcast the match, or any part thereof, via a broadcast station, cable service, or multichannel video programming distributor as such terms are defined in section 3(5), 602(6), and 602(13) of the Communications Act of 1934 (47 U.S.C. 153(5), 602(6), and 602(13), respectively)."

#### SEC. 715. JUDGES AND REFEREES.

(a) IN GENERAL.—Section 16 (15 U.S.C. 6307h) is amended—

(1) by inserting "(a) LICENSING AND ASSIGNMENT REQUIREMENT.—" before "No person";

(2) by striking "certified and approved" and inserting "selected";

(3) by inserting "or Indian lands" after "State"; and

(4) by adding at the end the following:

"(b) CHAMPIONSHIP AND 10-ROUND BOUTS.—In addition to the requirements of subsection (a), no person may arrange, promote, organize, produce, or fight in a professional boxing match advertised to the public as a championship match or in a professional boxing match scheduled for 10 rounds or more unless all referees and judges participating in the match have been licensed by the Commission.

"(c) ROLE OF SANCTIONING ORGANIZATION.—A sanctioning organization may provide a list of judges and referees deemed qualified by that organization to a boxing commission, but the boxing commission shall select, license, and appoint the judges and referees participating in the match.

"(d) ASSIGNMENT OF NONRESIDENT JUDGES AND REFEREES.—A boxing commission may assign judges and referees who reside outside that commission's State or Indian land.

"(e) REQUIRED DISCLOSURE.—A judge or referee shall provide to the boxing commission responsible for regulating a professional boxing match in a State or on Indian land a statement of all consideration, including reimbursement for expenses, that the judge or referee has received, or will receive, from any source for participation in the match. If the match is scheduled for 10 rounds or more, the judge or referee shall also provide such a statement to the Commission."

(b) CONFORMING AMENDMENT.—Section 14 (15 U.S.C. 6307f) is repealed.

#### SEC. 716. MEDICAL REGISTRY.

The Act is amended by inserting after section 13 (15 U.S.C. 6307e) the following:

##### "SEC. 14. MEDICAL REGISTRY.

"(a) IN GENERAL.—The Commission shall establish and maintain, or certify a third party entity to establish and maintain, a medical registry that contains comprehensive medical records and medical denials or suspensions for every licensed boxer.

"(b) CONTENT; SUBMISSION.—The Commission shall determine—

"(1) the nature of medical records and medical suspensions of a boxer that are to be forwarded to the medical registry; and

"(2) the time within which the medical records and medical suspensions are to be submitted to the medical registry.

"(c) CONFIDENTIALITY.—The Commission shall establish confidentiality standards for the disclosure of personally identifiable information to boxing commissions that will—

"(1) protect the health and safety of boxers by making relevant information available to the boxing commissions for use but not public disclosure; and

"(2) ensure that the privacy of the boxers is protected."

#### SEC. 717. CONFLICTS OF INTEREST.

Section 17 (15 U.S.C. 6308) is amended—

(1) by striking "enforces State boxing laws," in subsection (a) and inserting "implements State or tribal boxing laws, no officer or employee of the Commission,";

(2) by striking "belong to," and inserting "hold office in," in subsection (a);

(3) by striking the last sentence of subsection (a);

(4) by striking subsection (b) and inserting the following:

"(b) BOXERS.—A boxer may not own or control, directly or indirectly, an entity that promotes the boxer's bouts if that entity is responsible for—

“(1) executing a bout agreement or promotional agreement with the boxer's opponent; or

“(2) providing any payment or other compensation to—

“(A) the boxer's opponent for participation in a bout with the boxer;

“(B) the boxing commission that will regulate the bout; or

“(C) ring officials who officiate at the bout.”.

#### SEC. 718. ENFORCEMENT.

Section 18 (15 U.S.C. 6309) is amended—

(1) by striking “(a) INJUNCTIONS.—” in subsection (a) and inserting “(a) ACTIONS BY ATTORNEY GENERAL.—”;

(2) by striking “enforces State boxing laws,” in subsection (b)(3) and inserting “implements State or tribal boxing laws, any officer or employee of the Commission.”;

(3) by inserting “has engaged in or” after “organization” in subsection (c);

(4) by striking “subsection (b)” in subsection (c)(3) and inserting “subsection (b), a civil penalty, or”; and

(5) by striking “boxer” in subsection (d) and inserting “person”.

#### SEC. 719. REPEAL OF DEADWOOD.

Section 20 (15 U.S.C. 6311) is repealed.

#### SEC. 720. RECOGNITION OF TRIBAL LAW.

Section 22 (15 U.S.C. 6313) is amended—

(1) by insert “or tribal” in the section heading after “state”; and

(2) by inserting “or indian tribe” after “State”.

