

the bankruptcy process by both consumers and corporations. Unfortunately, the Senate leadership chose to go down a different road.

Because of unforeseen and unavoidable circumstances, I will not be present when the Senate votes on final passage of this bill today. But were I able to be here, I would vote no, because this bill is clearly not in the best interests of the American people.●

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with amendments:

S. 263. A bill to provide for the protection of paleontological resources on Federal lands, and for other purposes (Rept. No. 109-36).

By Mr. GREGG, from the Committee on the Budget, without amendment:

S. Con. Res. 18. An original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010.

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. LANDRIEU (for herself, Mr. JOHNSON, Mr. BAUCUS, Mrs. LINCOLN, and Mr. SHELBY):

S. 603. A bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CRAIG (for himself, Mr. BINGAMAN, Ms. COLLINS, Mr. BURR, Mr. DURBIN, and Ms. SNOWE):

S. 604. A bill to amend title XVIII of the Social Security Act to authorize expansion of medicare coverage of medical nutrition therapy services; to the Committee on Finance.

By Mr. HARKIN (for himself and Mr. DURBIN):

S. 605. A bill to amend the Internal Revenue Code of 1986 to restore the phaseout of personal exemptions and the overall limitation on itemized deductions, and to create a trust fund for the funding of education programs; to the Committee on Finance.

By Mr. THUNE (for himself, Mr. INHOFE, Mr. VOINOVICH, and Mr. BOND):

S. 606. A bill to amend the Clean Air Act to eliminate methyl tertiary butyl ether from the United States fuel supply, to increase production and use of renewable fuel, and to increase the Nation's energy independence, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HARKIN:

S. 607. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 with respect to early retirement benefits, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. HARKIN:

S. 608. A bill to create an independent office in the Department of Labor to advocate on behalf of pension participants, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BROWNBACK (for himself and Mr. KENNEDY):

S. 609. A bill to amend the Public Health Service Act to increase the provision of scientifically sound information and support services to patients receiving a positive test diagnosis for Down syndrome or other prenatally diagnosed conditions; to the Committee on Health, Education, Labor, and Pensions.

By Mr. TALENT (for himself, Mrs. LINCOLN, Mr. THUNE, Mr. JOHNSON, Mr. COLEMAN, Mr. SALAZAR, Mr. HARKIN, Mr. HAGEL, and Mr. BOND):

S. 610. A bill to amend the Internal Revenue Code of 1986 to provide for a small agribiodiesel producer credit and to improve the small ethanol producer credit; to the Committee on Finance.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GREGG:

S. Con. Res. 18. An original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2006 and including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010; from the Committee on the Budget; placed on the calendar.

By Mr. CHAMBLISS (for himself and Mr. NELSON of Nebraska):

S. Con. Res. 19. A concurrent resolution expressing the sense of the Congress regarding the importance of life insurance and recognizing and supporting National Life Insurance Awareness Month; to the Committee on the Judiciary.

#### ADDITIONAL COSPONSORS

S. 132

At the request of Mr. SMITH, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 132, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for premiums on mortgage insurance.

S. 328

At the request of Mr. CRAIG, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 328, a bill to facilitate the sale of United States agricultural products to Cuba, as authorized by the Trade Sanctions Reform and Export Enhancement Act of 2000.

S. 359

At the request of Mr. CRAIG, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 359, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 380

At the request of Ms. COLLINS, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 380, a bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children.

S. 445

At the request of Ms. STABENOW, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 445, a resolution to amend part D of title XVIII of the Social Security Act, as added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, to provide for negotiation of fair prices for Medicare prescription drugs.

S. 471

At the request of Mr. SPECTER, the names of the Senator from Vermont (Mr. JEFFORDS), the Senator from Illinois (Mr. DURBIN), the Senator from Hawaii (Mr. INOUE) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 471, a bill to amend the Public Health Service Act to provide for human embryonic stem cell research.

S. 578

At the request of Mr. LAUTENBERG, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 578, a bill to better manage the national instant criminal background check system and terrorism matches.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. LANDRIEU (for herself, Mr. JOHNSON, Mr. BAUCUS, Mrs. LINCOLN, and Mr. SHELBY):

S. 603. A bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Ms. LANDRIEU. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 603

*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 "Consumer Rental-Purchase Agreement Act of 2005".

#### SEC. 2. FINDINGS AND DECLARATION OF PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the rental-purchase industry provides a service that meets and satisfies the demands of many consumers;

(2) each year, approximately 2,300,000 United States households enter into rental-

purchase transactions, and over a 5-year period, approximately 4,900,000 United States households will do so;

(3) competition among the various firms engaged in the extension of rental-purchase transactions would be strengthened by informed use of rental-purchase transactions; and

(4) the informed use of rental-purchase transactions results from an awareness of the cost thereof by consumers.

(b) PURPOSES.—The purposes of this Act are to assure the availability of rental-purchase transactions; and to assure simple, meaningful, and consistent disclosure of rental-purchase terms so that consumers will be able to more readily compare the available rental-purchase terms and avoid uninformed use of rental-purchase transactions, and to protect consumers against unfair rental-purchase practices.

### SEC. 3. CONSUMER CREDIT PROTECTION ACT.

The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following new title:

#### “TITLE X—RENTAL-PURCHASE TRANSACTIONS

“Sec. 1001. Short title; definitions

“Sec. 1002. Exempted transactions

“Sec. 1003. General disclosure requirements

“Sec. 1004. Rental-purchase disclosures

“Sec. 1005. Other agreement provisions

“Sec. 1006. Right to acquire ownership

“Sec. 1007. Prohibited provisions

“Sec. 1008. Statement of accounts

“Sec. 1009. Renegotiations and extensions

“Sec. 1010. Point-of-rental disclosures

“Sec. 1011. Rental-purchase advertising

“Sec. 1012. Civil liability

“Sec. 1013. Additional grounds for civil liability

“Sec. 1014. Liability of assignees

“Sec. 1015. Regulations

“Sec. 1016. Enforcement

“Sec. 1017. Criminal liability for willful and knowing violation

“Sec. 1018. Relation to other laws

“Sec. 1019. Effect on Government agencies

“Sec. 1020. Compliance date

#### “SEC. 1001. SHORT TITLE; DEFINITIONS.

“(a) SHORT TITLE.—This title may be cited as the ‘Rental-Purchase Protections Act’.

“(b) DEFINITIONS.—For purposes of this title, the following definitions shall apply:

“(1) ADVERTISEMENT.—The term ‘advertisement’ means a commercial message in any medium that promotes, directly or indirectly, a rental-purchase agreement, but does not include price tags, window signs, or other in-store merchandising aids.

“(2) AGRICULTURAL PURPOSE.—The term ‘agricultural purpose’ includes—

“(A) the production, harvest, exhibition, marketing, transformation, processing, or manufacture of agricultural products by a natural person who cultivates plants or propagates or nurtures agricultural products; and

“(B) the acquisition of farmlands, real property with a farm residence, or personal property and services used primarily in farming.

“(3) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.

“(4) CASH PRICE.—The term ‘cash price’ means the price at which a merchant, in the ordinary course of business, offers to sell for cash the property that is the subject of the rental-purchase transaction.

“(5) CONSUMER.—The term ‘consumer’ means a natural person who is offered or enters into a rental-purchase agreement.

