Revenue Code of 1986 to remove cell phones from listed property under section 280F.

S. 2681

At the request of Mr. INHOFE, the names of the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 2681, a bill to require the issuance of medals to recognize the dedication and valor of Native American code talkers.

S. 2720

At the request of Mr. BYRD, his name was added as a cosponsor of S. 2720, a bill to withhold Federal financial assistance from each country that denies or unreasonably delays the acceptance of nationals of such country who have been ordered removed from the United States and to prohibit the issuance of visas to nationals of such country.

S. 2908

At the request of Mr. BROWN, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 2908, a bill to amend title II of the Social Security Act to prohibit the display of Social Security account numbers on Medicare cards.

S. 3070

At the request of Mr. SESSIONS, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 3070, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of the Boy Scouts of America, and for other proposes.

S. 3080

At the request of Mr. MARTINEZ, his name was added as a cosponsor of S. 3080, a bill to ensure parity between the temporary duty imposed on ethanol and tax credits provided on ethanol.

S. 3114

At the request of Mr. LIEBERMAN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 3114, a bill to provide safeguards against faulty asylum procedures, to improve conditions of detention for detainees, and for other purposes.

S. 3142

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 3142, a bill to amend the Public Health Service Act to enhance public health activities related to stillbirth and sudden unexpected infant death.

S. 3186

At the request of Mr. SANDERS, the names of the Senator from Iowa (Mr. GRASSLEY), the Senator from Pennsylvania (Mr. SPECTER), the Senator from California (Mrs. BOXER), the Senator from Arkansas (Mr. PRYOR), the Senator from South Dakota (Mr. JOHNSON) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 3186, a bill to provide funding for the Low-Income Home Energy Assistance Program.

S. 3287

At the request of Mr. DURBIN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 3287, a bill to amend the Truth in Lending Act to establish a national usury rate for consumer credit transactions.

S. 3291

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 3291, a bill to amend the Internal Revenue Code of 1986 to treat certain income and gains relating to fuels as qualifying income for publicly traded partnerships.

S. 3310

At the request of Mr. WYDEN, the names of the Senator from Minnesota (Mr. COLEMAN) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 3310, a bill to provide benefits under the Post-Development/Mobilization Respite Absence program for certain periods before the implementation of the program.

S. 3311

At the request of Mr. DURBIN, the names of the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 3311, a bill to amend the Public Health Service Act to improve mental and behavioral health services on college campuses.

S.J. RES. 44

At the request of Mr. ROCKEFELLER, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S.J. Res. 44, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule set forth as requirements contained in the August 17, 2007, letter to State Health Officials from the Director of the Center for Medicaid and State Operations in the Centers for Medicare & Medicaid Services and the State Health Official Letter 08–003, dated May 7, 2008, from such Center.

S. CON. RES. 93

At the request of Mr. DORGAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Con. Res. 93, a concurrent resolution supporting the goals and ideals of ''National Sudden Cardiac Arrest Awareness Month''.

S. RES. 502

At the request of Mr. ALLARD, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. Res. 502, a resolution commemorating the 25th anniversary of the Space Foundation.

S. RES. 618

At the request of Mr. LUGAR, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. Res. 618, a resolution recognizing the tenth anniversary of the bombings of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania, and memorializing the citizens of the United States, Kenya, and Tanzania whose lives were claimed as a result of the al Qaeda led terrorist attacks.

AMENDMENT NO. 4979

At the request of Mr. NELSON of Florida, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from New Mexico (Mr. DOMENICI), the Senator from Vermont (Mr. LEAHY) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of amendment No. 4979 intended to be proposed to S. 3001, an original bill to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 5105

At the request of Ms. SNOWE, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of amendment No. 5105 intended to be proposed to S. 3268, a bill to amend the Commodity Exchange Act, to prevent excessive price speculation with respect to energy commodities, and for other purposes.

AMENDMENT NO. 5108

At the request of Mr. MCCONNELL, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of amendment No. 5108 intended to be proposed to S. 3268, a bill to amend the Commodity Exchange Act, to prevent excessive price speculation with respect to energy commodities, and for other purposes.

At the request of Mr. SUNUNU, his name was added as a cosponsor of amendment No. 5108 intended to be proposed to S. 3268, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY (for himself, Mr. SPECTER, Mr. BAYH, Mr. VOINOVICH, Mrs. FEINSTEIN, and Mr. CORNYN):

S. 3325. A bill to enhance remedies for violations of intellectual property laws, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, before I was a Senator, I was a prosecutor, as the Chittenden County State's Attorney for 8 years, I prosecuted all varieties of crime in Vermont. I know first hand how important it is for criminal investigators, and the lawyers who prosecute those cases, to have a full arsenal of legal tools to ensure that justice is done. I also know how important the intellectual property industries are to our economy, and to our position as a global leader. In Vermont, Hubbardton Forge makes beautiful, trademarked lamps. The Vermont Teddy Bear Company relies heavily on its patented products. Likewise, SB Electronics needs patents for its film capacitor products. Burton's snowboards and logo are protected by trademarks and patents.

While Vermont is closest to my heart, every state in the Nation has such companies, and every community

in the United States is home to creative and productive people. Intellectual property—copyrights, patents, and trademarks—is critical to our fiscal health and to our continuing dominance of the world economy. This valuable property is also terribly vulnerable; by its very nature, it is subject to numerous types of thievery and misappropriation. The Internet has brought great and positive change to all our lives, but it is also an unparalleled tool for piracy. The increasing inter-connectedness of the globe, and the efficiencies of sharing information quickly and accurately between continents, has made foreign piracy and counterfeiting operations profitable in numerous countries. Americans suffer when their intellectual property is stolen, they suffer when those counterfeit goods displace sales of the legitimate products, and they suffer when counterfeit products actually harm them, as is sometimes the case with fake pharmaceuticals and faulty electrical products.

The time has come to bolster the Federal effort to protect this most valuable and vulnerable property, to give law enforcement the resources and the tools it needs to combat piracy and counterfeiting, and to make sure that the many agencies that deal with intellectual property enforcement have the opportunity and the incentive to talk with each other, to coordinate their efforts, and to achieve the maximum effects for their efforts. The Enforcement of Intellectual Property Rights Act of 2008 does just that.

First, it gives the Department of Justice the ability to bring civil actions against anyone whose conduct constitutes criminal copyright infringement. Many times, a criminal sanction is simply too severe for the harm done. This provision, the concept of which has passed the Senate on three separate occasions as the PIRATE Act, gives the Department of Justice an extra tool.

Second, the bill enhances civil intellectual property rights law by eliminating unnecessary burdens to instituting a suit; improving remedies; and applying the copyright and trademark laws not only to imported goods, but also to exported and transshipped items.

Third, the bill improves and harmonizes the forfeiture provisions in copyright and counterfeiting cases.

Fourth, the bill addresses concerns that the current governmental structure to coordinate intellectual property rights enforcement among agencies and departments is impeding the Government from reaching its full potential. It creates a Coordinator within the Executive Office of the President to chair an inter-agency committee that will produce a Joint Strategic Plan to combat piracy and counterfeiting.

Finally, the bill will increase the resources available to Federal, state and local law enforcement.

We are not addressing theoretical concerns with this bill, nor are we making grandiose policy proclamations. We are synthesizing the real-world experiences of our many constituents who develop and monetize intellectual property—the individuals and companies that turn their creative and innovative efforts into jobs, goods, and services—with the daily frustrations of law enforcement agents who lack the laws, and the resources, to vindicate those property rights.

I was once a prosecutor. I am now a Senator. But I have always been a fan of movies. My cameo in the latest Batman movie, The Dark Knight, was priceless to me, but we can put real numbers on the value of that production to the economy. The Dark Knight shot for 65 days in Chicago, pouring almost $36 million into the local economy. Seventeen million dollars went to nearly 800 local vendors that were critical to the production of the movie. For example, one local lumber supplier employing 40 people played a central role in the set construction that helped transform Chicago into the mythical ''Gotham City.'' In order to fulfill the production needs of the film, the lumber company worked closely with 15 other Illinois-based companies. Those 15 suppliers employed an additional 350 workers.

All of that value is threatened by piracy. Just in the movie industry, piracy costs 140,000 U.S. jobs and $5.5 billion in wages each year. Piracy costs cities, towns and states an estimated $837 million in additional tax revenue each year. The movie industry alone produces $30.2 billion each year in revenue for 160,000 vendors all across the Nation, and 85 percent of those vendors employ 10 people or fewer.

This is a well balanced bill, drawn from numerous conversations with all manner of interested parties. It brings together the best of numerous proposals, including important legislation I introduced earlier this year with Senator CORNYN. His support on intellectual property matters is critical to our success moving forward. I thank him, and all the cosponsors of this legislation for their efforts and support. This bill will improve the enforcement of our Nation's intellectual property laws, bolster our intellectual property-based economy, and protect American jobs.

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

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

S. 3325

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Enforcement of Intellectual Property Rights Act of 2008''.

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

SEC. 2. REFERENCE.

Any reference in this Act to the ''Trademark Act of 1946'' refers to the Act entitled ''An Act to provide for the registration 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.).

SEC. 3. DEFINITION.

In this Act, the term ''United States person'' means—

(1) any United States resident or national,

(2) any domestic concern (including any permanent domestic establishment of any foreign concern), and

(3) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern,

except that such term does not include an individual who resides outside the United

States and is employed by an individual or entity other than an individual or entity described in paragraph (1), (2), or (3).

TITLE I—AUTHORIZATION OF CIVIL COPYRIGHT ENFORCEMENT BY ATTORNEY GENERAL

SEC. 101. CIVIL PENALTIES FOR CERTAIN VIOLATIONS.

(a) IN GENERAL.—Chapter 5 of title 17, United States Code, is amended by inserting after section 506 the following:

''SEC. 506a. CIVIL PENALTIES FOR VIOLATIONS OF SECTION 506.

''(a) IN GENERAL.—In lieu of a criminal action under section 506, the Attorney General may commence a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 506. Upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty under section 504 which shall be in an amount equal to the amount which would be awarded under section 3663(a)(1)(B) of title 18 and restitution to the copyright owner aggrieved by the conduct.

''(b) OTHER REMEDIES.—

''(1) IN GENERAL.—Imposition of a civil penalty under this section does not preclude any other criminal or civil statutory, injunctive, common law, or administrative remedy, which is available by law to the United States or any other person.

''(2) OFFSET.—Any restitution received by a copyright owner as a result of a civil action brought under this section shall be offset against any award of damages in a subsequent copyright infringement civil action by that copyright owner for the conduct that gave rise to the civil action brought under this section.''.

(b) DAMAGES AND PROFITS.—Section 504 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) in the first sentence—

(i) by inserting '', or the Attorney General in a civil action,'' after ''The copyright owner''; and

(ii) by striking ''him or her'' and inserting ''the copyright owner''; and

(B) in the second sentence by inserting '', or the Attorney General in a civil action,'' after ''the copyright owner''; and

(2) in subsection (c)—

(A) in paragraph (1), by inserting '', or the Attorney General in a civil action,'' after ''the copyright owner''; and

(B) in paragraph (2), by inserting '', or the Attorney General in a civil action,'' after ''the copyright owner''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by inserting after the item relating to section 506 the following:

''Sec. 506a. Civil penalties for violations of section 506.''.