#### SEC. 721. ESTABLISHMENT OF UNITED STATES BOXING COMMISSION.

(a) IN GENERAL.—The Act is amended by adding at the end the following:

##### “TITLE II—UNITED STATES BOXING COMMISSION

##### “SEC. 201. PURPOSE.

“The purpose of this title is to protect the health, safety, and welfare of boxers and to ensure fairness in the sport of professional boxing.

##### “SEC. 202. UNITED STATES BOXING COMMISSION.

“(a) IN GENERAL.—The United States Boxing Commission is established as a commission within the Department of Commerce.

“(b) MEMBERS.—

“(1) IN GENERAL.—The Commission shall consist of 3 members appointed by the President, by and with the advice and consent of the Senate.

“(2) QUALIFICATIONS.—

“(A) IN GENERAL.—Each member of the Commission shall be a citizen of the United States who—

“(i) has extensive experience in professional boxing activities or in a field directly related to professional sports;

“(ii) is of outstanding character and recognized integrity; and

“(iii) is selected on the basis of training, experience, and qualifications and without regard to political party affiliation.

“(B) SPECIFIC QUALIFICATIONS FOR CERTAIN MEMBERS.—At least 1 member of the Commission shall be a former member of a local boxing authority. If practicable, at least 1 member of the Commission shall be a physician or other health care professional duly licensed as such.

“(C) DISINTERESTED PERSONS.—No member of the Commission may, while serving as a member of the Commission—

“(i) be engaged as a professional boxer, boxing promoter, agent, fight manager, matchmaker, referee, judge, or in any other capacity in the conduct of the business of professional boxing;

“(ii) have any pecuniary interest in the earnings of any boxer or the proceeds or outcome of any boxing match; or

“(iii) serve as a member of a boxing commission.

“(3) BIPARTISAN MEMBERSHIP.—Not more than 2 members of the Commission may be members of the same political party.

“(4) GEOGRAPHIC BALANCE.—Not more than 2 members of the Commission may be residents of the same geographic region of the United States when appointed to the Commission. For purposes of the preceding sentence, the area of the United States east of the Mississippi River is a geographic region, and the area of the United States west of the Mississippi River is a geographic region.

“(5) TERMS.—

“(A) IN GENERAL.—The term of a member of the Commission shall be 3 years.

“(B) REAPPOINTMENT.—Members of the Commission may be reappointed to the Commission.

“(C) MIDTERM VACANCIES.—A member of the Commission appointed to fill a vacancy in the Commission occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that unexpired term.

“(D) CONTINUATION PENDING REPLACEMENT.—A member of the Commission may serve after the expiration of that member's term until a successor has taken office.

“(6) REMOVAL.—A member of the Commission may be removed by the President only for cause.

“(c) EXECUTIVE DIRECTOR.—

“(1) IN GENERAL.—The Commission shall employ an Executive Director to perform the administrative functions of the Commission under this Act, and such other functions and duties of the Commission as the Commission shall specify.

“(2) DISCHARGE OF FUNCTIONS.—Subject to the authority, direction, and control of the Commission the Executive Director shall carry out the functions and duties of the Commission under this Act.

“(d) GENERAL COUNSEL.—The Commission shall employ a General Counsel to provide legal counsel and advice to the Executive Director and the Commission in the performance of its functions under this Act, and to carry out such other functions and duties as the Commission shall specify.

“(e) STAFF.—The Commission shall employ such additional staff as the Commission considers appropriate to assist the Executive Director and the General Counsel in carrying out the functions and duties of the Commission under this Act.

“(f) COMPENSATION.—

“(1) MEMBERS OF COMMISSION.—

“(A) IN GENERAL.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

“(B) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

“(2) EXECUTIVE DIRECTOR AND STAFF.—The Commission shall fix the compensation of the Executive Director, the General Counsel, and other personnel of the Commission. The rate of pay for the Executive Director, the General Counsel, and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

##### “SEC. 203. FUNCTIONS.

“(a) PRIMARY FUNCTIONS.—The primary functions of the Commission are—

“(1) to protect the health, safety, and general interests of boxers consistent with the provisions of this Act; and

“(2) to ensure uniformity, fairness, and integrity in professional boxing.

“(b) SPECIFIC FUNCTIONS.—The Commission shall—

“(1) administer title I of this Act;

“(2) promulgate uniform standards for professional boxing in consultation with the Association of Boxing Commissions;

“(3) except as otherwise determined by the Commission, oversee all professional boxing matches in the United States;

“(4) work with the boxing commissions of the several States and tribal organizations—

“(A) to improve the safety, integrity, and professionalism of professional boxing in the United States;

“(B) to enhance physical, medical, financial, and other safeguards established for the protection of professional boxers; and

“(C) to improve the status and standards of professional boxing in the United States;

“(5) ensure, in cooperation with the Attorney General (who shall represent the Commission in any judicial proceeding under this Act), the chief law enforcement officer of the several States, and other appropriate officers and agencies of Federal, State, and local government, that Federal and State laws applicable to professional boxing matches in the United States are vigorously, effectively, and fairly enforced;