“(6) DATE OF CONSUMMATION.—The term ‘date of consummation’ means the date on

which a consumer becomes contractually obligated under a rental-purchase agreement.

“(7) INITIAL PAYMENT.—The term ‘initial payment’ means the amount to be paid before or at the time of consummation of the agreement, or the time of delivery of the property covered by the agreement if delivery occurs after consummation, including—

“(A) the rental payment;

“(B) service, processing, or administrative charges;

“(C) any delivery fee;

“(D) refundable security deposit;

“(E) taxes;

“(F) mandatory fees or charges; and

“(G) any optional fees or charges agreed to by the consumer.

“(8) MERCHANT.—The term ‘merchant’ means a person who provides the use of property through a rental-purchase agreement in the ordinary course of business and to whom the initial payment by the consumer under the agreement is payable.

“(9) PAYMENT SCHEDULE.—The term ‘payment schedule’ means the amount and timing of the periodic payments and the total number of all periodic payments that the consumer will make if the consumer acquires ownership of the property by making all periodic payments.

“(10) PERIODIC PAYMENT.—The term ‘periodic payment’ means the total payment that a consumer will make for a specific rental period after the initial payment, including the rental payment, taxes, mandatory fees or charges, and any optional fees or charges agreed to by the consumer.

“(11) PROPERTY.—The term ‘property’ means property that is not real property under the laws of the State in which the property is located when it is made available under a rental-purchase agreement.

“(12) RENTAL PAYMENT.—The term ‘rental payment’ means rent required to be paid by a consumer for the possession and use of property for a specific rental period, but does not include taxes or any fees or charges.

“(13) RENTAL PERIOD.—The term ‘rental period’ means a week, month, or other specific period of time, during which the consumer has a right to possess and use property that is the subject of a rental-purchase agreement after paying the rental payment and any applicable taxes for such period.

“(14) RENTAL-PURCHASE AGREEMENT.—

“(A) IN GENERAL.—The term ‘rental-purchase agreement’ means a contract in the form of a bailment or lease for the use of property by a consumer for an initial period of 4 months or less, that is renewable with each payment by the consumer, and that permits but does not obligate the consumer to become the owner of the property.

“(B) EXCLUSIONS.—The term ‘rental-purchase agreement’ does not include—

“(i) a credit sale (as defined in section 103(g) of the Truth in Lending Act);

“(ii) a consumer lease (as defined in section 181(1) of the Truth in Lending Act); or

“(iii) a transaction giving rise to a debt incurred in connection with the business of lending money or a thing of value.

“(15) RENTAL-PURCHASE COST.—

“(A) IN GENERAL.—For purposes of sections 1010 and 1011, the term ‘rental-purchase cost’ means the sum of all rental payments and mandatory fees or charges imposed by the merchant as a condition of entering into a rental-purchase agreement or acquiring ownership of property under a rental-purchase agreement, including—

“(i) any service, processing, or administrative charge;

“(ii) any fee for an investigation or credit report; and

“(iii) any charge for delivery required by the merchant.

“(B) EXCLUDED ITEMS.—The following fees or charges shall not be taken into account in determining the rental-purchase cost with respect to a rental-purchase transaction:

“(i) Fees and charges prescribed by law, which actually are or will be paid to public officials or government entities, such as sales tax.

“(ii) Fees and charges for optional products and services offered in connection with a rental-purchase agreement.

“(16) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

“(17) TOTAL COST.—The term ‘total cost’ means the sum of the initial payment and all periodic payments in the payment schedule to be paid by the consumer to acquire ownership of the property that is the subject of the rental-purchase agreement.

#### “SEC. 1002. EXEMPTED TRANSACTIONS.

“This title does not apply to rental-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with agencies or instrumentalities of the Federal Government or a State or political subdivision thereof.

#### “SEC. 1003. GENERAL DISCLOSURE REQUIREMENTS.

“(a) RECIPIENT OF DISCLOSURE.—A merchant shall disclose to any person who will be a signatory to a rental-purchase agreement the information required by sections 1004 and 1005.

“(b) TIMING OF DISCLOSURE.—The disclosures required under sections 1004 and 1005 shall be made before the consummation of the rental-purchase agreement, and clearly and conspicuously in writing as part of the rental-purchase agreement to be signed by the consumer.

“(c) CLEARLY AND CONSPICUOUSLY.—As used in this section, the term ‘clearly and conspicuously’ means that information required to be disclosed to the consumer shall be worded plainly and simply, and appear in a type size, prominence, and location as to be readily noticeable, readable, and comprehensible to an ordinary consumer.

#### “SEC. 1004. RENTAL-PURCHASE DISCLOSURES.

“(a) IN GENERAL.—For each rental-purchase agreement, the merchant shall disclose to the consumer, to the extent applicable—

“(1) the date of consummation of the rental-purchase transaction and the identities of the merchant and the consumer;

“(2) a brief description of the rental property, which shall be sufficient to identify the property to the consumer, including an identification or serial number, if applicable, and a statement indicating whether the property is new or used;

“(3) a description of any fee, charge, or penalty, in addition to the periodic payment, that the consumer may be required to pay under the agreement, which shall be separately identified by type and amount;

“(4) a clear and conspicuous statement that the transaction is a rental-purchase agreement and that the consumer will not obtain ownership of the property until the consumer has paid the total dollar amount necessary to acquire ownership;

“(5) the amount of any initial payment, which includes the first periodic payment, and the total amount of any fees, taxes, or other charges, required to be paid by the consumer;

“(6) the amount of the cash price of the property that is the subject of the rental-purchase agreement, and, if the agreement involves the rental of 2 or more items as a

set (as may be defined by the Board in regulation) a statement of the aggregate cash price of all items shall satisfy this requirement;

“(7) the amount and timing of periodic payments, and the total number of periodic payments necessary to acquire ownership of the property under the rental-purchase agreement;

“(8) the total cost, using that term, and a brief description, such as ‘This is the amount that you will pay the merchant if you make all periodic payments to acquire ownership of the property.’;

“(9) a statement of the right of the consumer to terminate the agreement without paying any fee or charge not previously due under the agreement by voluntarily surrendering or returning the property in good repair upon expiration of any lease term; and

“(10) substantially the following statement: ‘other important terms: See your rental-purchase agreement for additional important information on early termination procedures, purchase option rights, responsibilities for loss, damage, or destruction of the property, warranties, maintenance responsibilities, and other charges or penalties you may incur.’.

“(b) **FORM OF DISCLOSURE.**—The disclosures required by paragraphs (4) through (10) of subsection (a) shall—

“(1) be segregated from other information at the beginning of the rental-purchase agreement;

“(2) contain only directly related information; and

“(3) be identified in boldface, upper-case letters as follows: **‘IMPORTANT RENTAL-PURCHASE DISCLOSURES’**.

“(c) **DISCLOSURE REQUIREMENTS RELATING TO INSURANCE PREMIUMS AND LIABILITY WAIVERS.**—

“(1) **IN GENERAL.**—A merchant shall clearly and conspicuously disclose in writing to the consumer before the consummation of a rental-purchase agreement that the purchase of leased property insurance or liability waiver coverage is not required as a condition for entering into the rental-purchase agreement.