TITLE II—ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY LAWS

SEC. 201. REGISTRATION OF CLAIM.

(a) LIMITATION TO CIVIL ACTIONS; HARMLESS ERROR.—Section 411 of title 17, United States Code, is amended—

(1) in the section heading, by inserting ''**CIVIL**'' before ''**INFRINGEMENT**'';

(2) in subsection (a)—

(A) in the first sentence, by striking ''no action'' and inserting ''no civil action''; and

(B) in the second sentence, by striking ''an action'' and inserting ''a civil action'';

(3) by redesignating subsection (b) as subsection (c);

(4) in subsection (c), as so redesignated by paragraph (3), by striking ''506 and sections 509 and'' and inserting ''505 and section''; and

(5) by inserting after subsection (a) the following:

''(b)(1) A certificate of registration satisfies the requirements of this section and section 412, regardless of whether the certificate contains any inaccurate information, unless—

''(A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and

''(B) the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.

''(2) In any case in which inaccurate information described under paragraph (1) is alleged, the court shall request the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 412 of title 17, United States Code, is amended by striking ''411(b)'' and inserting ''411(c)''.

(2) The item relating to section 411 in the table of sections for chapter 4 of title 17, United States Code, is amended to read as follows:

''Sec. 411. Registration and civil infringement actions.''.

SEC. 202. CIVIL REMEDIES FOR INFRINGEMENT.

(a) IN GENERAL.—Section 503(a) of title 17, United States Code, is amended—

(1) by striking ''and of all plates'' and inserting '', of all plates''; and

(2) by striking the period and inserting '', and of records documenting the manufacture, sale, or receipt of things involved in such violation. The court shall enter, if appropriate, a protective order with respect to discovery of any records that have been seized. The protective order shall provide for appropriate procedures to ensure that confidential information contained in such records is not improperly disclosed to any party.''.

(b) PROTECTIVE ORDERS FOR SEIZED RECORDS.—Section 34(d)(1)(A) of the Trademark Act (15 U.S.C. 1116(d)(1)(A)) is amended by adding at the end the following: ''The court shall enter, if appropriate, a protective order with respect to discovery of any records that have been seized. The protective order shall provide for appropriate procedures to ensure that confidential information contained in such records is not improperly disclosed to any party.''.

SEC. 203. TREBLE DAMAGES IN COUNTERFEITING CASES.

Section 35(b) of the Trademark Act of 1946 (15 U.S.C. 1117(b)) is amended to read as follows:

''(b) In assessing damages under subsection (a) for any violation of section 32(1)(a) of this Act or section 220506 of title 36, United States Code, in a case involving use of a counterfeit mark or designation (as defined in section 34(d) of this Act), the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever amount is greater, together with a reasonable attorney's fee, if the violation consists of—

''(1) intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 34(d) of this Act), in connection with the sale, offering for sale, or distribution of goods or services; or

''(2) providing goods or services necessary to the commission of a violation specified in paragraph (1), with the intent that the recipient of the goods or services would put the goods or services to use in committing the violation.

In such a case, the court may award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of the Internal Revenue Code of 1986, beginning on the date of the service of the claimant's pleadings setting forth the claim for such entry of judgment and ending on the date such entry is made, or for such shorter time as the court considers appropriate.''.

SEC. 204. STATUTORY DAMAGES IN COUNTERFEITING CASES.

Section 35(c) of the Trademark Act of 1946 (15 U.S.C. 1117) is amended—

(1) in paragraph (1)—

(A) by striking ''$500'' and inserting ''$1,000''; and

(B) by striking ''$100,000'' and inserting ''$200,000''; and

(2) in paragraph (2), by striking ''$1,000,000'' and inserting ''$2,000,000''.

SEC. 205. TRANSSHIPMENT AND EXPORTATION OF GOODS BEARING INFRINGING MARKS.

Title VII of the Trademark Act of 1946 (15 U.S.C. 1124) is amended—

(1) in the title heading, by inserting after ''**IMPORTATION**'' the following: ''**TRANSSHIPMENT, OR EXPORTATION**''; and

(2) in section 42—

(A) by striking ''imported''; and

(B) by inserting after ''customhouse of the United States'' the following: '', nor shall any such article be transshipped through or exported from the United States''.

SEC. 206. IMPORTATION, TRANSSHIPMENT, AND EXPORTATION.

(a) IN GENERAL.—The heading for chapter 6 of title 17, United States Code, is amended to read as follows:

''CHAPTER 6—MANUFACTURING REQUIREMENTS, IMPORTATION, TRANSSHIPMENT, AND EXPORTATION''.

(b) AMENDMENT ON EXPORTATION.—Section 602(a) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively, and moving such subparagraphs 2 ems to the right;

(2) by striking ''(a)'' and inserting ''(a) INFRINGING IMPORTATION, TRANSSHIPMENT, OR EXPORTATION.—

''(1) IMPORTATION.—'';

(3) by striking ''This subsection does not apply to—'' and inserting the following:

''(2) IMPORTATION, TRANSHIPMENT, OR EXPORTATION OF INFRINGING ITEMS.—Importation into the United States, transshipment through the United States, or exportation from the United States, without the authority of the owner of copyright under this title, of copies or phonorecords, the making of which either constituted an infringement of copyright or would have constituted an infringement of copyright if this title had been applicable, is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under sections 501 and 506.

''(3) EXCEPTIONS.—This subsection does not apply to—'';

(4) in paragraph (3)(A) (as redesignated by this subsection) by inserting ''or exportation'' after ''importation''; and

(5) in paragraph (3)(B) (as redesignated by this subsection)—

(A) by striking ''importation, for the private use of the importer'' and inserting ''importation or exportation, for the private use of the importer or exporter''; and

(B) by inserting ''or departing from the United States'' after ''United States''.

(c) CONFORMING AMENDMENTS.—(1) Section 602 of title 17, United States Code, is further amended—

(A) in the section heading, by inserting ''**OR EXPORTATION**'' after ''**IMPORTATION**''; and

(B) in subsection (b)—

(i) by striking ''(b) In a case'' and inserting ''(b) IMPORT PROHIBITION.—In a case'';

(ii) by striking ''the United States Customs Service'' and inserting ''United States Customs and Border Protection''; and

(iii) by striking ''the Customs Service'' and inserting ''United States Customs and Border Protection''.

(2) Section 601(b)(2) of title 17, United States Code, is amended by striking ''the United States Customs Service'' and inserting ''United States Customs and Border Protection''.

(3) The item relating to chapter 6 in the table of chapters for title 17, United States Code, is amended to read as follows:

''6. MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION ..... 601''.

TITLE III—ENHANCEMENTS TO CRIMINAL INTELLECTUAL PROPERTY LAWS

SEC. 301. CRIMINAL COPYRIGHT INFRINGEMENT.

(a) FORFEITURE AND DESTRUCTION; RESTITUTION.—Section 506(b) of title 17, United States Code, is amended to read as follows:

''(b) FORFEITURE, DESTRUCTION, AND RESTITUTION.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323 of title 18, to the extent provided in that section, in addition to any other similar remedies provided by law.''.

(b) SEIZURES AND FORFEITURES.—

(1) REPEAL.—Section 509 of title 17, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by striking the item relating to section 509.

SEC. 302. TRAFFICKING IN COUNTERFEIT LABELS, ILLICIT LABELS, OR COUNTERFEIT DOCUMENTATION OR PACKAGING FOR WORKS THAT CAN BE COPYRIGHTED.

Section 2318 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by redesignating subparagraphs (A) through (G) as clauses (i) through (vii), respectively;

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) by striking ''Whoever'' and inserting ''(1) Whoever'';

(2) by amending subsection (d) to read as follows:

''(d) FORFEITURE AND DESTRUCTION OF PROPERTY; RESTITUTION.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.''; and

(3) by striking subsection (e) and redesignating subsection (f) as subsection (e).

SEC. 303. UNAUTHORIZED FIXATION.

(a) Section 2319A(b) of title 18, United States Code, is amended to read as follows:

''(b) FORFEITURE AND DESTRUCTION OF PROPERTY; RESTITUTION.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.''.

(b) Section 2319A(c) of title 18, United States Code, is amended by striking the second sentence and inserting: ''The Secretary of Homeland Security shall issue regulations by which any performer may, upon payment of a specified fee, be entitled to notification by United States Customs and Border Protection of the importation of copies or phonorecords that appear to consist of unauthorized fixations of the sounds or sounds and images of a live musical performance.''.

SEC. 304. UNAUTHORIZED RECORDING OF MOTION PICTURES.

Section 2319B(b) of title 18, United States Code, is amended to read as follows:

''(b) FORFEITURE AND DESTRUCTION OF PROPERTY; RESTITUTION.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.''.

SEC. 305. TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES.

(a) IN GENERAL.—Section 2320 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''WHOEVER'' and inserting ''OFFENSE.—''

''(1) IN GENERAL.—Whoever;'';

(B) by moving the remaining text 2 ems to the right; and

(C) by adding at the end the following:

''(2) SERIOUS BODILY HARM OR DEATH.—

''(A) SERIOUS BODILY HARM.—If the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of paragraph (1), the penalty shall be a fine under this title or imprisonment for not more than 20 years, or both.

''(B) DEATH.—If the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of paragraph (1), the penalty shall be a fine under this title or imprisonment for any term of years or for life, or both.''.

(b) FORFEITURE AND DESTRUCTION OF PROPERTY; RESTITUTION.—Section 2320(b) of title 18, United States Code, is amended to read as follows:

''(b) FORFEITURE AND DESTRUCTION OF PROPERTY; RESTITUTION.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.''.

SEC. 306. FORFEITURE, DESTRUCTION, AND RESTITUTION.

(a) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by adding at the end the following:

''SEC. 2323. FORFEITURE, DESTRUCTION, AND RESTITUTION.

''(a) CIVIL FORFEITURE.—

''(1) PROPERTY SUBJECT TO FORFEITURE.—The following property is subject to forfeiture to the United States Government:

''(A) Any article, the making or trafficking of which is, prohibited under section 506 or 1204 of title 17, or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title.

''(B) Any property used, or intended to be used, in any manner or part to commit or facilitate the commission of an offense referred to in subparagraph (A), except that property is subject to forfeiture under this subparagraph only if the United States Government establishes that there was a substantial connection between the property and the violation of an offense referred to in subparagraph (A).

''(C) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of an offense referred to in subparagraph (A).

''(2) PROCEDURES.—The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, unless otherwise requested by an agency of the United States, the court shall order that any property forfeited under paragraph (1) be destroyed, or otherwise disposed of according to law.

''(b) CRIMINAL FORFEITURE.—

''(1) PROPERTY SUBJECT TO FORFEITURE.—The court, in imposing sentence on a person convicted of an offense under section 506 or 1204 of title 17, or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title, shall order, in addition to any other sentence imposed, that the person forfeit to the United States Government any property subject to forfeiture under subsection (a) for that offense.

''(2) PROCEDURES.—

''(A) IN GENERAL.—The forfeiture of property under paragraph (1), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section.

''(B) DESTRUCTION.—At the conclusion of the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States shall order that any—

''(i) forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law; and

''(ii) infringing items or other property described in subsection (a)(1)(A) and forfeited under paragraph (1) of this subsection be destroyed or otherwise disposed of according to law.