“(6) review boxing commission regulations for professional boxing and provide assistance to such authorities in meeting minimum standards prescribed by the Commission under this title;

“(7) serve as the coordinating body for all efforts in the United States to establish and maintain uniform minimum health and safety standards for professional boxing;

“(8) if the Commission determines it to be appropriate, publish a newspaper, magazine, or other publication and establish and maintain a website consistent with the purposes of the Commission;

“(9) procure the temporary and intermittent services of experts and consultants to the extent authorized by section 3109(b) of title 5, United States Code, at rates the Commission determines to be reasonable; and

“(10) promulgate rules, regulations, and guidance, and take any other action necessary and proper to accomplish the purposes of, and consistent with, the provisions of this title.

“(c) PROHIBITIONS.—The Commission may not—

“(1) promote boxing events or rank professional boxers; or

“(2) provide technical assistance to, or authorize the use of the name of the Commission by, boxing commissions that do not comply with requirements of the Commission.

“(d) USE OF NAME.—The Commission shall have the exclusive right to use the name ‘United States Boxing Commission’. Any person who, without the permission of the Commission, uses that name or any other exclusive name, trademark, emblem, symbol, or insignia of the Commission for the purpose of inducing the sale or exchange of any goods or services, or to promote any exhibition, performance, or sporting event, shall be subject to suit in a civil action by the Commission for the remedies provided in the Act of July 5, 1946 (commonly known as the ‘Trademark Act of 1946’; 15 U.S.C. 1051 et seq.).

##### “SEC. 204. LICENSING AND REGISTRATION OF BOXING PERSONNEL.

“(a) LICENSING.—

“(1) REQUIREMENT FOR LICENSE.—No person may compete in a professional boxing match



or serve as a boxing manager, boxing promoter, or sanctioning organization for a professional boxing match except as provided in a license granted to that person under this subsection.

“(2) APPLICATION AND TERM.—

“(A) IN GENERAL.—The Commission shall—

“(i) establish application procedures, forms, and fees;

“(ii) establish and publish appropriate standards for licenses granted under this section; and

“(iii) issue a license to any person who, as determined by the Commission, meets the standards established by the Commission under this title.

“(B) DURATION.—A license issued under this section shall be for a renewable—

“(i) 4-year term for a boxer; and

“(ii) 2-year term for any other person.

“(C) PROCEDURE.—The Commission may issue a license under this paragraph through boxing commissions or in a manner determined by the Commission.

“(b) LICENSING FEES.—

“(1) AUTHORITY.—The Commission may prescribe and charge reasonable fees for the licensing of persons under this title. The Commission may set, charge, and adjust varying fees on the basis of classifications of persons, functions, and events determined appropriate by the Commission.

“(2) LIMITATIONS.—In setting and charging fees under paragraph (1), the Commission shall ensure that, to the maximum extent practicable—

“(A) club boxing is not adversely effected;

“(B) sanctioning organizations and promoters pay comparatively the largest portion of the fees; and

“(C) boxers pay as small a portion of the fees as is possible.

“(3) COLLECTION.—Fees established under this subsection may be collected through boxing commissions or by any other means determined appropriate by the Commission.

**“SEC. 205. NATIONAL REGISTRY OF BOXING PERSONNEL.**

“(a) REQUIREMENT FOR REGISTRY.—The Commission shall establish and maintain (or authorize a third party to establish and maintain) a unified national computerized registry for the collection, storage, and retrieval of information related to the performance of its duties.

“(b) CONTENTS.—The information in the registry shall include the following:

“(1) BOXERS.—A list of professional boxers and data in the medical registry established under section 114 of this Act, which the Commission shall secure from disclosure in accordance with the confidentiality requirements of section 114(c).

“(2) OTHER PERSONNEL.—Information (pertinent to the sport of professional boxing) on boxing promoters, boxing matchmakers, boxing managers, trainers, cut men, referees, boxing judges, physicians, and any other personnel determined by the Commission as performing a professional activity for professional boxing matches.

**“SEC. 206. CONSULTATION REQUIREMENTS.**

“The Commission shall consult with the Association of Boxing Commissions—

“(1) before prescribing any regulation or establishing any standard under the provisions of this title; and

“(2) not less than once each year regarding matters relating to professional boxing.

**“SEC. 207. MISCONDUCT.**

“(a) SUSPENSION AND REVOCATION OF LICENSE OR REGISTRATION.—

“(1) AUTHORITY.—The Commission may, after notice and opportunity for a hearing, suspend or revoke any license issued under this title if the Commission finds that—

“(A) the license holder has violated any provision of this Act;

“(B) there are reasonable grounds for belief that a standard prescribed by the Commission under this title is not being met, or that bribery, collusion, intentional losing, racketeering, extortion, or the use of unlawful threats, coercion, or intimidation have occurred in connection with a license; or

“(C) the suspension or revocation is necessary for the protection of health and safety or is otherwise in the public interest.