“(2) **AFFIRMATIVE WRITTEN REQUEST AFTER COST DISCLOSURE.**—A merchant may provide insurance or liability waiver coverage, directly or indirectly, in connection with a rental-purchase transaction only if—

“(A) the merchant clearly and conspicuously discloses to the consumer the cost of each component of such coverage before the consummation of the rental-purchase agreement; and

“(B) the consumer signs an affirmative written request for such coverage after receiving the disclosures required under paragraph (1) and subparagraph (A) of this paragraph.

“(d) **ACCURACY OF DISCLOSURE.**—

“(1) **IN GENERAL.**—The disclosures required to be made under subsection (a) shall be accurate as of the date on which the disclosures are made, based on the information available to the merchant.

“(2) **INFORMATION SUBSEQUENTLY RENDERED INACCURATE.**—If information required to be disclosed under subsection (a) is subsequently rendered inaccurate as a result of any agreement between the merchant and the consumer subsequent to the delivery of the required disclosures, the resulting inaccuracy shall not constitute a violation of this title.

#### **“SEC. 1005. OTHER AGREEMENT PROVISIONS.**

“(a) **IN GENERAL.**—Each rental-purchase agreement shall—

“(1) provide a statement specifying whether the merchant or the consumer is responsible for loss, theft, damage, or destruction of the property;

“(2) provide a statement specifying whether the merchant or the consumer is responsible for maintaining or servicing the property, together with a brief description of the responsibility;

“(3) provide that the consumer may terminate the agreement without paying any charges not previously due under the agreement by voluntarily surrendering or returning the property that is the subject of the agreement upon expiration of any rental period;

“(4) contain a provision for reinstatement of the agreement, which at a minimum—

“(A) permits a consumer who fails to make a timely rental payment to reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of all past due rental payments and any other charges then due under the agreement and a payment for the next rental period within 7 business days after failing to make a timely rental payment if the consumer pays monthly, or within 3 business days after failing to make a timely rental payment if the consumer pays more frequently than monthly;

“(B) if the consumer returns or voluntarily surrenders the property covered by the agreement, other than through judicial process, during the applicable reinstatement period set forth in subparagraph (A), permits the consumer to reinstate the agreement during a period of at least 60 days after the date of the return or surrender of the property by the payment of all amounts previously due under the agreement, any applicable fees, and a payment for the next rental period;

“(C) if the consumer has paid 50 percent or more of the total cost necessary to acquire ownership and returns or voluntarily surrenders the property, other than through judicial process, during the applicable reinstatement period set forth in subparagraph (A), permits the consumer to reinstate the agreement during a period of at least 120 days after the date of the return of the property by the payment of all amounts previously due under the agreement, any applicable fees, and a payment for the next rental period; and

“(D) permits the consumer, upon reinstatement of the agreement, to receive the same property, if available, that was the subject of the rental-purchase agreement, or if the same property is not available, a substitute item of comparable quality and condition, except that the Board may, by regulation or order, exempt any independent small business (as defined by regulation of the Board) from the requirement of providing the same or comparable product during the extended reinstatement period provided in subparagraph (C), if the Board determines, taking into account such standards as the Board determines appropriate, that the reinstatement right provided in subparagraph (C) would provide excessive hardship for the independent small business;

“(5) provide a statement specifying the terms under which the consumer shall acquire ownership of the property that is the subject of the rental-purchase agreement either by payment of the total cost to acquire ownership, as provided in section 1006, or by exercise of any early purchase option provided in the rental-purchase agreement;

“(6) provide a statement disclosing that if any part of a manufacturer’s express warranty covers the property at the time the consumer acquires ownership of the property, the warranty will be transferred to the consumer if allowed by the terms of the warranty; and

“(7) provide, to the extent applicable, a description of any grace period for making any periodic payment, the amount of any secu-

rity deposit, if any, to be paid by the consumer upon initiation of the rental-purchase agreement, and the terms for refund of such security deposit to the consumer upon return, surrender or purchase of the property.

“(b) **REPOSSESSION DURING REINSTATEMENT PERIOD.**—Subsection (a)(4) shall not be construed so as to prevent a merchant from attempting to repossess property during the reinstatement period pursuant to subsection (a)(4)(A), but such a repossession does not affect the right of the consumer to reinstate under subsection (a)(4).

#### **“SEC. 1006. RIGHT TO ACQUIRE OWNERSHIP.**

“(a) **IN GENERAL.**—The consumer shall acquire ownership of the property that is the subject of the rental-purchase agreement, and the rental-purchase agreement shall terminate, upon compliance by the consumer with the requirements of subsection (b) or any early payment option provided in the rental purchase agreement, and upon payment of any past due payments and fees, as permitted by regulation of the Board.

“(b) **PAYMENT OF TOTAL COST.**—The consumer shall acquire ownership of the rental property upon payment of the total cost of the rental-purchase agreement, as defined in section 1001(17), and as disclosed to the consumer in the rental-purchase agreement pursuant to section 1004(a).

“(c) **ADDITIONAL FEES PROHIBITED.**—A merchant shall not require the consumer to pay, as a condition for acquiring ownership of the property that is the subject of the rental-purchase agreement, any fee or charge in addition to, or in excess of, the regular periodic payments required by subsection (b), or any early purchase option amount provided in the rental-purchase agreement, as applicable. A requirement that the consumer pay an unpaid late charge or other fee or charge which the merchant has previously billed to the consumer shall not constitute an additional fee or charge for purposes of this subsection.

“(d) **TRANSFER OF OWNERSHIP RIGHTS.**—Upon payment by the consumer of all payments necessary to acquire ownership under subsection (b) or any early purchase option amount provided in the rental-purchase agreement, as applicable, the merchant shall—

“(1) deliver, or mail to the last known address of the consumer, such documents or other instruments which the Board has determined, by regulation, are necessary to acknowledge full ownership by the consumer of the property acquired pursuant to the rental-purchase agreement; and

“(2) transfer to the consumer the unexpired portion of any warranties provided by the manufacturer, distributor, or seller of the property, which shall apply as if the consumer were the original purchaser of the property, except where such transfer is prohibited by the terms of the warranty.

#### **“SEC. 1007. PROHIBITED PROVISIONS.**

“A rental-purchase agreement may not contain—

“(1) a confession of judgment;

“(2) a negotiable instrument;

“(3) a security interest or any other claim of a property interest in any goods, except those goods, the use of which is provided by the merchant pursuant to the agreement;

“(4) a wage assignment;

“(5) a provision requiring the waiver of any legal claim or remedy created by this title or other provision of Federal or State law;

“(6) a provision requiring the consumer, in the event that the property subject to the rental-purchase agreement is lost, stolen, damaged, or destroyed, to pay an amount in excess of the least of—

“(A) the fair market value of the property, as determined by regulation of the Board;

“(B) any early purchase option amount provided in the rental-purchase agreement; or

“(C) the actual cost of repair, as appropriate;

“(7) a provision authorizing the merchant, or a person acting on behalf of the merchant, to enter the dwelling of the consumer or other premises without obtaining the consent of the consumer, or to commit any breach of the peace in connection with the repossession of the rental property or the collection of any obligation or alleged obligation of the consumer arising out of the rental-purchase agreement;

“(8) a provision requiring the purchase of insurance or liability damage waiver to cover the property that is the subject of the rental-purchase agreement, except as permitted by regulation of the Board; or

“(9) a provision requiring the consumer to pay more than 1 late fee or charge for an unpaid or delinquent periodic payment, regardless of the period in which the payment remains unpaid or delinquent, or to pay a late fee or charge for any periodic payment because a previously assessed late fee has not been paid in full.