''(c) RESTITUTION.—When a person is convicted of an offense under section 506 or 1204 of title 17 or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title, the court, pursuant to sections 3556, 3663A, and 3664 of this title, shall order the person to pay restitution to any victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii) of this title.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 113 of title 18, United States Code, is amended by adding at the end the following:

''Sec. 2323. Forfeiture, destruction, and restitution.''.

SEC. 307. FORFEITURE UNDER ECONOMIC ESPIONAGE ACT.

Section 1834 of title 18, United States Code, is amended to read as follows:

''SEC. 1834. CRIMINAL FORFEITURE.

''Forfeiture, destruction, and restitution relating to this chapter shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.''.

SEC. 308. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TITLE 17, UNITED STATES CODE.—

(1) Section 109 (b)(4) of title 17, United States Code, is amended by striking ''505, and 509'' and inserting ''and 505''.

(2) Section 111 of title 17, United States Code, is amended—

(A) in subsection (b), by striking ''and 509'';

(B) in subsection (c)—

(i) in paragraph (2), by striking ''and 509'';

(ii) in paragraph (3), by striking ''sections 509 and 510'' and inserting ''section 510''; and

(iii) in paragraph (4), by striking ''and section 509''; and

(C) in subsection (e)—

(i) in paragraph (1), by striking ''sections 509 and 510'' and inserting ''section 510''; and

(ii) in paragraph (2), by striking ''and 509''.

(3) Section 115(c) of title 17, United States Code, is amended—

(A) in paragraph (3)(G)(i), by striking ''and 509''; and

(B) in paragraph (6), by striking ''and 509''.

(4) Section 119(a) of title 17, United States Code, is amended—

(A) in paragraph (6), by striking ''sections 509 and 510'' and inserting ''section 510'';

(B) in paragraph (7)(A), by striking ''and 509'';

(C) in paragraph (8), by striking ''and 509''; and

(D) in paragraph (13), by striking ''and 509''.

(5) Section 122 of title 17, United States Code, is amended—

(A) in subsection (d), by striking ''and 509'';

(B) in subsection (e), by striking ''sections 509 and 510'' and inserting ''section 510''; and

(C) in subsection (f)(1), by striking ''and 509''.

(6) Section 411(b) of title 17, United States Code, is amended by striking ''sections 509 and 510'' and inserting ''section 510''.

(b) OTHER AMENDMENTS.—Section 596(c)(2)(c) of the Tariff Act of 1950 (19 U.S.C. 1595a(c)(2)(c)) is amended by striking ''or 509''.

TITLE IV—COORDINATION AND STRATEGIC PLANNING OF FEDERAL EFFORT AGAINST COUNTERFEITING AND PIRACY

SEC. 401. INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR.

(a) INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR.—The President shall appoint, by and with the advice and consent of the Senate, an Intellectual Property Enforcement Coordinator (in this title referred to as the ''IPEC'') to serve within the Executive Office of the President. As an exercise of the rulemaking power of the Senate, any nomination of the IPEC submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on the Judiciary.

(b) DUTIES OF IPEC.—

(1) IN GENERAL.—The IPEC shall—

(A) chair the interagency intellectual property enforcement advisory committee established under subsection (b)(3)(A);

(B) coordinate the development of the Joint Strategic Plan against counterfeiting and piracy by the advisory committee under section 403;

(C) assist in the implementation of the Joint Strategic Plan by the departments and agencies listed in subsection (b)(3)(A);

(D) report directly to the President and Congress regarding domestic and international intellectual property enforcement programs;

(E) report to Congress, as provided in section 404, on the implementation of the Joint Strategic Plan, and make recommendations to Congress for improvements in Federal intellectual property enforcement efforts; and

(F) carry out such other functions as the President may direct.

(2) LIMITATION ON AUTHORITY.—The IPEC may not control or direct any law enforcement agency in the exercise of its investigative or prosecutorial authority.

(3) ADVISORY COMMITTEE.—

(A) ESTABLISHMENT.—There is established an interagency intellectual property enforcement advisory committee composed of the IPEC, who shall chair the committee, and Senate-confirmed representatives of the following departments and agencies who are involved in intellectual property enforcement, and who are, or are appointed by, the respective heads of those departments and agencies:

(i) The Office of Management and Budget.

(ii) The Department of Justice.

(iii) The United States Patent and Trademark Office and other relevant units of the Department of Commerce.

(iv) The Office of the United States Trade Representative.

(v) The Department of State, the United States Agency for International Development, and the Bureau of International Narcotics Law Enforcement.

(vi) The Department of Homeland Security, United States Customs and Border Protection, and United States Immigration and Customs Enforcement.

(vii) The Food and Drug Administration of the Department of Health and Human Services.

(viii) The United States Copyright Office.

(ix) Any such other agencies as the President determines to be substantially involved in the efforts of the Federal Government to combat counterfeiting and piracy.

(B) FUNCTIONS.—The advisory committee established under subparagraph (A) shall develop the Joint Strategic Plan against counterfeiting and piracy under section 403.

(c) COMPENSATION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following: ''United States Intellectual Property Enforcement Coordinator.''.

SEC. 402. DEFINITION.

For purposes of this title, the term ''intellectual property enforcement'' means matters relating to the enforcement of laws protecting copyrights, patents, trademarks, other forms of intellectual property, and trade secrets, both in the United States and abroad, including in particular matters relating to combating counterfeit and pirated goods.

SEC. 403. JOINT STRATEGIC PLAN.

(a) PURPOSE.—The objectives of the Joint Strategic Plan against counterfeiting and piracy that is referred to in section 401(b)(1)(B) (in this section referred to as the ''joint strategic plan'') are the following:

(1) Reducing counterfeit and pirated goods in the domestic and international supply chain.

(2) Identifying and addressing structural weaknesses, systemic flaws, or other unjustified impediments to effective enforcement action against the financing, production, trafficking, or sale of counterfeit or pirated goods.

(3) Ensuring that information is identified and shared among the relevant departments and agencies, to the extent permitted by law and consistent with law enforcement protocols for handling information, to aid in the objective of arresting and prosecuting individuals and entities that are knowingly involved in the financing, production, trafficking, or sale of counterfeit or pirated goods.

(4) Disrupting and eliminating domestic and international counterfeiting and piracy networks.

(5) Strengthening the capacity of other countries to protect and enforce intellectual property rights, and reducing the number of countries that fail to enforce laws preventing the financing, production, trafficking, and sale of counterfeit and pirated goods.

(6) Working with other countries to establish international standards and policies for the effective protection and enforcement of intellectual property rights.

(7) Protecting intellectual property rights overseas by—

(A) working with other countries and exchanging information with appropriate law enforcement agencies in other countries relating to individuals and entities involved in the financing, production, trafficking, or sale of pirated or counterfeit goods;

(B) using the information described in subparagraph (A) to conduct enforcement activities in cooperation with appropriate law enforcement agencies in other countries; and

(C) building a formal process for consulting with companies, industry associations, labor unions, and other interested groups in other countries with respect to intellectual property enforcement.

(b) TIMING.—Not later than 12 months after the date of the enactment of this Act, and not later than December 31 of every third year thereafter, the IPEC shall submit the joint strategic plan to the Committee on the Judiciary and the Committee on Appropriations of the Senate, and to the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives.

(c) RESPONSIBILITY OF THE IPEC.—During the development of the joint strategic plan, the IPEC—

(1) shall provide assistance to, and coordinate the meetings and efforts of, the appropriate officers and employees of departments and agencies represented on the advisory committee appointed under section 401(b)(3) who are involved in intellectual property enforcement; and

(2) may consult with private sector experts in intellectual property enforcement in furtherance of providing assistance to the members of the advisory committee appointed under section 401(b)(3).

(d) RESPONSIBILITIES OF OTHER DEPARTMENTS AND AGENCIES.—In the development and implementation of the joint strategic plan, the heads of the departments and agencies identified under section 401(b)(3) shall—

(1) designate personnel with expertise and experience in intellectual property enforcement matters to work with the IPEC and other members of the advisory committee; and

(2) share relevant department or agency information with the IPEC and other members of the advisory committee, including statistical information on the enforcement activities of the department or agency against counterfeiting or piracy, and plans for addressing the joint strategic plan.

(e) CONTENTS OF THE JOINT STRATEGIC PLAN.—Each joint strategic plan shall include the following:

(1) A detailed description of the priorities identified for carrying out the objectives in the joint strategic plan, including activities of the Federal Government relating to intellectual property enforcement.

(2) A detailed description of the means and methods to be employed to achieve the priorities, including the means and methods for improving the efficiency and effectiveness of the Federal Government's enforcement efforts against counterfeiting and piracy.

(3) Estimates of the resources necessary to fulfill the priorities identified under paragraph (1).

(4) The performance measures to be used to monitor results under the joint strategic plan during the following year.

(5) An analysis of the threat posed by violations of intellectual property rights, including the costs to the economy of the United States resulting from violations of intellectual property laws, and the threats to public health and safety created by counterfeiting and piracy.

(6) An identification of the departments and agencies that will be involved in implementing each priority under paragraph (1).

(7) A strategy for ensuring coordination between the IPEC and the departments and agencies identified under paragraph (6), including a process for oversight by the executive branch of, and accountability among, the departments and agencies responsible for carrying out the strategy.

(8) Such other information as is necessary to convey the costs imposed on the United States economy by, and the threats to public health and safety created by, counterfeiting and piracy, and those steps that the Federal Government intends to take over the period covered by the succeeding joint strategic plan to reduce those costs and counter those threats.

(f) ENHANCING ENFORCEMENT EFFORTS OF FOREIGN GOVERNMENTS.—The joint strategic plan shall include programs to provide training and technical assistance to foreign governments for the purpose of enhancing the efforts of such governments to enforce laws against counterfeiting and piracy. With respect to such programs, the joint strategic plan shall—

(1) seek to enhance the efficiency and consistency with which Federal resources are expended, and seek to minimize duplication, overlap, or inconsistency of efforts;

(2) identify and give priority to those countries where programs of training and technical assistance can be carried out most effectively and with the greatest benefit to reducing counterfeit and pirated products in the United States market, to protecting the intellectual property rights of United States persons and their licensees, and to protecting the interests of United States persons otherwise harmed by violations of intellectual property rights in those countries;

(3) in identifying the priorities under paragraph (2), be guided by the list of countries identified by the United States Trade Representative under section 182(a) of the Trade Act of 1974 (19 U.S.C. 2242(a)); and

(4) develop metrics to measure the effectiveness of the Federal Government's efforts to improve the laws and enforcement practices of foreign governments against counterfeiting and piracy.

(g) DISSEMINATION OF THE JOINT STRATEGIC PLAN.—The joint strategic plan shall be posted for public access on the website of the White House, and shall be disseminated to the public through such other means as the IPEC may identify.

SEC. 404. REPORTING.

(a) ANNUAL REPORT.—Not later than December 31 of each calendar year beginning in 2009, the IPEC shall submit a report on the activities of the advisory committee during the preceding fiscal year. The annual report shall be submitted to Congress, and disseminated to the people of the United States, in the manner specified in subsections (b) and (g) of section 403.