“(2) PERIOD OF SUSPENSION.—

“(A) IN GENERAL.—A suspension of a license under this section shall be effective for a period determined appropriate by the Commission except as provided in subparagraph (B).

“(B) SUSPENSION FOR MEDICAL REASONS.—In the case of a suspension or denial of the license of a boxer for medical reasons by the Commission, the Commission may terminate the suspension or denial at any time that a physician certifies that the boxer is fit to participate in a professional boxing match. The Commission shall prescribe the standards and procedures for accepting certifications under this subparagraph.

“(3) PERIOD OF REVOCATION.—In the case of a revocation of the license of a boxer, the revocation shall be for a period of not less than 1 year.

“(b) INVESTIGATIONS AND INJUNCTIONS.—

“(1) AUTHORITY.—The Commission may—

“(A) conduct any investigation that it considers necessary to determine whether any person has violated, or is about to violate, any provision of this Act or any regulation prescribed under this Act;

“(B) require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated;

“(C) in its discretion, publish information concerning any violations; and

“(D) investigate any facts, conditions, practices, or matters to aid in the enforcement of the provisions of this Act, in the prescribing of regulations under this Act, or in securing information to serve as a basis for recommending legislation concerning the matters to which this Act relates.

“(2) POWERS.—

“(A) IN GENERAL.—For the purpose of any investigation under paragraph (1) or any other proceeding under this title—

“(i) any officer designated by the Commission may administer oaths and affirmations, subpoena or otherwise compel the attendance of witnesses, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records the Commission considers relevant or material to the inquiry; and

“(ii) the provisions of sections 6002 and 6004 of title 18, United States Code, shall apply.

“(B) WITNESSES AND EVIDENCE.—The attendance of witnesses and the production of any documents under subparagraph (A) may be required from any place in the United States, including Indian land, at any designated place of hearing.

“(3) ENFORCEMENT OF SUBPOENAS.—

“(A) CIVIL ACTION.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may file an action in any district court of the United States within the jurisdiction of which an investigation or proceeding is carried out, or where that person resides or carries on business, to enforce the attendance and testimony of witnesses and the production of books, papers, correspondence, memorandums, and other records. The court may issue an order requiring the person to appear before the Commission to produce records, if so ordered, or to give testimony concerning the matter under investigation or in question.

“(B) FAILURE TO OBEY.—Any failure to obey an order issued by a court under subparagraph (A) may be punished as contempt of that court.

“(C) PROCESS.—All process in any contempt case under subparagraph (A) may be served in the judicial district in which the person is an inhabitant or in which the person may be found.

“(4) EVIDENCE OF CRIMINAL MISCONDUCT.—

“(A) IN GENERAL.—No person may be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records and documents before the Commission, in obedience to the subpoena of the Commission, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate the person or subject the person to a penalty or forfeiture.

“(B) LIMITED IMMUNITY.—No individual may be prosecuted or subject to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning the matter about which that individual is compelled, after having claimed a privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

“(5) INJUNCTIVE RELIEF.—If the Commission determines that any person is engaged or about to engage in any act or practice that constitutes a violation of any provision of this Act, or of any regulation prescribed under this Act, the Commission may bring an action in the appropriate district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin the act or practice, and upon a proper showing, the court shall grant without bond a permanent or temporary injunction or restraining order.

“(6) MANDAMUS.—Upon application of the Commission, the district courts of the United States, the United States District Court for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States, shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this Act or any order of the Commission.

“(c) INTERVENTION IN CIVIL ACTIONS.—

“(1) IN GENERAL.—The Commission, on behalf of the public interest, may intervene of right as provided under rule 24(a) of the Federal Rules of Civil Procedure in any civil action relating to professional boxing filed in a district court of the United States.

“(2) AMICUS FILING.—The Commission may file a brief in any action filed in a court of the United States on behalf of the public interest in any case relating to professional boxing.

“(d) HEARINGS BY COMMISSION.—Hearings conducted by the Commission under this Act shall be public and may be held before any officer of the Commission. The Commission shall keep appropriate records of the hearings.

**“SEC. 208. NONINTERFERENCE WITH BOXING COMMISSIONS.**

“(a) NONINTERFERENCE.—Nothing in this Act prohibits any boxing commission from exercising any of its powers, duties, or functions with respect to the regulation or supervision of professional boxing or professional boxing matches to the extent not inconsistent with the provisions of this Act.

“(b) MINIMUM STANDARDS.—Nothing in this Act prohibits any boxing commission from enforcing local standards or requirements

that exceed the minimum standards or requirements promulgated by the Commission under this Act.

**“SEC. 209. ASSISTANCE FROM OTHER AGENCIES.**

“Any employee of any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality may be detailed to the Commission, upon the request of the Commission, on a reimbursable or nonreimbursable basis, with the consent of the appropriate authority having jurisdiction over the employee. While so detailed, an employee shall continue to receive the compensation provided pursuant to law for the employee's regular position of employment and shall retain, without interruption, the rights and privileges of that employment.