#### “SEC. 1008. STATEMENT OF ACCOUNTS.

“Upon request of a consumer, a merchant shall provide a statement of the account of the consumer. If a consumer requests a statement for an individual account more than 4 times in any 12-month period, the merchant may charge a reasonable fee for the additional statements requested in excess of 4 times during that 12-month period.

#### “SEC. 1009. RENEGOTIATIONS AND EXTENSIONS.

“(a) RENEGOTIATIONS.—For purposes of this section, a ‘renegotiation’ occurs when a rental-purchase agreement is satisfied and replaced by a new agreement undertaken by the same consumer. A renegotiation requires new disclosures under this title, except as provided in subsection (c).

“(b) EXTENSIONS.—For purposes of this section, an ‘extension’ is an agreement by the consumer and the merchant to continue an existing rental-purchase agreement beyond the original end of the payment schedule, but does not include a continuation that is the result of a renegotiation.

“(c) EXCEPTIONS.—New disclosures under this title are not required for the following, even if they meet the definition of a renegotiation or an extension under this section:

“(1) A reduction in payments.

“(2) A deferment of 1 or more payments.

“(3) The extension of a rental-purchase agreement.

“(4) The substitution of property with property that has a substantially equivalent or greater economic value, provided that the rental-purchase cost does not increase.

“(5) The deletion of property in a multiple-item agreement.

“(6) A change in the rental period, provided that the rental-purchase cost does not increase.

“(7) An agreement resulting from a court proceeding.

“(8) Any other event described in regulations prescribed by the Board.

#### “SEC. 1010. POINT-OF-RENTAL DISCLOSURES.

“(a) IN GENERAL.—For any item of property or set of items displayed or offered for rental-purchase, the merchant shall display on or next to the item or set of items a card, tag, or label that clearly and conspicuously discloses—

“(1) a brief description of the property;

“(2) whether the property is new or used;

“(3) the cash price of the property;

“(4) the amount of each rental payment;

“(5) the total number of rental payments necessary to acquire ownership of the property; and

“(6) the rental-purchase cost.

“(b) FORM OF DISCLOSURE.—

“(1) IN GENERAL.—A merchant may make the disclosures required by subsection (a) in the form of a list or catalog which is readily available to the consumer at the point of rental if the merchandise is not displayed in the showroom of the merchant, or if displaying a card, tag, or label would be impractical due to the size of the merchandise.

“(2) CLEARLY AND CONSPICUOUSLY.—As used in this section, the term ‘clearly and conspicuously’ means that information required to be disclosed to the consumer shall appear in a type size, prominence, and location as to be noticeable, readable, and comprehensible to an ordinary consumer.

#### “SEC. 1011. RENTAL-PURCHASE ADVERTISING.

“(a) IN GENERAL.—If an advertisement for a rental-purchase transaction refers to or states the amount of any payment for any specific item or set of items, the merchant making the advertisement shall also clearly and conspicuously state in the advertisement for the item or set of items advertised—

“(1) that the transaction advertised is a rental-purchase agreement;

“(2) the amount, timing, and total number of rental payments necessary to acquire ownership under the rental-purchase agreement;

“(3) the amount of the rental-purchase cost;

“(4) that to acquire ownership of the property, the consumer must pay the rental-purchase cost plus applicable taxes; and

“(5) whether the stated payment amount and advertised rental-purchase cost is for new or used property.

“(b) PROHIBITION.—An advertisement for a rental-purchase agreement shall not state or imply that a specific item or set of items is available at specific amounts or terms, unless the merchant usually and customarily offers, or will offer, the item or set of items at the stated amounts or terms.

“(c) CLEARLY AND CONSPICUOUSLY.—

“(1) IN GENERAL.—For purposes of this section, the term ‘clearly and conspicuously’ means that required disclosures shall be presented in a type, size, shade, contrast, prominence, location, and manner, as applicable to different media for advertising, so as to be readily noticeable and comprehensible to the ordinary consumer.

“(2) REGULATORY GUIDANCE.—The Board shall prescribe regulations on principles and factors to meet the clear and conspicuous standard, as appropriate to print, video, audio, and computerized advertising, reflecting the principles and factors typically applied in each medium by the Federal Trade Commission.

“(3) LIMITATION.—Nothing contrary to, inconsistent with, or in mitigation of, the disclosures required by this section shall be used in any advertisement in any medium, and no audio, video, or print technique shall be used that is likely to obscure or detract significantly from the communication of the required disclosures.

#### “SEC. 1012. CIVIL LIABILITY.

“(a) IN GENERAL.—Except as otherwise provided in section 1013, any merchant who fails to comply with any requirement of this title with respect to any consumer is liable to such consumer as provided for leases in section 130. For purposes of this section, the term ‘creditor’ as used in section 130 shall include a ‘merchant’, as defined in section 1001.

“(b) JURISDICTION OF COURTS; LIMITATION ON ACTIONS.—

“(1) IN GENERAL.—Notwithstanding section 130(e), any action under this section may be brought in any United States district court, or in any other court of competent jurisdic-

tion, before the end of the 1-year period beginning on the date on which the last payment was made by the consumer under the rental-purchase agreement.

“(2) RECOUPMENT OR SET-OFF.—This subsection shall not bar a consumer from asserting a violation of this title in an action to collect an obligation arising from a rental-purchase agreement, which was brought after the end of the 1-year period described in paragraph (1) as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law.

#### “SEC. 1013. ADDITIONAL GROUNDS FOR CIVIL LIABILITY.

“(a) INDIVIDUAL CASES WITH ACTUAL DAMAGES.—Any merchant who fails to comply with any requirement imposed under section 1010 or 1011 with respect to any consumer who suffers actual damage from the violation shall be liable to such consumer as provided in section 130.

“(b) PATTERN OR PRACTICE OF VIOLATIONS.—If a merchant engages in a pattern or practice of violating any requirement imposed under section 1010 or 1011, the Federal Trade Commission or an appropriate State attorney general, in accordance with section 1016, may initiate an action to enforce sanctions against the merchant, including—

“(1) an order to cease and desist from such practices; and

“(2) a civil money penalty of such amount as the court may impose, based on such factors as the court may determine to be appropriate.

#### “SEC. 1014. LIABILITY OF ASSIGNEES.

“(a) ASSIGNEES INCLUDED.—For purposes of section 1013 and this section, the term ‘merchant’ includes an assignee of a merchant.

“(b) LIABILITIES OF ASSIGNEES.—

“(1) APPARENT VIOLATION.—An action under section 1012 or 1013 for a violation of this title may be brought against an assignee only if the violation is apparent on the face of the rental-purchase agreement to which it relates.

“(2) APPARENT VIOLATION DEFINED.—For purposes of this subsection, a violation that is apparent on the face of a rental-purchase agreement includes, but is not limited to, a disclosure that can be determined to be incomplete or inaccurate from the face of the agreement.

“(3) INVOLUNTARY ASSIGNMENT.—An assignee has no liability under this section in a case in which the assignment is involuntary.