(b) CONTENTS.—The report required by this section shall include the following:

(1) The progress made on implementing the strategic plan and on the progress toward fulfillment of the priorities identified under section 403(e)(1).

(2) The progress made in efforts to encourage Federal, State, and local government departments and agencies to accord higher priority to intellectual property enforcement.

(3) The progress made in working with foreign countries to investigate, arrest, and prosecute entities and individuals involved in the financing, production, trafficking, and sale of counterfeit and pirated goods.

(4) The manner in which the relevant departments and agencies are working together and sharing information to strengthen intellectual property enforcement.

(5) An assessment of the successes and shortcomings of the efforts of the Federal Government, including departments and agencies represented on the committee established under section 401(b)(3).

(6) Recommendations for any changes in enforcement statutes, regulations, or funding levels that the advisory committee considers would significantly improve the effectiveness or efficiency of the effort of the Federal Government to combat counterfeiting and piracy and otherwise strengthen intellectual property enforcement, including through the elimination or consolidation of duplicative programs or initiatives.

(7) The progress made in strengthening the capacity of countries to protect and enforce intellectual property rights.

(8) The successes and challenges in sharing with other countries information relating to intellectual property enforcement.

(9) The progress made under trade agreements and treaties to protect intellectual property rights of United States persons and their licensees.

SEC. 405. SAVINGS AND REPEALS.

(a) REPEAL OF COORDINATION COUNCIL.—Section 653 of the Treasury and General Government Appropriations Act, 2000 (15 U.S.C. 1128) is repealed.

(b) CURRENT AUTHORITIES NOT AFFECTED.—Except as provided in subsection (a), nothing in this title shall alter the authority of any department or agency of the United States (including any independent agency) that relates to—

(1) the investigation and prosecution of violations of laws that protect intellectual property rights;

(2) the administrative enforcement, at the borders of the United States, of laws that protect intellectual property rights; or

(3) the United States trade agreements program or international trade.

(c) REGISTER OF COPYRIGHTS.—Nothing in this title shall derogate from the duties and functions of the Register of Copyrights.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this title.

TITLE V—DEPARTMENT OF JUSTICE PROGRAMS

SEC. 501. LOCAL LAW ENFORCEMENT GRANTS.

(a) AUTHORIZATION.—Section 2 of the Computer Crime Enforcement Act (42 U.S.C. 3713) is amended—

(1) in subsection (b), by inserting after ''computer crime'' each place it appears the following: '', including infringement of copyrighted works over the Internet''; and

(2) in subsection (e)(1), relating to authorization of appropriations, by striking ''fiscal years 2001 through 2004'' and inserting ''fiscal years 2009 through 2013''.

(b) GRANTS.—The Office of Justice Programs of the Department of Justice shall make grants to eligible State or local law enforcement entities, including law enforcement agencies of municipal governments and public educational institutions, for training, prevention, enforcement, and prosecution of intellectual property theft and infringement crimes (in this subsection referred to as ''IP–TIC grants''), in accordance with the following:

(1) USE OF IP–TIC GRANT AMOUNTS.—IP–TIC grants may be used to establish and develop programs to do the following with respect to the enforcement of State and local true name and address laws and State and local criminal laws on anti-piracy, anti-counterfeiting, and unlawful acts with respect to goods by reason of their protection by a patent, trademark, service mark, trade secret, or other intellectual property right under State or Federal law:

(A) Assist State and local law enforcement agencies in enforcing those laws, including by reimbursing State and local entities for expenses incurred in performing enforcement operations, such as overtime payments and storage fees for seized evidence.

(B) Assist State and local law enforcement agencies in educating the public to prevent, deter, and identify violations of those laws.

(C) Educate and train State and local law enforcement officers and prosecutors to conduct investigations and forensic analyses of evidence and prosecutions in matters involving those laws.

(D) Establish task forces that include personnel from State or local law enforcement entities, or both, exclusively to conduct investigations and forensic analyses of evidence and prosecutions in matters involving those laws.

(E) Assist State and local law enforcement officers and prosecutors in acquiring computer and other equipment to conduct investigations and forensic analyses of evidence in matters involving those laws.

(F) Facilitate and promote the sharing, with State and local law enforcement officers and prosecutors, of the expertise and information of Federal law enforcement agencies about the investigation, analysis, and prosecution of matters involving those laws and criminal infringement of copyrighted works, including the use of multijurisdictional task forces.

(2) ELIGIBILITY.—To be eligible to receive an IP–TIC grant, a State or local government entity shall provide to the Attorney General—

(A) assurances that the State in which the government entity is located has in effect laws described in paragraph (1);

(B) an assessment of the resource needs of the State or local government entity applying for the grant, including information on the need for reimbursements of base salaries and overtime costs, storage fees, and other expenditures to improve the investigation, prevention, or enforcement of laws described in paragraph (1); and

(C) a plan for coordinating the programs funded under this section with other federally funded technical assistance and training programs, including directly funded local programs such as the Edward Byrne Memorial Justice Assistance Grant Program authorized by subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(3) MATCHING FUNDS.—The Federal share of an IP–TIC grant may not exceed 90 percent of the costs of the program or proposal funded by the IP–TIC grant, unless the Attorney General waives, in whole or in part, the 90 percent requirement.

(4) AUTHORIZATION OF APPROPRIATIONS.—

(A) AUTHORIZATION.—There is authorized to be appropriated to carry out this subsection the sum of $25,000,000 for each of fiscal years 2009 through 2013.

(B) LIMITATION.—Of the amount made available to carry out this subsection in any fiscal year, not more than 3 percent may be used by the Attorney General for salaries and administrative expenses.

SEC. 502. IMPROVED INVESTIGATIVE AND FORENSIC RESOURCES FOR ENFORCEMENT OF LAWS RELATED TO INTELLECTUAL PROPERTY CRIMES.

(a) IN GENERAL.—Subject to the availability of appropriations to carry out this subsection, the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall, with respect to crimes related to the theft of intellectual property—

(1) create an operational unit of the Federal Bureau of Investigation—

(A) to work with the Computer Crime and Intellectual Property section of the Department of Justice on the investigation and coordination of intellectual property crimes that are complex, committed in more than 1 judicial district, or international;

(B) that consists of at least 10 agents of the Bureau; and

(C) that is located at the headquarters of the Bureau;

(2) ensure that any unit in the Department of Justice responsible for investigating computer hacking or intellectual property crimes is assigned at least 2 agents of the Federal Bureau of Investigation (in addition to any agent assigned to such unit as of the date of the enactment of this Act) to support such unit for the purpose of investigating or prosecuting intellectual property crimes; and

(3) implement a comprehensive program—

(A) the purpose of which is to train agents of the Federal Bureau of Investigation in the investigation and prosecution of such crimes and the enforcement of laws related to intellectual property crimes;

(B) that includes relevant forensic training related to investigating and prosecuting intellectual property crimes; and

(C) that requires such agents who investigate or prosecute intellectual property crimes to attend the program annually.

(b) ORGANIZED CRIME TASK FORCE.—Subject to the availability of appropriations to carry out this subsection, and not later than 120 days after the date of the enactment of this Act, the Attorney General, through the United States Attorneys' Offices, the Computer Crime and Intellectual Property section, and the Organized Crime and Racketeering section of the Department of Justice, and in consultation with the Federal Bureau of Investigation and other Federal law enforcement agencies, shall create a Task Force to develop and implement a comprehensive, long-range plan to investigate and prosecute international organized crime syndicates engaging in or supporting crimes relating to the theft of intellectual property.

(c) AUTHORIZATION.—There are authorized to be appropriated to carry out this section $12,000,000 for each of fiscal years 2009 through 2013.

SEC. 503. ADDITIONAL FUNDING FOR RESOURCES TO INVESTIGATE AND PROSECUTE CRIMINAL ACTIVITY INVOLVING COMPUTERS.

(a) ADDITIONAL FUNDING FOR RESOURCES.—

(1) AUTHORIZATION.—In addition to amounts otherwise authorized for resources to investigate and prosecute criminal activity involving computers, there are authorized to be appropriated for each of the fiscal years 2009 through 2013—

(A) $10,000,000 to the Director of the Federal Bureau of Investigation; and

(B) $10,000,000 to the Attorney General for the Criminal Division of the Department of Justice.

(2) AVAILABILITY.—Any amounts appropriated under paragraph (1) shall remain available until expended.

(b) USE OF ADDITIONAL FUNDING.—Funds made available under subsection (a) shall be used by the Director of the Federal Bureau of Investigation and the Attorney General, for the Federal Bureau of Investigation and the Criminal Division of the Department of Justice, respectively, to—

(1) hire and train law enforcement officers to—

(A) investigate crimes committed through the use of computers and other information technology, including through the use of the Internet; and

(B) assist in the prosecution of such crimes; and

(2) procure advanced tools of forensic science to investigate, prosecute, and study such crimes.

SEC. 504. INTERNATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATORS.

(a) DEPLOYMENT OF ADDITIONAL COORDINATORS.—Subject to the availability of appropriations to carry out this section, the Attorney General shall, within 180 days after the date of the enactment of this Act, deploy 5 Intellectual Property Law Enforcement Coordinators, in addition to those serving in such capacity on such date of enactment. Such deployments shall be made to those countries and regions where the activities of such a coordinator can be carried out most effectively and with the greatest benefit to reducing counterfeit and pirated products in the United States market, to protecting the intellectual property rights of United States persons and their licensees, and to protecting the interests of United States persons otherwise harmed by violations of intellectual property rights in those countries. The mission of all International Intellectual Property Law Enforcement Coordinators shall include the following:

(1) Acting as liaison with foreign law enforcement agencies and other foreign officials in criminal matters involving intellectual property rights.

(2) Performing outreach and training to build the enforcement capacity of foreign governments against intellectual property-related crime in the regions in which the coordinators serve.

(3) Coordinating United States law enforcement activities against intellectual property-related crimes in the regions in which the coordinators serve.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year such sums as may be necessary for the deployment and support of all International Intellectual Property Enforcement Coordinators of the Department of Justice, including those deployed under subsection (a).

SEC. 505. ANNUAL REPORTS.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on actions taken to carry out this title.

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this title.

Mr. SPECTER. Mr. President, I am pleased to speak today on the introduction of the Enforcement of Intellectual Property Rights Act of 2008, which I am sponsoring with Senator LEAHY.

The United States has always placed a high value on creativity and innovation. As a result, we rank number 1 for innovation in the World Economic Forum's Global Competition Report. Yet, the U.S. does not even make it into the ''top 20'' countries when it comes to the protection of intellectual property. When you consider that intellectual property contributes over $5 trillion annually to our national economy, this is not acceptable.

If we want to profit from our intellectual property, then we must protect it. Counterfeiting and piracy, though, are on the rise. Counterfeiting, which at one time involved mainly ''knocking off' products in the high end and luxury goods markets, is now much more pervasive. According to FBI, Interpol, World Customs Organization and International Chamber of Commerce estimates, roughly 7–8 percent of world trade every year is in counterfeit goods. That is the equivalent of as much as $512 billion in global lost sales. Of that amount, U.S. companies annually lose between $200 billion and $250 billion in sales.