**“SEC. 210. REPORTS.**

“(a) ANNUAL REPORT.—The Commission shall submit a report on its activities to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Commerce each year. The annual report shall include—

“(1) a detailed discussion of the activities of the Commission for the year covered by the report; and

“(2) an overview of the licensing and enforcement activities of the State and tribal organization boxing commissions.

“(b) PUBLIC REPORT.—The Commission shall annually issue and publicize a report of the Commission on the progress made at Federal and State levels and on Indian lands in the reform of professional boxing, which shall include comments on issues of continuing concern to the Commission.

“(c) FIRST ANNUAL REPORT ON THE COMMISSION.—The first annual report under this title shall be submitted not later than 2 years after the effective date of this title.

**“SEC. 211. INITIAL IMPLEMENTATION.**

“(a) TEMPORARY EXEMPTION.—The requirements for licensing under this title do not apply to a person for the performance of an activity as a boxer, boxing judge, or referee, or the performance of any other professional activity in relation to a professional boxing match, if the person is licensed by a boxing commission to perform that activity as of the effective date of this title.

“(b) EXPIRATION.—The exemption under subsection (a) with respect to a license issued by a boxing commission expires on the earlier of—

“(A) the date on which the license expires; or

“(B) the date that is 2 years after the date of the enactment of the Professional Boxing Amendments Act of 2004.

**“SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

“(a) IN GENERAL.—There are authorized to be appropriated for the Commission for each fiscal year such sums as may be necessary for the Commission to perform its functions for that fiscal year.

“(b) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, United States Code, any fee collected under this title—

“(1) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

“(2) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

“(3) shall remain available until expended.”

(b) CONFORMING AMENDMENTS.—

(1) PBSA.—The Professional Boxing Safety Act of 1996, as amended by this Act, is further amended—

(A) by striking section 1 and inserting the following:

**“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

“(a) SHORT TITLE.—This Act may be cited as the ‘Professional Boxing Safety Act’.

“(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

“Section 1. Short title; table of contents.

“Sec. 2. Definitions.

**“TITLE I—PROFESSIONAL BOXING SAFETY**

“Sec. 101. Purposes.

“Sec. 102. Approval or sanction requirement.

“Sec. 103. Safety standards.

“Sec. 104. Registration.

“Sec. 105. Review.

“Sec. 106. Reporting.

“Sec. 107. Contract requirements.

“Sec. 108. Protection from coercive contracts.

“Sec. 109. Sanctioning organizations.

“Sec. 110. Required disclosures to State boxing commissions by sanctioning organizations.

“Sec. 111. Required disclosures by promoters and broadcasters.

“Sec. 112. Medical registry.

“Sec. 113. Confidentiality.

“Sec. 114. Judges and referees.

“Sec. 115. Conflicts of interest.

“Sec. 116. Enforcement.

“Sec. 117. Professional boxing matches conducted on Indian lands.

“Sec. 118. Relationship with State or Tribal law.

**“TITLE II—UNITED STATES BOXING COMMISSION**

“Sec. 201. Purpose.

“Sec. 202. United States Boxing Commission.

“Sec. 203. Functions.

“Sec. 204. Licensing and registration of boxing personnel.

“Sec. 205. National registry of boxing personnel.

“Sec. 206. Consultation requirements.

“Sec. 207. Misconduct.

“Sec. 208. Noninterference with boxing commissions

“Sec. 209. Assistance from other agencies.

“Sec. 210. Reports.

“Sec. 211. Initial implementation.

“Sec. 212. Authorization of appropriations.”;

(B) by inserting before section 3 the following:

**“TITLE I—PROFESSIONAL BOXING SAFETY”;**

(C) by redesignating sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, and 22 as sections 101 through 118, respectively;

(D) by striking subsection (a) of section 113, as redesignated, and inserting the following:

“(a) IN GENERAL.—Except to the extent required in a legal, administrative, or judicial proceeding, a boxing commission, an Attorney General, or the Commission may not disclose to the public any matter furnished by a promoter under section 111.”;

(E) by striking “section 13” in subsection (b) of section 113, as redesignated, and inserting “section 111”;

(F) by striking “9(b), 10, 11, 12, 13, 14, or 16,” in paragraph (1) of section 116(b), as redesignated, and inserting “107, 108, 109, 110, 111, or 114.”;

(G) by striking “9(b), 10, 11, 12, 13, 14, or 16” in paragraph (2) of section 116(b), as redesignated, and inserting “107, 108, 109, 110, 111, or 114”;

(H) by striking “section 17(a)” in subsection (b)(3) of section 116, as redesignated, and inserting “section 115(a)”;

(I) by striking “section 10” in subsection (e)(3) of section 116, as redesignated, and inserting “section 108”; and

(J) by striking “of this Act” each place it appears in sections 101 through 120, as redesignated, and inserting “of this title”.