“(4) RULE OF CONSTRUCTION.—No provision of this section shall be construed as limiting or altering the liability under section 1012 or 1013 of a merchant assigning a rental-purchase agreement.

“(c) PROOF OF DISCLOSURE.—In an action by or against an assignee, the consumer's written acknowledgment of receipt of a disclosure, made as part of the rental-purchase agreement, shall be conclusive proof that the disclosure was made, if the assignee had no knowledge that the disclosure had not been made when the assignee acquired the rental-purchase agreement to which it relates.

#### “SEC. 1015. REGULATIONS.

“(a) IN GENERAL.—The Board shall prescribe regulations, as necessary to carry out this title, to prevent its circumvention, and to facilitate compliance with its requirements.

“(b) MODEL DISCLOSURE FORMS.—

“(1) BOARD AUTHORITY.—The Board may publish model disclosure forms and clauses for common rental-purchase agreements to facilitate compliance with the disclosure requirements of this title and to aid the consumer in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.

“(2) CONTENT.—In devising forms described in paragraph (1), the Board shall consider the use by merchants of data processing or similar automated equipment.

“(3) USE NOT MANDATORY.—Nothing in this title may be construed to require a merchant to use any model form or clause published by the Board under this section.

“(4) DETERMINATION OF COMPLIANCE.—A merchant shall be deemed to be in compliance with the requirement to provide disclosure under section 1003(a) if the merchant—

“(A) uses any appropriate model form or clause published by the Board under this section; or

“(B) uses any such model form or clause, and changes it by deleting any information which is not required by this title or rearranging the format, if in making such deletion or rearranging the format, the merchant does not affect the substance, clarity, or meaningful sequence of the disclosure.

“(c) EFFECTIVE DATE OF REGULATIONS.—

“(1) IN GENERAL.—Any regulation prescribed by the Board, or any amendment or interpretation thereof, shall not be effective before the October 1 that follows the date of publication of the regulation in final form by at least 6 months.

“(2) AUTHORITY TO MODIFY.—The Board may, at its discretion—

“(A) lengthen the period of time described in paragraph (1) to permit merchants to adjust to accommodate new requirements; or

“(B) shorten that period of time, if the Board makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices.

“(3) VOLUNTARY COMPLIANCE.—Notwithstanding paragraph (1) or (2), a merchant may comply with any newly prescribed disclosure requirement prior to its effective date.

#### “SEC. 1016. ENFORCEMENT.

“(a) FEDERAL ENFORCEMENT.—Compliance with this title shall be enforced under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), and a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements of this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional test under the Federal Trade Commission Act.

“(b) STATE ENFORCEMENT.—

“(1) IN GENERAL.—An action to enforce the requirements imposed by this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction.

“(2) PRIOR WRITTEN NOTICE.—

“(A) IN GENERAL.—The State attorney general shall provide prior written notice of any civil action described in paragraph (1) to the Federal Trade Commission, and shall provide the Commission with a copy of the complaint.

“(B) EMERGENCY ACTION.—If prior notice required by this paragraph is not feasible, the State attorney general shall provide notice to the Commission immediately upon instituting the action.

“(3) FTC INTERVENTION.—The Commission may—

“(A) intervene in an action described in paragraph (1);

“(B) upon intervening—

“(i) remove the action to the appropriate United States district court, if it was not originally brought there; and

“(ii) be heard on all matters arising in the action; and

“(C) file a petition for appeal.

#### “SEC. 1017. CRIMINAL LIABILITY FOR WILLFUL AND KNOWING VIOLATION.

“Whoever willfully and knowingly gives false or inaccurate information, or fails to provide information which that person is required to disclose under the provisions of this title or any regulation issued under this title shall be subject to the penalty provisions as provided in section 112.

#### “SEC. 1018. RELATION TO OTHER LAWS.

“(a) RELATION TO STATE LAW.—

“(1) NO EFFECT ON CONSISTENT STATE LAWS.—Except as otherwise provided in subsection (b), this title does not annul, alter, or affect in any manner the meaning, scope, or applicability of the laws of any State relating to rental-purchase agreements, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency.

“(2) DETERMINATION OF INCONSISTENCY.—Upon its own motion or upon the request of an interested party, which is submitted in accordance with procedures prescribed by regulation of the Board, the Board shall determine whether any such inconsistency exists. If the Board determines that a term or provision of a State law is inconsistent with a provision of this title, merchants located in that State shall not be required to comply with that term or provision, and shall incur no liability under the law of that State for failure to follow such term or provision, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

“(3) GREATER PROTECTION UNDER STATE LAW.—Except as provided in subsection (b), for purposes of this section, a term or provision of a State law is not inconsistent with the provisions of this title if the term or provision affords greater protection and benefit to the consumer than the protection and benefit provided under this title, as determined by the Board, on its own motion or upon the petition of any interested party.

“(b) STATE LAWS RELATING TO CHARACTERIZATION OF TRANSACTION.—Notwithstanding subsection (a), this title shall supersede any State law, to the extent that such law—

“(1) regulates a rental-purchase agreement as a security interest, credit sale, retail installment sale, conditional sale, or any other form of consumer credit, or that imputes to a rental-purchase agreement the creation of a debt or extension of credit; or

“(2) requires the disclosure of a percentage rate calculation, including a time-price differential, an annual percentage rate, or an effective annual percentage rate.

“(c) RELATION TO FEDERAL TRADE COMMISSION ACT.—No provision of this title shall be construed as limiting, superseding, or otherwise affecting the applicability of the Federal Trade Commission Act to any merchant or rental-purchase transaction.

#### “SEC. 1019. EFFECT ON GOVERNMENT AGENCIES.

“No civil liability or criminal penalty under this title may be imposed on the United States or any of its departments or agencies, any State or political subdivision thereof, or any agency of a State or political subdivision thereof.

#### “SEC. 1020. COMPLIANCE DATE.

“Compliance with this title shall not be required until 6 months after the date of enactment of this title. In any case, a merchant may comply with this title at any time after such date of enactment.”

By Mr. CRAIG (for himself, Mr. BINGAMAN, Ms. COLLINS, Mr. BURR, Mr. DURBIN, and Ms. SNOWE):

S. 604. A bill to amend title XVIII of the Social Security Act to authorize expansion of medicare coverage of medical nutrition therapy services; to the Committee on Finance.

Mr. CRAIG. Mr. President, in this day of runaway medical costs, I would like to take a moment to highlight one cost-effective component of healthcare; Medical Nutrition Therapy (MNT). MNT can be used to promote health and functionality and effects the quality of life for many Americans. MNT is also an effective disease management component that lessens chronic disease risk, slows disease progression and reduces symptoms. Currently, Medicare beneficiaries can have access to MNT, but only for the care of diabetes and kidney disease.

The legislation that I have introduced, along with Mr. BINGAMAN and other colleagues, would give the Centers for Medicare & Medicaid Services the authority, using the National Coverage Determination (NCD) process, to expand the MNT benefit beyond diabetes and renal diseases. Currently, Congress must pass legislation for beneficiaries to receive MNT for each and every condition or disease for which MNT proves itself to be cost effective. Choosing to rely on the NCD process would allow CMS to make decisions based upon the science, and establish the extent to which Medicare will cover specific services, procedures or technologies on a national basis. This is what the NCD is designed to do.