Counterfeiting, piracy, and the theft of intellectual property, are not victimless crimes. Exporters face unfair competition abroad. Non-exporters face counterfeit imports at home. Businesses face legal, health and safety risks from the threat of counterfeit goods entering their supply chains. Consumers, too, face serious health and safety risks.

For every legitimate product on the market, one can find a counterfeit version, being passed off as the same quality at a fraction of the cost. Counterfeit products run the gamut from low end products such as razor blades, shampoos, batteries, and cigarettes to more specialized products like auto and plane parts. Although these products may look real, they are not subjected to the same quality protocols as their legitimate counterparts and a consumer—be they knowing or not—uses the product at their own risk. Counterfeit products that are substandard goods have been the subject of public recalls and seizures in industries ranging from food products both human and pet consumables, pharmaceuticals both lifestyle and life-saving drugs, aircraft or automobile parts, toys and baby furniture, and building and manufacturing components. The potential for harm is very serious. Every day, our newspapers are filled with stories of the damage that counterfeit products have caused.

Further, each counterfeit item that is manufactured overseas and distributed in the United States costs American workers their jobs. According to the U.S. Chamber of Commerce, overall intellectual property theft costs 750,000 U.S. jobs a year. These are losses that directly impact each and every person listening to my voice by inhibiting the growth of the American economy. Although private industry is more vigilant than ever in pursuing infringers civilly and devoting enormous amounts of human and financial capital to combat violations of their intellectual property rights, the U.S. Government must do its part to protect one of our Nation's most valuable assets.

Building on the work of the House with the Prioritizing Resources and Organization of Intellectual Property Act of 2007, better known as the PRO-IP Act, and Senators BAYH and VOINOVICH with the Intellectual Property Rights Enforcement Act, Senators LEAHY and I have crafted a comprehensive intellectual property that responds to that need.

This bill will provide the current and future administrations with the additional tools it needs to combat intellectual property theft by, amongst other things: Giving the Attorney General the authority, in lieu of a criminal action, to pursue a civil action for intellectual property infringement and collect damages and profits resulting from infringement; enhancing the civil and criminal penalties for intellectual property violations in order to deter new criminal organizations from entering into ''the business'' of counterfeiting and piracy; elevating the intergovernmental coordination of intellectual property enforcement efforts; and authorizing funding for State and local governments for pursuing intellectual property related investigations.

Alan Greenspan stated in ''The Age of Turbulence'' that, ''Arguably, the single most important economic decision our lawmakers and courts will face in the next twenty-five years is to clarify the rules of intellectual property.''

Great legislation does not happen overnight—nor should it. When considering any reforms to something as valuable as our intellectual property assets—whether it is reforms to our Nations patents, trademarks, or more relevantly to this group, copyright laws—we must act cautiously and with a careful understanding of the effects that any such changes will have on the interested industries. That said, I believe that we can work together in the few remaining days that is left in this Congress in not just a bipartisan but a nonpartisan manner to pass and send this bill to the President this Congress.

By Mr. LIEBERMAN (for himself and Mr. COLEMAN):

S. 3324. A bill to provide leadership regarding science, technology, engineering, and mathematics education programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. LIEBERMAN. Mr. President, the United States has been the most innovative, technologically capable economy in the world. Yet our science, technology, engineering, and mathematics, STEM, education system is failing to ensure that children in our great Nation are entering the workforce with the skills and knowledge required for success in the global economy of the 21st century. Meanwhile, the rest of the world is catching up. I rise today on behalf of myself and Senator COLEMAN to introduce the Science, Technology, Engineering, and Mathematics Education for the 21st Century Act. This legislation seeks to promote and coordinate existing science and technology education efforts and to improve the communication among various stakeholders so that tomorrow's workforce will be prepared to continue the American tradition of innovation and enterprise. There are three pieces to this legislation, which is based largely on the recommendations found in the National Science Board's action plan on STEM education.

First, this legislation charters a new, independent, and non-Federal National Council for Science, Technology, Engineering, and Mathematics Education, which will coordinate and facilitate STEM education initiatives across the Nation and inform policymakers and the public on the state of STEM education across the United States. This council will be housed in the National Academy of Sciences and will have a Board of Directors comprised of representatives from the various State and local governments, organizations, businesses, and industries that have a stake in the success of STEM education. This includes current and former governors, chief State school officers, representatives from local school boards, classroom teachers, school administrators, representatives from institutions of higher education, private foundations, and representatives of businesses and industries.

Much of the innovation and success in improving STEM education throughout the country is being done locally, in the State's counties, and school systems, often partnering with businesses and industry in need of a STEM-educated workforce. The Council will bring together these various stakeholders to facilitate and coordinate the flow of information on STEM education systems to various stakeholders; to independently evaluate the success of Federal and non-Federal STEM initiatives; to fairly determine and promote best STEM classroom practices; to encourage the acquisition and retention of highly effective STEM teachers; and to inform policymakers and the general public on the state of STEM education across the United States. More specifically, the Council will also be responsible for issuing an annual report on the state of STEM education in America to the States, Congress, the Federal Government, and the general public; disseminating results from research on teaching and learning in STEM fields to State educational agencies; helping the States establish their own Science, Technology, Engineering, and Mathematics Education boards or councils; proposing models for the effective professional development of teachers in STEM fields; and launching and updating a publicly available website that hosts a database consisting of information on scholarships, fellowships, grants, internships, and summer programs for both students and teachers.

Second, this bill authorizes a full standing Committee on Science, Technology, Engineering, and Mathematics Education within the National Science and Technology Council, NSTC, which is part of the Executive Office of the President. This committee would be responsible for coordinating STEM education across all the Federal agencies involved in such efforts, including the National Laboratories, the Department of Commerce, the Environmental Protection Agency, the National Science Foundation, and NASA. Currently, the NSTC Committee on Science has a Subcommittee on Education and Workforce Development with jurisdiction over issues relating to STEM education. However, this subcommittee has been largely inactive: it rarely meets and has not been effective in coordinating the efforts of these different agencies. Senator COLEMAN and I believe that the state of STEM education in the Nation today warrants a full committee at the NSTC that will meet regularly to assess the effectiveness of such Federal efforts.

Finally in this legislation we direct the Secretary of Education to undergo a comprehensive review of all programs within the Department of Education relating to education in science, technology, engineering, and mathematics fields, and to evaluate them for their effectiveness. We want to make sure that the current panoply of such programs are effective, target the students they are intended to target, are not unnecessarily redundant, complement State and local educational agencies, and are promoted effectively so that students, teachers, and parents know about these efforts. We also direct the Department to submit to Congress a plan for addressing the challenges they identify in this review.

I believe this legislation will help science, technology, engineering, and mathematics education in this country, and will help students, parents, teachers, and other educators as we strive to prepare tomorrow's workforce for the global economy of the 21st century.

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

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

S. 3324

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 ''Science, Technology, Engineering, and Mathematics Education for the 21st Century Act of 2008''.

SEC. 2. NATIONAL COUNCIL FOR SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS EDUCATION.

(a) ESTABLISHMENT.—There is established a federally chartered corporation to be known as the National Council for Science, Technology, Engineering, and Mathematics Education (referred to in this section as the ''STEM Council'') which shall be incorporated under the laws of the District of Columbia and which shall have the powers granted in this section. Notwithstanding any other provision of law, the STEM Council is a private entity and is not an agency, instrumentality, authority, entity, or establishment of the United States Government.

(b) MISSION.—The mission of the STEM Council is to—

(1) provide guidance and coordinate and facilitate the flow of information about science, technology, engineering, and mathematics (referred to in this section as ''STEM'') education among State, local, and private entities, as well as the general public;

(2) provide leadership by identifying critical deficiencies in the Nation's STEM education systems and proposing strategies for members of the STEM Council to collaborate to address such deficiencies;

(3) serve as a primary focal point for Federal agencies to improve their coordination with, and service to, State and local school systems; and

(4) promote STEM fields and educate the general public about the value of a STEM education.

(c) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The management of the STEM Council shall be vested in a Board of Directors composed of 23 voting members and 10 nonvoting members, who shall meet not less frequently than quarterly.

(2) INITIAL APPOINTMENTS.—The Director of the National Science Foundation, in consultation with the Chairmen and Ranking Members of the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Education and Labor of the House of Representatives, and the Committee on Science and Technology of the House of Representatives, shall appoint, in accordance with this subsection, the initial voting members of the Board of Directors of the STEM Council.

(3) APPOINTMENTS.—The Director of the National Science Foundation, in consultation with the STEM Council, shall appoint, in accordance with this subsection, a new voting member of the Board of Directors of the STEM Council after a voting member has completed service on the STEM Council.

(4) REPRESENTATIVES ON THE STEM COUNCIL.—

(A) VOTING SEATS.—The Board of Directors of the STEM Council shall consist of the following voting members:

(i) Two State Governors or former Governors.

(ii) Two chief State school officers.

(iii) One local school board representative.

(iv) One representative from the National Science Board.

(v) One active classroom teacher in science or mathematics.

(vi) One active classroom teacher in engineering.

(vii) One school administrator.

(viii) One representative from organizations representing community colleges.

(ix) One representative from organizations representing research universities.

(x) One representative from technological institutes or organizations representing technological institutes.

(xi) One representative from informal STEM education organizations.

(xii) Three representatives from local school boards, State legislatures, and other State and local officials.

(xiii) Two representatives from various teacher, parent-teacher, and STEM education organizations.

(xiv) Three representatives from various organizations representing industry and business associations with an interest in hiring a STEM-educated workforce.

(xv) Two representatives from various organizations that support educational initiatives, the Nation's global competitiveness, or STEM education specifically.

(B) NONVOTING SEATS.—The Board of Directors of the STEM Council shall consist of nonvoting members for the following seats:

(i) The two co-chairs of the STEM Committee established under section 3.

(ii) One representative from the majority party and 1 representative from the minority party from each of the following committees:

(I) The Committee on Health, Education, Labor, and Pensions of the Senate.

(II) The Committee on Commerce, Science, and Transportation of the Senate.

(III) The Committee on Education and Labor of the House of Representatives.

(IV) The Committee on Science and Technology of the House of Representatives.

(C) CO-CHAIRS.—The Board of Directors of the STEM Council shall have 2 co-chairs who shall be a Governor, or former Governor, and a chief State school officer appointed by the Director of the National Science Foundation in consultation with the Chairmen and Ranking Members of the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Education and Labor of the House of Representatives, and the Committee on Science and Technology of the House of Representatives.

(5) NATIONAL ACADEMY OF SCIENCES SUPPORT.—The Director of the National Science Foundation shall enter into an agreement with the National Academy of Sciences—

(A) to provide staff support to the Board of Directors of the STEM Council; and

(B) to carry out any projects proposed by the Board of Directors or required under this Act.

(d) ACTIVITIES.—

(1) MANDATORY ACTIVITIES.—

(A) IN GENERAL.—The STEM Council shall carry out the following activities:

(i) Provide leadership by identifying critical deficiencies in the Nation's STEM education systems and proposing strategies for members of the STEM Council to collaborate to address such deficiencies.

(ii) Not later than 18 months after the date of enactment of this Act, and annually thereafter, the STEM Council shall submit a report that highlights the status of STEM education in the Nation and the States to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Education and Labor of the House of Representatives, the Committee on Science and Technology of the House of Representatives, the Governor of each of the 50 States, and the STEM Committee established in section 3. Each report submitted under this clause shall be widely available to the public and posted on the website of the STEM Council.