(2) COMPENSATION OF MEMBERS.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

“Members of the United States Boxing Commission.”.

**SEC. 722. STUDY AND REPORT ON DEFINITION OF PROMOTER.**

(a) STUDY.—The United States Boxing Commission shall conduct a study on how the term “promoter” should be defined for purposes of the Professional Boxing Safety Act.

(b) HEARINGS.—As part of that study, the Commission shall hold hearings and solicit testimony at those hearings from boxers, managers, promoters, premium, cable, and satellite program service providers, hotels, casinos, resorts, and other commercial establishments that host or sponsor professional boxing matches, and other interested parties with respect to the definition of that term as it is used in the Professional Boxing Safety Act.

(c) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the study conducted under subsection (a). The report shall—

(1) set forth a proposed definition of the term “promoter” for purposes of the Professional Boxing Safety Act; and

(2) describe the findings, conclusions, and rationale of the Commission for the proposed definition, together with any recommendations of the Commission, based on the study.

**SEC. 723. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title shall take effect on the date of enactment of this Act.

(b) 1-YEAR DELAY FOR CERTAIN TITLE II PROVISIONS.—Sections 205 through 212 of the Professional Boxing Safety Act of 1996, as added by section 721(a) of this title, shall take effect 1 year after the date of enactment of this Act.

Mr. HATCH. Mr. President, I commend my esteemed colleagues in the Senate for passing S. 3021, the Family Entertainment and Copyright Act of 2004, which I introduced today with the senior Senator from Vermont. This important legislation is actually a package of several smaller intellectual property bills that the House and Senate have been working to enact over the past 2 years. This bill strengthens the intellectual property laws that are vital to the ongoing growth of our economy. In addition to important clarifications to U.S. intellectual property laws, this bill also contains the Family Movie Act, introduced by Representative Lamar Smith, the Chairman of the House subcommittee with jurisdiction over intellectual property legislation.

Title I of this Act, the Artists' Rights and Theft Prevention Act of 2003, the ART Act, contains a slightly modified version of S. 1932, authored by my colleagues Senators Cornyn and Feinstein, that passed the Senate by unanimous consent earlier this Congress. This bill will close two significant gaps in our copyright laws that are feeding some of the piracy now rampant on the Internet. First, it criminalizes attempts to camcord movies off of theater screens. These camcorded copies of new movies now appear on filesharing networks almost contemporaneously with the theatrical release

of a film. Several states have already taken steps to criminalize this activity, but providing a uniform Federal law, instead of a patchwork of State criminal statutes, will assist law enforcement officials in combating the theft and redistribution of valuable intellectual property embodied in newly-released motion pictures. Second, the bill will create a pre-registration system that will permit criminal penalties and statutory damage awards. This will also provide a tool for law enforcement officials combating the growing problem of music and movies being distributed on filesharing networks and circulating on the Internet before they are even released. Obviously, the increasingly frequent situation of copyrighted works being distributed illegally via the Internet before they are even made available for sale to the public severely undercuts the ability of copyright holders to receive fair and adequate compensation for their works.

Title II of this Act, the Family Movie Act of 2004, resolves some ongoing disputes about the legality of so-called "jump-and-skip" technologies that companies like Clearplay in my home state of Utah have developed to permit family-friendly viewing of films that may contain objectionable content. The Family Movie Act creates a narrowly-defined safe-harbor clarifying that distributors of such technologies will not face liability for copyright or trademark infringement, provided that they comply with the requirements of the Act. Throughout the 108th Congress, I have been working to resolve this issue with my colleagues in the Senate and several leaders in the House, including, most importantly Chairman SMITH and Chairman SENBRENNER. The Family Movie Act will help to end aggressive litigation threatening the viability of small companies like Clearplay who are busy creating innovative technologies for consumers that allow them to tailor their home viewing experience to their own individual or family preferences.

I thank my friend, the senior Senator from Arizona, for his and his staff's assistance in drafting this version of the legislation to resolve concerns that the House version might affect entirely unrelated disputes about commercial-skipping technology. Apparently, some were concerned that language in the House bill stating that this particular safe-harbor provision was not intended to resolve disputes about the legality of commercial-skipping technologies might be construed by courts as evidence that Congress believes that such technologies violate the Copyright Act.

Courts do not, cannot, and should not construe the Copyright Act's safe harbors in this way. For example, when Congress created safe-harbor provisions for certain types of internet service providers, it did not imply that all others were violating the Copyright Act. Nevertheless, I am pleased that we

were able to find language that satisfies all so that it is clear the Act's safe-harbor for family-friendly viewing technologies encode absolutely no judgment whatsoever about the proper resolution of entirely unrelated disputes about the legality of commercial-skipping technologies. It would have been tragic if we had allowed a special-interest dispute about advertising to deny parents access to technologies that give them and their children the opportunity to watch movies without being exposed to profanity or images of rape, sex or murder.