CMS reported to Congress last year that there are other conditions, such as hypertension and dyslipidemia, HIV/AIDS and cancer, where evidence supports the cost-effectiveness of MNT as part of the care plan. It is time to make the MNT benefit more preventive in nature, and combat diabetes, hypertension, and dyslipidemia in the early stages of the diseases. It makes good sense for CMS, which routinely reviews the science behind recommendations, to direct this benefit appropriately without having to get Congressional approval for each and every disease.

It is important to note that this new language does not mandate any expansion; it only gives CMS the authority to include coverage of MNT based on scientific evidence that the proposed coverage is reasonable, necessary and cost effective. I encourage your support for this legislation.

By Mr. THUNE (for himself, Mr. INHOFE, Mr. VOINOVICH, and Mr. BOND):

S. 606. A bill to amend the Clean Air Act to eliminate methyl tertiary butyl ether from the United States fuel supply, to increase production and use of renewable fuel, and to increase the Nation's energy independence, and for other purposes; to the Committee on Environment and Public Works.

Mr. THUNE. Mr. President, last weekend I joined four of my colleagues to travel to Alaska, to see first-hand the Arctic National Wildlife Refuge.

It's not a welcoming place—it's cold and icy; vast and empty . . . even the Caribou didn't notice our presence. But beneath the icy tundra is one of the largest oil fields in the world—an oil field so vast it could power the State of South Dakota for centuries.

This week the Senate is moving forward on legislation to explore ANWR. This is just one piece of finally passing a national energy policy and reducing our dependence on foreign sources of oil.

We cannot act fast enough: This week gas prices hit record highs. And with oil hovering around \$55 per barrel and threatening to move even higher, it's critical that the Senate act to reduce America's dependence on foreign sources of oil.

ANWR is one piece of the solution. But equally important—and even more important to my State of South Dakota—is investing in renewable fuels like ethanol.

It is time for the United States Senate to pass the Renewable Fuels Standard.

The Renewable Fuels Standard has languished for too long. Despite strong bipartisan support and private-sector agreements, past Congresses have failed to pass a national energy policy that includes a Renewable Fuels Standard. Now, we have another opportunity.

This legislation has a special importance to my State. South Dakota is a heavily agricultural State and the Nation's fifth largest producer of ethanol. The market for ethanol has breathed new life into the small towns and small farms that dot the prairies of South Dakota. When driving through the rural counties of South Dakota, it's not unusual to observe the silos and storage tanks of an ethanol plant silhouetted against the prairie horizon. In many ways, the ethanol industry and its physical manifestations have become a part of the rural American identity.

Make no mistake about it: South Dakota's farmers are relying on the passage of the Renewable Fuels Standard to provide a surge in corn prices and a guaranteed market for their product.

This legislation is an improvement upon what passed out of the United States Senate last Congress. It increases the ethanol gallon requirement to 6 billion gallons, an increase of 1 billion gallons.

As we have a tremendous opportunity and responsibility to move this country forward. This legislation is vital to the ethanol industry, and will strengthen our economy, and our energy security. After so many failed attempts to pass this important legislation, I hope this Senate will finally finish the job and pass a Renewable Fuel Standard.

By Mr. HARKIN:

S. 607. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 with respect to early retirement

benefits, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, I rise to introduce a bill that will prevent workers from losing a large chunk of their pension when they work for a company that sells their division.

This legislation is prompted by articles written by Mary Williams Walsh in the New York Times outlining the story of how a group of workers in Olean, NY lost \$25 million in promised benefits when their division was acquired and then spun off.

Current law says that if a company wants to amend their pension plan, they have to give workers the share of their early retirement subsidy that they have already earned. However, a company doesn't have to do that if your division is bought and sold—even if the workers are in the same building, sitting at the same desk, and doing the same job the whole time. That's just ridiculous.

In this case, Halliburton purchased a division of Dresser Industries, and seventeen months later spun off the Olean, NY division, netting \$215 million. They treated those employees as if they had resigned and gone to work for Ingersoll-Rand. While employees who were 55 years old were kept whole, anyone younger lost up to half the value of their pension overnight, without being informed. They realized what had happened in June 2002 when they got notices in the mail telling them that they had 90 days to either collect a much smaller benefit than they had anticipated, or lose their right to a lump sum payment forever. Some recent retirees were even told that they got paid too much, and had to give back pension money they already received.

Meanwhile, the CEO during that period, now Vice President DICK CHENEY, got a special pension deal from the board totaling an estimated \$10 million in benefits, even though he hadn't worked there long enough to qualify for a pension under the usual rules.

This is a completely unconscionable way to cheat hard working people out of their promised pension benefits.

My will would simply require that companies must follow the same rules about applying credits toward pension under mergers and acquisitions that they do under any other kind of pension plan amendment.

By Mr. HARKIN:

S. 608. A bill to create an independent office in the Department of Labor to advocate on behalf of pension participants, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, I rise to reintroduce a bill originally introduced in the 106th Congress that seeks to create an Office of Pension Participant Advocacy at the Department of Labor.

When I first introduced this bill, it was just a good idea. Now, it has become an absolute necessity. Since 2000,

unimaginable pension loss horror stories have cropped up in the wake of major corporate bankruptcies like Enron and WorldCom. People have lost their guaranteed pensions to mergers and acquisitions and to misinformation and to just plain irresponsibility.

On March 3, the New York Times reported that companies are still desperately seeking ways to scrape funds out of their pensions—despite market downfalls and despite the dire situation at the Pension Benefit Guarantee Corporation. And who ultimately ends up paying the price when the company ends up bailing on its obligation? Pension plan participants pay.

Many of these people have absolutely nowhere to turn. People who have a genuine legal claim to their pension, but have been unfairly denied it, can end up spending countless hours calling phone number after phone number and getting the run around, and maybe receiving technical assistance years later.

Individual pension plans are complex, as are the laws that govern them. Currently, multiple Federal agencies share jurisdiction over pension law. Time and time again, the needs of pension participants are ignored, and pensioners don't get help in navigating the government's pension bureaucracy.

This office would accelerate good public policy. Several years ago, I heard from an employee of a large technology manufacturer that gave early retirees the choice between taking either an annuity of \$1,470 per month, or an annuity of \$200 per month plus \$107,300 as a lump sum, both payable at age 55. While the lump sum package may appear more lucrative at first glance, the annuity option for a given employee had a value of approximately \$228,000—more than 80 percent greater than the lump sum option touted by the employer.

I also heard from a 53 year old man with 26 years of service. He shared with me the complicated summary of his pension options he received from his employer. The first line offers a \$423,000 lump sum, which looks like it is based on the value of the \$3,140 per month annuity he would normally receive. However, the true actuarial value of the annuity option turns out to be closer to \$511,000. Stated another way, the \$423,000 lump sum offer is equivalent to a monthly benefit of \$2,590, almost \$500 a month less than the annuity option would provide. People lost half the value of their pensions to this kind of misinformation, many of whom never found out how they had been hurt.

Hearing stories like that prompted me to write to the Treasury requesting that they close this loophole and require that employees get an apples-to-apples comparison of their benefits, and Treasury did. However, how many fewer people would have been given misleading information about their pensions if there were someone within the government specifically charged with seeking out problems like these?