(iii) Evaluate progress toward the goals described in the National Action Plan of the National Science Board on a regular and sustained basis, including the effectiveness of the STEM Committee, established under section 3, in coordinating kindergarten through graduate-level Federal STEM education programs.

(iv) Serve as a national resource by disseminating through the Department of Education to State and local educational agencies information on research on teaching and learning, including best educational practices, and encouraging the adoption of such practices.

(v) Help States establish or strengthen existing P–16 or P–20 STEM councils and serve as a technical resource center for P–16 or P–20 STEM councils.

(vi) Utilize scientifically valid studies to determine programs that raise student achievement or interest in STEM fields.

(vii) Direct the Department of Education to promote the programs described in clause (vi) to State educational agencies and local educational agencies.

(viii) Work with all stakeholders to address—

(I) the removal of barriers that exist throughout the Nation in recruiting and retaining effective STEM educators; and

(II) the removal of barriers imposed by local educational agencies on the movement of STEM educators between local educational agencies both within and across States.

(ix) Propose models for effective teacher professional development.

(x) Launch a public education initiative to—

(I) promote STEM fields to the general public, especially to stakeholders that represent individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a, 1885b); and

(II) raise awareness that STEM education is essential for the Nation's success.

(B) DATABASE ON FEDERAL AND NON-FEDERAL SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS EDUCATIONAL INITIATIVES.—

(i) ESTABLISHMENT AND MAINTENANCE OF DATABASE.—

(I) DATABASE.—The STEM Council shall establish and maintain, on a public website of the STEM Council, a database consisting of information on Federal scholarships, fellowships, and other Federal STEM and relevant non-STEM education programs recommended by the STEM Committee established under section 3, as well as non-Federal STEM and relevant non-STEM programs that have been recommended by the Board of Directors of the STEM Council. The database may include information on grants, fellowships, internships, and summer programs at the primary through graduate levels.

(II) SPECIFIC INFORMATION.—The database established under subclause (I) shall include specific information on any programs of financial assistance that are targeted to individuals of a particular gender, ethnicity, or other demographic group, especially individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b)

(ii) DISSEMINATION OF INFORMATION ON DATABASE.—The STEM Council shall take such actions as may be necessary on an ongoing basis, including sending notices to educational institutions, to disseminate information on the database established and maintained under this subparagraph.

(iii) LISTING DIRECT CONTACT INFORMATION.—The database established under clause (i) shall provide contact information for awards, including the sponsor's website.

(iv) APPROVAL.—The STEM Council shall review submissions for inclusion on the database established under clause (i) from prospective sponsors to exclude fraudulent scholarship offers and scholarship programs that require the payment of an application fee or other charge. The STEM Council may—

(I) remove information from the database if the STEM Council determines the information is not in accordance with the purpose of the database; or

(II) promote those programs most effective at improving student achievement or interest in STEM fields.

(v) ACCURACY.—Information on scholarships included in the database established under clause (i) shall be updated not less often than quarterly in order to provide current and accurate information regarding available scholarships.

(vi) LINKS.—The database established under clause (i) may have links to other privately operated online tools designed to help students find scholarships and educational opportunities that are approved by the STEM Council.

(2) PERMISSIVE ACTIVITIES.—The STEM Council may carry out any of the following activities:

(A) Coordinate the development and maintenance of integrated data management systems to consolidate and share information among States on STEM educational practices, research, and outcomes, including student assessment results, teacher quality measures, and high school graduation requirements.

(B) Assemble a database of opportunities for teachers interested in summer research in a STEM field in a Government research laboratory, institution of higher education, or STEM-related business or industry.

(C) Assemble a database of grants and other funding opportunities for STEM classroom resources to be used by teachers and local educational agencies.

(e) CORPORATE POWERS.—Not later than 1 year after the date of enactment of this Act, the STEM Council shall become a body corporate and as such shall have the authority to do the following:

(1) To adopt and use a corporate seal.

(2) To have succession until dissolved by an Act of Congress.

(3) To appoint, through the actions of its Board of Directors, officers and employees of the STEM Council, to define their duties and responsibilities, fix their compensations, and to dismiss at will such officers or employees.

(4) To prescribe, through the actions of its Board of Directors, bylaws not inconsistent with Federal law and the laws of the District of Columbia, regulating the manner in which its general business may be conducted and

the manner in which the privileges granted to it by law may be exercised.

(5) To exercise, through the actions of its Board of Directors, all powers specifically granted by the provisions of this section, and such incidental powers as shall be necessary.

(6) To develop a source of revenue that is in addition to Federal funds provided under this section and that extends later than fiscal year 2013.

(7) To pay for a small personnel staff, office space, equipment, and travel, including employing not less than 1 executive staff member and 2 professional staff members.

(f) CORPORATE FUNDS.—

(1) DEPOSIT OF FUNDS.—The Board of Directors shall deposit all funds of the STEM Council in federally chartered and insured depository institutions until such funds are disbursed under paragraph (2).

(2) DISBURSEMENT OF FUNDS.—Funds of the STEM Council may be disbursed only for purposes that are—

(A) approved by the chief executive of the STEM Council; and

(B) in accordance with the mission of the STEM Council as specified in subsection (b).

(g) USE OF MAILS.—The STEM Council may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

(h) FEDERAL ADVISORY COMMITTEE ACT.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App) shall not apply to the STEM Council.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the STEM Council to carry out this section $2,000,000 for each of fiscal years 2009 through 2013.

SEC. 3. COMMITTEE ON SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS EDUCATION.

(a) ESTABLISHMENT.—There is established within the National Science and Technology Council a standing committee on science, technology, engineering, and mathematics education (referred to in this section as the ''STEM Committee'').

(b) MEMBERS.—

(1) IN GENERAL.—The STEM Committee shall be composed of representatives from all Federal departments and agencies involved in STEM education, including the National Laboratories.

(2) CO-CHAIRS.—The STEM Committee shall have 2 co-chairs—

(A) one of whom shall be a representative from the National Science Foundation; and

(B) one of whom shall be the Secretary of Education or a designee of the Secretary.

(c) DUTIES AND RESPONSIBILITIES.—The STEM Committee shall—

(1) coordinate all programs related to education in science, technology, engineering, and mathematics (referred to in this section as ''STEM'') fields funded or administered by the Federal Government;

(2) conduct an ongoing inventory and assessment of the effectiveness of all Federal education initiatives related to STEM fields, especially with regard to how the initiatives are serving those individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a, 1885b);

(3) disseminate the annual report received from the STEM Council under section 2(d)(1)(A)(ii) to each Federal Agency engaged in STEM education efforts;

(4) coordinate among all Federal departments and agencies involved in STEM education research and programs to inventory and assess the effectiveness and coherence of Federally funded STEM education programs; and

(5) represent all Federal agencies on the National Council for STEM Education and coordinate the STEM education efforts of the Federal government with State and local governments through the National Council for STEM Education.

(d) MEETINGS.—The STEM Committee shall meet not less frequently than quarterly.

SEC. 4. EVALUATION OF SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS PROGRAMS OF THE DEPARTMENT OF EDUCATION.

(a) IN GENERAL.—The Secretary of Education shall conduct, directly or though contract, a comprehensive evaluation of all science, technology, engineering, and mathematics education (referred to in this section as ''STEM education'') programs of the Department of Education.

(b) PROGRAMS TO EVALUATE.—The STEM education programs that shall be evaluated under subsection (a) shall include the following:

(1) The Mathematics and Science Partnerships program.

(2) The Math Now for Elementary School and Middle School Students program.

(3) The Math Skills for Secondary School Students program.

(4) The Minority Science and Engineering Improvement program.

(5) The Teachers for a Competitive Tomorrow program.

(6) The National Science and Mathematics Access to Retain Talent grant program (the National SMART grant program).

(7) The Teacher Education Assistance for College and Higher Education Grants program (the TEACH Grants program).

(8) The Academic Competitiveness Grant program.

(9) Grant programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006.

(c) CONTENT OF EVALUATION.—The evaluation conducted under subsection (a) shall—

(1) examine the coherence of the Department of Education in administering STEM education programs, including identifying unnecessary or harmful overlap;

(2) identify the unmet State and local education needs that could be filled with reorganization or expansion of STEM education programs existing on the date of the evaluation;

(3) evaluate the ease of access to information on STEM education programs by students, educators, and others target populations;

(4) evaluate the ability of the Department of Education to disseminate information from the STEM Council established under section 2; and

(5) propose how the Department of Education can address any needs or problems identified in paragraphs (2), (3), and (4).

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Education, or the entity with whom the Secretary contracts to conduct the evaluation under subsection (a), shall submit to Congress a report of such evaluation.

By Mr. DURBIN:

S. 3326. A bill to authorize the Secretary of Education to award grants to local education agencies to improve college access; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN. Mr. President, I rise today to introduce legislation designed to make it easier for students to reach college and to succeed in college. An educated workforce is crucial to the success of the American economy, but too many students are not receiving a college education. Of students who were in eighth grade in 2000, only 20 percent of the lowest-income students will earn a college degree by 2012, compared to 68 percent of the highest income group. Every student who wants to go to college should have that opportunity, and we should provide them with the tools they need. Today, I am introducing the Pathways to College Act, which creates grants for school districts to help them increase the number of low-income students who are entering and succeeding in college.

Lack of guidance and information about college has a real effect on students in poor schools. The Consortium on Chicago School Research recently released a report called ''Potholes on the Road to College.'' This report examines the difficulties faced by Chicago Public School students during the college application process. The Consortium discovered that only 41 percent of Chicago Public School students who wanted to go to college took the steps necessary to apply to and enroll in a 4-year college. Only one-third of students enrolled in a college that matched their qualifications. Of the students who had the grades and test scores to attend a selective college, 29 percent went to a community college or skipped college entirely.

But the most heartbreaking parts of this report are the profiles of smart, ambitious students who find themselves helplessly lost in the college admissions process. One student, Amelia, worked hard in her classes at Silverstein High School and dreamed of studying criminal justice. Amelia never received the help she needed to achieve her goal. The wait was two weeks to see a guidance counselor, and so Amelia learned about the process on her own. She did not apply for federal financial aid and ended up at a local community college where she described the classes as easy and ''just like high school.''

The Pathways to College Act would create a grant program for school districts serving low-income students to increase their college-enrollment rates. The Consortium's ''Potholes'' report found that the most important factor in whether students enroll in a four-year college is if they attended a school where teachers create a strong college-going culture and help students with the process of applying. The Pathways to College Act would provide the funding to help school districts improve the college-going culture in schools and guide students through the college admissions process.

A school with a strong college culture is a school where the expectation throughout the school is that every single student will go to college. Administrators, teachers, and staff members embrace and act on that goal every day. With a grant through the Pathways to College Act, schools could train student leaders, integrate college planning into the curriculum, and provide opportunities for college fairs, college tours, and workplace visits. Most

importantly, teachers and counselors would be trained in post-secondary advising so that they can motivate their students to reach for high goals. Every school in the school district would incorporate these elements and others into a school-wide plan of action to strengthen the college-going culture.