Title III of this Act, the National Film Preservation Act of 2004, will reauthorize the National Film Preservation Board and the National Film Preservation Foundation. These entities have worked successfully to recognize and preserve historically or culturally significant films, often by providing the grants and expertise that enable local historical societies to protect and preserve historically significant films for the local communities for which they are most important. This fine work will ensure that the history of the 20th century will be preserved and available to future generations. As a conservative Senator from a socially-conservative-state, I occasionally take a few swings at the movie industry for the quality and content of the motion pictures they are currently creating, but I will note for the record that I commend efforts to ensure that important artistic, cultural, and historically-significant films are preserved for future generations, and I commend the Senator from Vermont for his perseverance in reauthorizing federal funds to continue this important effort.

Title IV of this Act, the Preservation of Orphan Works Act, also ensures the preservation of valuable historic records by correcting a technical error that unnecessarily narrows a limitation on the copyright law applicable to librarians and archivists. This will strengthen the ability of librarians and archivists to better meet the needs of both researchers and ordinary individuals and will result in greater accessibility of important works. I applaud my colleague in the House, Representative HOWARD BERMAN of California, for his efforts on this bill and am pleased to see it included in this Senate package.

Title V of this Act, the Anticounterfeiting Act of 2004, amends our criminal and civil anticounterfeiting laws to ensure that these laws keep pace with the counterfeiters. Traffic in counterfeit copies of goods protected by American copyrights, patents or trademarks has become a multi-billion dollar drain on our economy. The proceeds of this illegal traffic are stolen from legitimate American companies and then used to fund other criminal enterprises. Unlike several of the other bills in this package that provide tools for combating music and movie piracy, the Anticounterfeiting Act is directed primarily toward combating counter-

feiting practices that enable software piracy around the world.

To combat this counterfeiting, companies are using increasingly sophisticated authentication features to distinguish genuine, authorized copies of their products and to protect their customers and distributors. Now, the counterfeiters are fighting back by counterfeiting authentication features or by stealing legally produced authentication features and selling them to counterfeiters. The Anticounterfeiting Act of 2004 will impose criminal and civil penalties upon those who traffic in counterfeit or stolen authentication features. This will ensure that law-enforcement agencies and private rights-holders can halt criminal traffic in counterfeit or stolen authentication features before it even creates an illusion of authenticity that allows counterfeit goods to penetrate legitimate markets and endanger both the growth of our economy and the personal safety of our citizens.

Title VI of this Act, the Cooperative Research and Technology Enhancement Act of 2004, the CREATE Act, will create new opportunities to innovate when public institutions and private entrepreneurs combine their respective forms of expertise in collaborative, joint research efforts. This type of joint private-public research effort is well-suited to, in the words of President Lincoln, add "the fuel of interest to the fire of genius in the production of new and useful things." As a result, we have long realized the enormous value of these joint research efforts, and we have long realized that their potential cannot be realized unless their participants can benefit from the intellectual property rights generated by such research.

Unfortunately, the literal language of Section 102(g) of the Patent Act suggests that nonpublic information known to some members of a private-public research team can constitute "prior art" that may make the final results of the team research obvious, and thus not patentable. Because nonpublic information does not usually constitute "prior art" under the Patent Act, the potentially disparate treatment of such information creates a disincentive for entrepreneurs and public institutions to collaborate in joint research efforts.

I believe that we must encourage, not discourage, public institutions and private entrepreneurs to combine their respective talents in joint research efforts. Indeed, Congress committed itself to this principle when it passed the Bayh-Dole amendments to the Patent Act. The CREATE Act will simply conform the present language of the Patent Act to the intent that has always animated it. I commend Chairman SMITH and his staff for their efforts on this legislation and am pleased that it has been made part of this package of bills.

Before I close, I thank all my colleagues and their staff who made passage of this bill today possible. In particular, I commend staff of both Judiciary Committees, including my own staff, Tom Sydnor and Dave Jones, and also Susan Davies, Chip Roy, Rich Phillips, Dan Fine, Jeff Miller, Jonathan Schwantes, Jonathan Meyer, Brooke Roberts, Bill Bailey, Lee Carosi, Jim Hippe, Joseph Gibson, Bill Bailey, Blaine Meritt, David Whitney, Joe Keeley, Alec French, and Sampak Garg.

Finally, I must note that the bicameral, bipartisan approach to these bills in particular and to intellectual property issues in general is a model we should strive to achieve in the 109th Congress.

#### FEDERAL EMPLOYEE DENTAL AND VISION BENEFITS ENHANCEMENT ACT OF 2004

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 783, S. 2657.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2657) to amend part III of title 5, United States Code, to provide for the establishment of programs under which supplemental dental and vision benefits are made available to Federal employees, retirees, and their dependents, to expand the contracting authority of the Office of Personnel Management, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4075) was agreed to, as follows:

#### AMENDMENT NO. 4075

(Purpose: To make technical and conforming amendments)

On page 3, line 10, insert “or an employee organization defined under section 8901(8)” after “companies”).