In the years that I have been working to fight age discriminatory practices sometimes used when converting from traditional defined benefit plans to cash balance pensions, I heard from a number of people who lost huge amounts of money in their pensions to "wear away," again, often not realizing what had happened to them until their nest egg was gone.

For example, take Larry Cutrone. He was one of thousands of people who figured out how much they lost in their cash balance conversion. He said that before AT&T converted his pension, it was valued at \$350,000. After the conversion, in July 1997, the value dropped to \$138,000. The calculation period for his pension was frozen at 1994–1996 salaries, so no value to his retirement account was added for any years he worked after the conversion.

He said:

In September 2001, I was "downsized" out of AT&T and decided to take my pension. I discovered that it translated into an annual income of just \$23,444 instead of the \$47,303 income under the old plan.

When these plans were changed over, workers were not informed that this could happen. They woke up one day and found out: they have less than 50 percent of what they thought they were going to get in their retirement.

Good public policy on pensions should never, ever have allowed that. People need someone on their side, because large corporations have plenty of people on their side.

This office would not only provide technical assistance to participants, but would serve as a voice to advocate for participants' rights in general within the Administration. Corporations who cheat employees out of their pensions should not be able to wait for a retiree to notice that they've been taken. There should be someone in the Federal government actively pursuing companies who use their employees' pension plans as their own private piggy bank.

The Office of Pension Participant Advocacy created in this bill would: actively seek out information and suggestions on pension policies and on Federal agencies which affect pension participants.

Evaluate the efforts of Federal agencies, businesses and industry to assist pension participants.

Identify significant problems faced by employees and retirees.

Make annual recommendations documenting significant pension problems and recommending legislative and regulatory solutions.

And examine existing pension plans and determine the extent to which current law serves pensioners in those plans.

We need one central place where pension participants can turn to when problems arise. We need one place in government whose sole obligation is to look out for the general pension interests of employees and retirees concerning their pensions. We need an office that will be an advocate for pen-

sion participants. For that reason, I urge my colleagues to join me in supporting this critical legislation.

By Mr. TALENT (for himself, Mrs. LINCOLN, Mr. THUNE, Mr. JOHNSON, Mr. COLEMAN, Mr. SALAZAR, Mr. HARKIN, Mr. HAGEL, and Mr. BOND):

S. 610. A bill to amend the Internal Revenue Code of 1986 to provide for a small agri-biodiesel producer credit and to improve the small ethanol producer credit; to the Committee on Finance.

Mr. TALENT. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

#### S. 610

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

#### SECTION 1. SMALL AGRI-BIODIESEL PRODUCER CREDIT.

(a) IN GENERAL.—Subsection (a) of section 40A of the Internal Revenue Code of 1986 (relating to biodiesel used as a fuel) is amended to read as follows:

"(A) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

"(1) the biodiesel mixture credit, plus

"(2) the biodiesel credit, plus

"(3) in the case of an eligible small agri-biodiesel producer, the small agri-biodiesel producer credit."

(b) SMALL AGRI-BIODIESEL PRODUCER CREDIT DEFINED.—Section 40A(b) of the Internal Revenue Code of 1986 (relating to definition of biodiesel mixture credit and biodiesel credit) is amended by adding at the end the following new paragraph:

"(5) SMALL AGRI-BIODIESEL PRODUCER CREDIT.—

"(A) IN GENERAL.—The small agri-biodiesel producer credit of any eligible small agri-biodiesel producer for any taxable year is 10 cents for each gallon of qualified agri-biodiesel production of such producer.

"(B) QUALIFIED AGRI-BIODIESEL PRODUCTION.—For purposes of this paragraph, the term 'qualified agri-biodiesel production' means any agri-biodiesel which is produced by an eligible small agri-biodiesel producer, and which during the taxable year—

"(i) is sold by such producer to another person—

"(I) for use by such other person in the production of a qualified biodiesel mixture in such other person's trade or business (other than casual off-farm production),

"(II) for use by such other person as a fuel in a trade or business, or

"(III) who sells such agri-biodiesel at retail to another person and places such agri-biodiesel in the fuel tank of such other person, or

"(ii) is used or sold by such producer for any purpose described in clause (i).

"(C) LIMITATION.—The qualified agri-biodiesel production of any producer for any taxable year shall not exceed 15,000,000 gallons."

(c) DEFINITIONS AND SPECIAL RULES.—Section 40A of the Internal Revenue Code of 1986 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) DEFINITIONS AND SPECIAL RULES FOR SMALL AGRI-BIODIESEL PRODUCER CREDIT.—For purposes of this section—

"(1) ELIGIBLE SMALL AGRI-BIODIESEL PRODUCER.—The term 'eligible small agri-biodiesel producer' means a person who, at all times during the taxable year, has a productive capacity for agri-biodiesel not in excess of 60,000,000 gallons.

"(2) AGGREGATION RULE.—For purposes of the 15,000,000 gallon limitation under subsection (b)(5)(C) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

"(3) PARTNERSHIP, S CORPORATION, AND OTHER PASS-THRU ENTITIES.—In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(5)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

"(4) ALLOCATION.—For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

"(5) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary—

"(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of agri-biodiesel during the taxable year, or

"(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

"(6) ALLOCATION OF SMALL AGRI-BIODIESEL CREDIT TO PATRONS OF COOPERATIVE.—

"(A) ELECTION TO ALLOCATE.—

"(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

"(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

"(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—

"(i) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

"(ii) PATRONS.—The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

"(iii) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return of the organization for such year, an amount equal to the excess of—

"(I) such reduction, over

“(II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.”.

(d) SMALL AGRI-BIODIESEL CREDIT NOT A PASSIVE ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) of the Internal Revenue Code of 1986, as amended by section 2, is amended by striking “section 40(a)(3)” and inserting “sections 40(a)(3) and 40A(a)(3)”.

(e) SMALL AGRI-BIODIESEL PRODUCER CREDIT NOT ADDED BACK TO INCOME UNDER SECTION 87.—Section 87 of the Internal Revenue Code of 1986, as amended by section 2, is amended by striking “and” at the end of paragraph (2) and by striking paragraph (3) and inserting the following new paragraphs:

“(3) the biodiesel mixture credit determined with respect to the taxpayer for the taxable year under section 40A(a)(1), and

“(4) the biodiesel credit determined with respect to the taxpayer for the taxable year under section 40A(a)(2).”.

(f) CONFORMING AMENDMENTS.—

(1) Paragraph (4) of section 40A(b) of the Internal Revenue Code of 1986 is amended by striking “this section” and inserting “paragraph (1) or (2) of subsection (a)”.

(2) The heading of subsection (b) of section 40A of such Code is amended by striking “AND BIODIESEL CREDIT” and inserting “BIODIESEL CREDIT, AND SMALL AGRI-BIODIESEL PRODUCER CREDIT”.

(3) Paragraph (3) of section 40A(d) of such Code is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

“(C) PRODUCER CREDIT.—If—

“(i) any credit was determined under subsection (a)(3), and

“(ii) any person does not use such fuel for a purpose described in subsection (b)(5)(B), then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such agri-biodiesel.”.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

## SEC. 2. IMPROVEMENTS TO SMALL ETHANOL PRODUCER CREDIT.

(a) DEFINITION OF SMALL ETHANOL PRODUCER.—Section 40(g) of the Internal Revenue Code of 1986 (relating to definitions and special rules for eligible small ethanol producer credit) is amended by striking “30,000,000” each place it appears and inserting “60,000,000”.