KIPP Ascend Charter School in Chicago is a school that does this well. A few weeks ago, a group of eighth grade students from KIPP came to my constituent coffee here in Washington. Each one was wearing a shirt that said ''I am college bound.'' Every child and each teacher believed the message on those shirts, and I did too. The facts prove we are all right. Eighty percent of students in the KIPP program nation-wide attend college. KIPP accomplishes this by training teachers to constantly reinforce high college expectations. If you walk into a KIPP classroom, you see college posters on the walls and hear college discussed as part of the day's lesson. If you ask the students about going to college, they will answer without hesitation and might tell you about their last field trip to a local university. When you combine those clear, high expectations with KIPP's rigorous college-preparatory curriculum, you can understand their enormous success.

The Pathways to College Act will also give school districts the tools they need to help students meet their high aspirations. Participating school districts would provide each high school freshman with at least one meeting with an advisor to discuss their goals post-graduation and create a plan to reach those goals. School districts would also educate students and families about the intricacies of the college application process and the federal financial aid application process. The average student-to-counselor ratio in high schools is 315 to one, but schools could use grant money to hire more counselors and form partnerships with community groups to help students with college applications and financial aid forms. School districts also consider could create college planning classes or establish a college access center in their school.

The Pathways to College Act provides flexibility to school districts to achieve higher college enrollment rates, but requires that each school accurately track their results so we can learn from what works. Chicago Public Schools is doing a great job—both in tackling the problem and in documenting progress. Under the leadership of CEO Arne Duncan, Chicago Public Schools responded aggressively to the ''Potholes'' report. A team of postsecondary coaches were deployed in high schools to work with students and counselors. To ensure that financial aid is not a roadblock, FAFSA completion rates are tracked so that counselors can follow-up with students. A spring-break college tour took 500 students to see colleges across the country. Because Chicago Public Schools tracks its college enrollment rates, we know that their efforts are working. Half of the 2007 graduating class enrolled in college, an increase of 6.5 percent in four years. The national increase was less than one percent in the same time-frame. Nationally, the number of African-American graduates going to college has decreased by six percent over the last four years while the Chicago rate has increased by almost eight percent.

Applying to college is not easy. Low-income students often need the most help to achieve their college dreams. When schools focus on college and provide the tools to get there, students make the connection between the work they are doing now and their future goals in college and life. Students in those schools are more likely enroll in college and are also more likely to work hard in high school to be prepared for college when they arrive. The bill I am introducing today tries to ensure that lack of information never prevents a student from achieving his or her college dream.

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

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

S. 3326

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 ''Pathways to College Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) An educated workforce is crucial to the success of the United States economy. Access to higher education for all students is critical to maintaining an educated workforce. More than 80 percent of the 23,000,000 jobs that will be created in the next 10 years will require postsecondary education. Only 36 percent of all 18- to 24-year olds are currently enrolled in postsecondary education.

(2) Workers with bachelor's degrees earn on average $17,000 more annually than workers with only high school diplomas. Workers who earn bachelor's degrees can be expected to earn $1,000,000 more over a lifetime than those who only finished high school.

(3) The ACT recommends that schools—

(A) provide student guidance to engage students in college and career awareness; and

(B) ensure that students enroll in a rigorous curriculum to prepare for postsecondary education.

(4) The Department of Education reports that the average student-to-counselor ratio in high schools is 315:1. This falls far above the ratio recommended by the American School Counselor Association, which is 250:1. While school counselors at private schools spend an average of 58 percent of their time on postsecondary education counseling, counselors in public schools spend an average of 25 percent of their time on postsecondary education counseling.

(5) While just 57 percent of students from the lowest income quartile enroll in college, 87 percent of students from the top income quartile enroll. Of students who were in eighth grade in 2000, only 20 percent of the lowest-income students are projected to attain a bachelor's degree by 2012, compared to 68 percent of the highest income group, according to the Advisory Committee on Student Financial Assistance in 2006.

(6) A recent report by the Consortium on Chicago School Research found that only 41 percent of Chicago public school students who aspire to go to college took the steps necessary to apply to and enroll in a 4-year institution of higher education. The report also reveals that only ⅓ of Chicago students who want to attend a 4-year institution of higher education enroll in a school that matches their qualifications. Even among students qualified to attend a selective college, 29 percent enrolled in a community college or did not enroll at all.

(7) The Consortium found that many Chicago public school students do not complete the Free Application for Federal Student Aid, even though students who apply for Federal financial aid are 50 percent more likely to enroll in college. Sixty-five percent of public secondary school counselors at low-income schools believe that students and parents are discouraged from considering college as an option due to lack of knowledge about financial aid.

(8) Low-income and first-generation families often overestimate the cost of tuition and underestimate available aid; students from these backgrounds have access to fewer college application resources and financial aid resources than other groups, and are less likely to fulfill their postsecondary plans as a result.

(9) College preparation intervention programs can double the college-going rates for at-risk youth, can expand students' educational aspirations, and can boost college enrollment and graduation rates.

SEC. 3. GRANT PROGRAM.

(a) DEFINITIONS.—In this Act:

(1) ESEA DEFINITIONS.—The terms ''local educational agency'' and ''Secretary'' have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—The term ''eligible local educational agency'' means a local educational agency in which a majority of the secondary schools served by the agency are high-need secondary schools.

(3) HIGH-NEED SECONDARY SCHOOL.—The term ''high-need secondary school'' means a secondary school in which not less than 50 percent of the students enrolled in the school are—

(A) eligible for a school lunch program under the Richard B. Russell National School Lunch Act;

(B) eligible to be counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)); or

(C) in families eligible for assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(b) COMPETITIVE GRANTS TO ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—The Secretary is authorized to award grants, on a competitive basis, to eligible local educational agencies to carry out the activities described in this section.

(c) DURATION.—Grants awarded under this section shall be 5 years in duration.

(d) DISTRIBUTION.—In awarding grants under this section, the Secretary shall ensure that the grants are distributed among the different geographic regions of the United States, and among eligible local educational agencies serving urban and rural areas.

(e) APPLICATIONS.—

(1) IN GENERAL.—Each eligible local educational agency desiring a grant under this section shall submit an application to the

Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(2) CONTENTS.—Each application submitted under paragraph (1) shall include a description of the program to be carried out with grant funds and—

(A) a description of the secondary school population to be targeted by the program, the particular college-access needs of such population, and the resources available for meeting such needs;

(B) an outline of the objectives of the program, including goals for increasing the number of college applications submitted by each student, increasing Free Application for Federal Student Aid completion rates, and increasing school-wide college enrollment rates across the local educational agency;

(C) a description of the local educational agency's plan to work cooperatively with programs funded under chapters 1 and 2 of subpart 2 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–11 et seq. and 1070a–21 et seq.), including the extent to which the agency commits to sharing facilities, providing access to students, and developing compatible record-keeping systems;

(D) a description of the activities, services, and training to be provided by the program, including a plan to provide structure and support for all students in the college search, planning, and application process;

(E) a description of the methods to be used to evaluate the outcomes and effectiveness of the program;

(F) an assurance that grant funds will be used to supplement, and not supplant, any other Federal, State, or local funds available to carry out activities of the type carried out under the grant;

(G) an explanation of the method used for calculating college enrollment rates for each secondary school served by the eligible local educational agency that is based on externally verified data, and, when possible, aligned with existing State or local methods; and

(H) a plan to make the program sustainable over time, including the use of matching funds from non-Federal sources.

(3) METHOD OF CALCULATING ENROLLMENT RATES.—

(A) IN GENERAL.—A method included in an application under paragraph (2)(G)—

(i) shall, at a minimum, track students' first-time enrollment in institutions of higher education; and

(ii) may track progress toward completion of a postsecondary degree.

(B) DEVELOPMENT IN CONJUNCTION.—An eligible local educational agency may develop a method pursuant to paragraph (2)(G) in conjunction with an existing public or private entity that currently maintains such a method.

(f) SPECIAL CONSIDERATION.—In awarding grants under this section, the Secretary shall give special consideration to applications from eligible local educational agencies serving schools with the highest percentages of poverty.

(g) USE OF FUNDS.—

(1) IN GENERAL.—An eligible local educational agency that receives a grant under this section shall develop and implement, or expand, a program to increase the number of low-income students who enroll in postsecondary educational institutions, including institutions with competitive admissions criteria.

(2) REQUIRED USE OF FUNDS.—Each program funded under this section shall—

(A) provide professional development to secondary school teachers and counselors in postsecondary education advising;

(B) ensure that each student has not less than 1 meeting, not later than the first semester of the first year of secondary school, with a school counselor, college access personnel (including personnel involved in programs funded under chapters 1 and 2 of subpart 2 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–11 et seq. and 1070a–21 et seq.)), trained teacher, or other professional or organization, such as a community-based organization, approved by the school, to discuss postsecondary options, outline postsecondary goals, and create a plan to achieve those goals;

(C) provide information to all students enrolled in the secondary schools served by the eligible local educational agency and parents beginning in the first year of secondary school on—

(i) the economic and social benefits of higher education;

(ii) college expenses, including information about expenses by institutional type, differences between sticker price and net price, and expenses beyond tuition;

(iii) paying for college, including the availability, eligibility, and variety of financial aid; and

(iv) the forms and processes associated with applying for financial aid; and

(D) ensure that each secondary school served by the eligible local educational agency develops a comprehensive, school-wide plan of action to strengthen the college-going culture within the school.

(3) ALLOWABLE USE OF FUNDS.—Each program funded under this section may—

(A) establish mandatory postsecondary planning classes for secondary school seniors to assist the seniors in the college preparation and application process;

(B) hire and train postsecondary coaches with expertise in the college-going process;

(C) increase the number of counselors who specialize in the college-going process serving students;

(D) train student leaders to assist in the creation of a college-going culture in their schools;

(E) provide opportunities for students to explore postsecondary opportunities outside of the school setting, such as college fairs, career fairs, college tours, workplace visits, or other similar activities;

(F) assist students with test preparation, college applications, Federal financial aid applications, and scholarship applications;

(G) establish partnerships with programs funded under chapters 1 and 2 of subpart 2 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–11 et seq. and 1070a–21 et seq.)), and with community and nonprofit organizations to increase college-going rates at secondary schools served by the eligible local educational agency;

(H) provide long-term postsecondary follow up with graduates of the secondary schools served by the eligible local educational agencies, including increasing alumni involvement in mentoring and advising roles within the secondary school;

(I) create and maintain a postsecondary access center in the school setting that provides information on colleges and universities, career opportunities, and financial aid options and provide a setting in which professionals working in programs funded under chapters 1 and 2 of subpart 2 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–11 et seq. and 1070a–21 et seq.)), can meet with students;

(J) deliver college and career planning curriculum as a stand-alone course, or embedded in other classes, for all students in secondary school; and

(K) increase parent involvement in preparing for postsecondary opportunities.

(h) SUPPLEMENT, NOT SUPPLANT.—Funds made available under this section shall be used to supplement, and not supplant, other Federal, State, and local funds available to carry out the activities described in this section.