On page 8, line 9, insert “area” after “delivery”.

On page 12, line 15, strike “General Accounting Office” and insert “Government Accountability Office”.

On page 13, line 1, strike “General Accounting Office” and insert “Government Accountability Office”.

On page 15, line 4, insert “or an employee organization defined under section 8901(8)” after “companies”).

On page 19, line 20, “area” after “delivery”.

On page 23, line 25, strike “General Accounting Office” and insert “Government Accountability Office”.

On page 24, line 11, strike “General Accounting Office” and insert “Government Accountability Office”.

On page 25, line 18, strike all through page 26, line 19.

On page 26, line 20, strike “sec. 7.” and insert “sec. 6.”.

On page 27, line 7, strike “sec. 8.” and insert “sec. 7.”.

The bill (S. 2657), as amended, was read the third time and passed, as follows:

S. 2657

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Employee Dental and Vision Benefits Enhancement Act of 2004”.

#### SEC. 2. ENHANCED DENTAL BENEFITS FOR FEDERAL EMPLOYEES.

(a) IN GENERAL.—Subpart G of part III of title 5, United States Code, is amended by inserting after chapter 89 the following:

#### “CHAPTER 89A—ENHANCED DENTAL BENEFITS

“Sec.

“8951. Definitions.

“8952. Availability of dental benefits.

“8953. Contracting authority.

“8954. Benefits.

“8955. Information to individuals eligible to enroll.

“8956. Election of coverage.

“8957. Coverage of restored survivor or disability annuitants.

“8958. Premiums.

“8959. Preemption.

“8960. Studies, reports, and audits.

“8961. Jurisdiction of courts.

“8962. Administrative functions.

#### “§ 8951. Definitions

“In this chapter:

“(1) The term ‘employee’ means an employee defined under section 8901(1).

“(2) The terms ‘annuitant’, ‘member of family’, and ‘dependent’ have the meanings as such terms are defined under paragraphs (3), (5), and (9), respectively, of section 8901.

“(3) The term ‘eligible individual’ refers to an individual described in paragraph (1) or (2), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

“(4) The term ‘Office’ means the Office of Personnel Management.

“(5) The term ‘qualified company’ means a company (or consortium of companies or an employee organization defined under section 8901(8)) that offers indemnity, preferred provider organization, health maintenance organization, or discount dental programs and if required is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

“(6) The term ‘employee organization’ means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under chapter 89.

“(7) The term ‘State’ includes the District of Columbia.

#### “§ 8952. Availability of dental benefits

“(a) The Office shall establish and administer a program through which an eligible individual may obtain dental coverage to supplement coverage available through chapter 89.

“(b) The Office shall determine, in the exercise of its reasonable discretion, the financial requirements for qualified companies to participate in the program.

“(c) Nothing in this chapter shall be construed to prohibit the availability of dental benefits provided by health benefits plans under chapter 89.

#### “§ 8953. Contracting authority

“(a)(1) The Office shall contract with a reasonable number of qualified companies for a policy or policies of benefits described under section 8954 without regard to section 5 of title 41 or any other statute requiring competitive bidding. An employee organization may contract with a qualified company for the purpose of participating with that qualified company in any contract between the Office and that qualified company.

“(2) The Office shall ensure that each resulting contract is awarded on the basis of contractor qualifications, price, and reasonable competition.

“(b) Each contract under this section shall contain—

“(1) the requirements under section 8902(d), (f), and (i) made applicable to contracts under this section by regulations prescribed by the Office;

“(2) the terms of the enrollment period; and

“(3) such other terms and conditions as may be mutually agreed to by the Office and the qualified company involved, consistent with the requirements of this chapter and regulations prescribed by the Office.

“(c) Nothing in this chapter shall, in the case of an individual electing dental supplemental benefit coverage under this chapter after the expiration of such individual’s first opportunity to enroll, preclude the application of waiting periods more stringent than those that would have applied if that opportunity had not yet expired.

“(d)(1) Each contract under this chapter shall require the qualified company to agree—

“(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

“(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

“(i) to establish internal procedures designed to expeditiously resolve such disputes; and

“(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for 1 or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the qualified company.

“(2) A determination by a qualified company as to whether or not a particular individual is eligible to obtain coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable contract.

“(3) For purposes of applying the Contract Disputes Act of 1978 to disputes arising under this chapter between a qualified company and the Office—

“(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing (after appropriate arrangements, as described in section 8(c) of such Act); and

“(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 10(a)(1) of such Act relative to such a dispute.

“(e) Nothing in this section shall be considered to grant authority for the Office or third-party reviewer to change the terms of any contract under this chapter.