(b) SMALL ETHANOL PRODUCER CREDIT NOT A PASSIVE ACTIVITY CREDIT.—Clause (i) of section 469(d)(2)(A) of the Internal Revenue Code of 1986 is amended by striking “subpart D” and inserting “subpart D, other than section 40(a)(3).”.

(c) SMALL ETHANOL PRODUCER CREDIT NOT ADDED BACK TO INCOME UNDER SECTION 87.—Section 87 of the Internal Revenue Code of 1986 (relating to income inclusion of alcohol and biodiesel fuels credits) is amended by redesignating paragraph (2) as paragraph (3) and by striking paragraph (1) and inserting the following:

“(1) the amount of the alcohol mixture credit determined with respect to the taxpayer for the taxable year under section 40(a)(1),

“(2) the alcohol credit determined with respect to the taxpayer for the taxable year under section 40(a)(2), and”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable

years beginning after the date of the enactment of this Act.

## SUBMITTED RESOLUTIONS

### SENATE CONCURRENT RESOLUTION 18—SETTING FORTH THE CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2006 AND INCLUDING THE APPROPRIATE BUDGETARY LEVELS FOR FISCAL YEARS 2005 AND 2007 THROUGH 2010.

Mr. GREGG from the Committee on the Budget; submitted the following concurrent resolution; which was placed on the calendar:

S. CON. RES. 18

#### SECTION 1. CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2006.

(a) DECLARATION.—Congress declares that this resolution is the concurrent resolution on the budget for fiscal year 2006 including the appropriate budgetary levels for fiscal years 2005 and 2007 through 2010 as authorized by section 301 of the Congressional Budget Act of 1974 (2 U.S.C. 632).

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

Sec. 1. Concurrent resolution on the budget for fiscal year 2006.

#### TITLE I—LEVELS AND AMOUNTS

Sec. 101. Recommended levels and amounts.

Sec. 102. Social Security.

Sec. 103. Major functional categories.

#### TITLE II—RECONCILIATION

Sec. 201. Reconciliation in the Senate.

#### TITLE III—RESERVE FUNDS

Sec. 301. Reserve fund for health information technology and pay-for-performance.

Sec. 302. Reserve fund for Asbestos Injury Trust Fund.

Sec. 303. Reserve fund for the uninsured.

Sec. 304. Reserve fund for Land and Water Conservation Fund.

Sec. 305. Reserve fund for the Federal Pell Grant Program.

Sec. 306. Reserve fund for Higher Education.

Sec. 307. Reserve fund for energy legislation.

Sec. 308. Reserve fund for the safe importation of prescription drugs.

Sec. 309. Adjustment for surface transportation.

#### TITLE IV—BUDGET ENFORCEMENT

Sec. 401. Restrictions on advance appropriations.

Sec. 402. Emergency legislation.

Sec. 403. Supermajority enforcement.

Sec. 404. Discretionary spending limits in the Senate.

Sec. 405. Application and effect of changes in allocations and aggregates.

Sec. 406. Adjustments to reflect changes in concepts and definitions.

Sec. 407. Limitation on long-term spending proposals.

Sec. 408. Exercise of rulemaking powers.

#### TITLE V—SENSE OF THE SENATE

Sec. 501. Sense of the Senate regarding unauthorized appropriations.

Sec. 502. Sense of the Senate regarding a commission to review the performance of programs.

Sec. 503. Sense of the Senate regarding Tricare.

Sec. 504. Sense of the Senate regarding restraining Medicaid growth.

Sec. 505. Sense of the Senate regarding tribal colleges and universities.

Sec. 506. Sense of the Senate regarding support for the President's request to concentrate Federal funds for State and local homeland security assistance programs on the highest threats, vulnerabilities, and needs.

Sec. 507. Sense of the Senate rejecting proposed elimination of per diem reimbursement to State nursing homes in the President's budget.

Sec. 508. Sense of the Senate regarding Impact Aid.

Sec. 509. Sense of the Senate regarding mandatory agricultural programs.

#### TITLE I—LEVELS AND AMOUNTS

##### SEC. 101. RECOMMENDED LEVELS AND AMOUNTS.

The following budgetary levels are appropriate for the fiscal years 2005 through 2010:

(1) FEDERAL REVENUES.—For purposes of the enforcement of this resolution—

(A) The recommended levels of Federal revenues are as follows:

Fiscal year 2005: \$1,483,908,000,000.

Fiscal year 2006: \$1,592,723,000,000.

Fiscal year 2007: \$1,714,387,000,000.

Fiscal year 2008: \$1,824,619,000,000.

Fiscal year 2009: \$1,932,613,000,000.

Fiscal year 2010: \$2,051,205,000,000.

(B) The amounts by which the aggregate levels of Federal revenues should be changed are as follows:

Fiscal year 2005: —\$116,000,000.

Fiscal year 2006: —\$14,939,000,000.

Fiscal year 2007: —\$4,884,000,000.

Fiscal year 2008: —\$11,566,000,000.

Fiscal year 2009: —\$23,602,000,000.

Fiscal year 2010: —\$15,163,000,000.

(2) NEW BUDGET AUTHORITY.—For purposes of the enforcement of this resolution, the appropriate levels of total new budget authority are as follows:

Fiscal year 2005: \$2,074,959,000,000.

Fiscal year 2006: \$2,134,484,000,000.

Fiscal year 2007: \$2,207,426,000,000.

Fiscal year 2008: \$2,324,416,000,000.

Fiscal year 2009: \$2,446,869,000,000.

Fiscal year 2010: \$2,543,608,000,000.

(3) BUDGET OUTLAYS.—For purposes of the enforcement of this resolution, the appropriate levels of total budget outlays are as follows:

Fiscal year 2005: \$2,055,994,000,000.

Fiscal year 2006: \$2,143,040,000,000.

Fiscal year 2007: \$2,222,311,000,000.

Fiscal year 2008: \$2,310,069,000,000.

Fiscal year 2009: \$2,412,389,000,000.

Fiscal year 2010: \$2,518,768,000,000.

(4) DEFICITS.—For purposes of the enforcement of this resolution, the amounts of the deficits are as follows:

Fiscal year 2005: —\$572,086,000,000.

Fiscal year 2006: —\$550,317,000,000.

Fiscal year 2007: —\$507,924,000,000.

Fiscal year 2008: —\$485,450,000,000.

Fiscal year 2009: —\$479,776,000,000.

Fiscal year 2010: —\$467,563,000,000.

(5) DEBT SUBJECT TO LIMIT.—The appropriate levels of the public debt are as follows:

Fiscal year 2005: \$7,961,738,000,000.

Fiscal year 2006: \$8,630,464,000,000.

Fiscal year 2007: \$9,266,253,000,000.

Fiscal year 2008: \$9,890,194,000,000.

Fiscal year 2009: \$10,511,998,000,000.

Fiscal year 2010: \$11,122,769,000,000.

(6) DEBT HELD BY THE PUBLIC.—The appropriate levels of the debt held by the public are as follows:

Fiscal year 2005: \$4,688,918,000,000.

Fiscal year 2006: \$5,060,681,000,000.

Fiscal year 2007: \$5,372,906,000,000.

Fiscal year 2008: \$5,644,888,000,000.