(i) TECHNICAL ASSISTANCE.—The Secretary, directly or through contracting through a full and open process with 1 or more organizations that have demonstrated experience providing technical assistance to raise school-wide college enrollment rates in local educational agencies in not less than 3 States, shall provide technical assistance to grantees in carrying out this section. The technical assistance shall—

(1) provide assistance in the calculation and analysis of college-going rates for all grant recipients;

(2) provide semi-annual analysis to each grant recipient recommending best practices based on a comparison of the recipient's data with that of secondary schools with similar demographics; and

(3) provide annual best practices conferences for all grant recipients.

(j) EVALUATION AND REPORTING REQUIREMENTS.—

(1) MEASURE ENROLLMENT AND TRACK DATA.—Each eligible local educational agency that receives a grant under this section shall—

(A) measure externally verified school-wide college enrollment; and

(B) track data that leads to increased college going, including college applications sent and Free Application for Federal Student Aid forms filed.

(2) EVALUATIONS BY GRANTEES.—Each eligible local educational agency that receives a grant under this section shall—

(A) conduct periodic evaluations of the effectiveness of the activities carried out under the grant toward increasing school-wide college-going rates;

(B) use such evaluations to refine and improve activities conducted with the grant and the performance measures for such activities; and

(C) make the results of such evaluations publicly available, including by providing public notice of such availability.

(3) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a report concerning the results of—

(A) the evaluations conducted under paragraph (2); and

(B) an evaluation conducted by the Secretary to analyze the effectiveness and efficacy of the activities conducted with grants under this section.

By Mr. KERRY (for himself and Mr. GRASSLEY):

S. 3327. A bill amend title XIX of the Social Security Act to improve the State plan amendment option for providing home and community-based services under the Medicaid program, and for other purposes; to the Committee on Finance.

Mr. KERRY. Mr. President, every day millions of Americans are faced with significant challenges when it comes to meeting their own personal needs or caring for a loved one who needs significant support. Many elderly Americans and individuals of all ages with disabilities need long-term services and supports, such as assistance with dressing, bathing, preparing meals, and managing chronic conditions. They prefer to live and work in their community, and it is time that the Federal

Government and states act as better partners to provide improved access to home- and community-based long-term care services HCBS.

The Medicaid program, administered by the states but jointly financed with the Federal Government, is our Nation's largest payer for long-term care services. Medicaid spends about $100 billion per year on long-term services. Despite recognizing that per person spending is much lower in community settings, and that people generally prefer community services, Medicaid still spends 61 percent of its long-term services spending in institutional settings. This disparity is due, in large part, to a strong access and payment bias in the program for institutional care.

Where Medicaid does offer HCBS, it is often in short supply, with more than 280,000 Medicaid beneficiaries on waiting lists for HCBS waiver services. Further, eligibility for HCBS waiver services requires beneficiaries to already have a very significant level of disability before gaining access they must meet a level of functional need that qualifies them for a nursing home. This not only contributes to the unmet needs of those in the community but it also prevents states from providing services that can help prevent beneficiaries from one day requiring high-cost institutional care. While institutionalized care may be an appropriate choice for some, it should be just that: a choice that individuals and families are allowed to make about the most appropriate setting for their own care.

The result of Medicaid's ''institutional bias'' is that, according to the Georgetown Health Policy Institute, ''one in five persons living in the community with a need for assistance from others has unmet needs, endangering their health and demeaning their quality of life.'' This is simply unacceptable.

The lack of long-term care options available to families has a significant impact on their lives. Many of my constituents are affected, as are countless Americans across the country. Take the parents living in Newton who continue to wait for their physically disabled daughter, Julia, to have the opportunity to live independently. Julia is a young adult and instead of starting out on her own, she must watch as her peers move away and begin their independent lives- something she yearns to do as well. Growing up, Julia was able to attend Newton schools and keep a similar schedule to other children in the community but now has limited social interaction, as there is no other option but to live at home with her parents. Julia's parents are her full time caregivers and would like to see her able to live in an environment more conducive to both her needs and their own. Community based care or home based care in an apartment she could share with a roommate are options Julia and her parents would mutually benefit from. As the opportunities for the future grow for her peers, Julia's options continue to shrink because housing and home based supports for adults with disabilities are limited at best. I have heard many stories similar to that of Julia, which emphasizes the urgency in which HCBS is needed. In addition to individual lives being put on hold, entire families must deal with the consequences of inadequate services available to their family members.

Access to HCBS affects individuals in all stages of life, including Americans dealing with conditions such as Alzheimer's. Take Ann Bowers and Jay Sweatman for example. Without access to HCBS services, Jay, who suffers from early onset Alzheimer's, was forced to first move into assisted living and then a nursing home. By the time Jay was approved for HCBS it was too late and he was no longer able to live independently. Ann had worked tirelessly to coordinate her husband's care and get additional HCBS support but the process was so difficult that by the time help came, it was simply too late. This is just one case of many where early HCBS intervention would have not only saved time, money, and stress for family members, but would have made a significant impact on the quality of life and personal independence for Jay and Ann.

So today, I am introducing with my colleague from the Finance Committee, Senator GRASSLEY, the Empowered at Home Act, a bill that increases access to home and community based services by giving states new tools and incentives to make these services more available to those in need. It has four basic parts.

First, it will improve the Medicaid HCBS State Plan Amendment Option by giving states more flexibility in determining eligibility for which services they can offer under the program, which will create greater options for individuals in need of long-term supports. In return we ask that states no longer cap enrollment and that services be offered throughout the entire state.

Second, the bill ensures that the same spousal impoverishment protections offered for new nursing home beneficiaries will be in place for those opting for home and community based services. In addition, low-income recipients of home and community based services will be able to keep more of their assets when they become eligible for Medicaid, allowing them to stay in their community as long as possible.

Third, the Empowered at Home Act addresses the financial needs of spouses and family members caring for a loved one by offering tax-related provisions to support family caregivers and promote the purchase of meaningful private long-term care insurance.

Finally, the bill seeks to improve the overall quality of home and community based services available by providing grants for states to invest in organizations and systems that can help to ensure a sufficient supply of high quality workers, promote health, and transform home and community based care to be more consumer-centered.

I want to say a word about the Community Choice Act, legislation long-championed by Senator HARKIN that would make HCBS a mandatory benefit in Medicaid. I am a strong supporter and co-sponsor of this landmark legislation, and look forward to working for its enactment as soon as possible. The legislation I am introducing today seeks to supplement—not supplant—the Community Choice Act by increasing access to HCBS for those who are disabled but not at a sufficient level of need to qualify for nursing home services. These two complimentary bills will finally make HCBS a right while vastly improving HCBS availability to vulnerable citizens of varying levels of disability.

I would also like to thank a number of organizations who have been integral to the development of the Empowered at Home Act and who have endorsed it today, including the National Council on Aging, the Arc of the United States, United Cerebral Palsy, the American Association of Homes and Services for the Aging, the Alzheimer's Association, the National Association of Area Agencies on Aging, the American Geriatrics Society, ANCOR, the Trust for America's Health, and SEIU.

Improving access to a range of long term care services for the elderly and Americans of all ages with disabilities is an issue that must not stray from the top of our Nation's health care priorities. I believe this legislation can move forward in a bi-partisan manner to dramatically improve access to high-quality home- and community-based care for the millions of Americans who are not receiving the significant supports and services they need.

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

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

S. 3327

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Empowered at Home Act of 2008''.

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

TITLE I—STRENGTHENING THE MEDICAID HOME AND COMMUNITY-BASED STATE PLAN AMENDMENT OPTION

SEC. 101. REMOVAL OF BARRIERS TO PROVIDING HOME AND COMMUNITY-BASED SERVICES UNDER STATE PLAN AMENDMENT OPTION FOR INDIVIDUALS IN NEED.

(a) PARITY WITH INCOME ELIGIBILITY STANDARD FOR INSTITUTIONALIZED INDIVIDUALS.—Paragraph (1) of section 1915(i) of the Social Security Act (42 U.S.C. 1396n(i)) is amended by striking ''150 percent of the poverty line (as defined in section 2110(c)(5))'' and inserting ''300 percent of the supplemental security income benefit rate established by section 1611(b)(1)''.

(b) ADDITIONAL STATE OPTION TO PROVIDE HOME AND COMMUNITY-BASED SERVICES TO INDIVIDUALS ELIGIBLE FOR SERVICES UNDER A WAIVER.—Section 1915(i) of the Social Security Act (42 U.S.C. 1396n(i)) is amended by adding at the end the following new paragraph:

''(6) STATE OPTION TO PROVIDE HOME AND COMMUNITY-BASED SERVICES TO INDIVIDUALS ELIGIBLE FOR SERVICES UNDER A WAIVER.—

''(A) IN GENERAL.—A State that provides home and community-based services in accordance with this subsection to individuals who satisfy the needs-based criteria for the receipt of such services established under paragraph (1)(A) may, in addition to continuing to provide such services to such individuals, elect to provide home and community-based services in accordance with the requirements of this paragraph to individuals who are eligible for home and community-based services under a waiver approved for the State under subsection (c), (d), or (e) or under section 1115 to provide such services, but only for those individuals whose income does not exceed 300 percent of the supplemental security income benefit rate established by section 1611(b)(1).

''(B) APPLICATION OF SAME REQUIREMENTS FOR INDIVIDUALS SATISFYING NEEDS-BASED CRITERIA.—Subject to subparagraph (C), a State shall provide home and community-based services to individuals under this paragraph in the same manner and subject to the same requirements as apply under the other paragraphs of this subsection to the provision of home and community-based services to individuals who satisfy the needs-based criteria established under paragraph (1)(A).

''(C) AUTHORITY TO OFFER DIFFERENT TYPE, AMOUNT, DURATION, OR SCOPE OF HOME AND COMMUNITY-BASED SERVICES.—A State may offer home and community-based services to individuals under this paragraph that differ in type, amount, duration, or scope from the home and community-based services offered for individuals who satisfy the needs-based criteria established under paragraph (1)(A), so long as such services are within the scope of services described in paragraph (4)(B) of subsection (c) for which the Secretary has the authority to approve a waiver and do not include room or board.''.

(c) REMOVAL OF LIMITATION ON SCOPE OF SERVICES.—Paragraph (1) of section 1915(i) of the Social Security Act (42 U.S.C. 1396n(i)), as amended by subsection (a), is amended by striking ''or such other services requested by the State as the Secretary may approve''

(d) OPTIONAL ELIGIBILITY CATEGORY TO PROVIDE FULL MEDICAID BENEFITS TO INDIVIDUALS RECEIVING HOME AND COMMUNITY-BASED SERVICES UNDER A STATE PLAN AMENDMENT.—

(1) IN GENERAL.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(A) in subclause (XVIII), by striking ''or'' at the end;

(B) in subclause (XIX), by adding ''or'' at the end; and

(C) by inserting after subclause (XIX), the following new subclause:

''(XX) who are eligible for home and community-based services under needs-based criteria established under paragraph (1)(A) of section 1915(i), or who are eligible for home and community-based services under paragraph (6) of such section, and who will receive home and community-based services pursuant to a State plan amendment under such subsection;''.

(2) CONFORMING AMENDMENTS.—

(A) Section 1903(f)(4) of the Social Security Act (42 U.S.C. 1396b(f)(4)) is amended in the matter preceding subparagraph (A), by inserting ''1902(a)(10)(A)(ii)(XX),'' after ''1902(a)(10)(A)(ii)(XIX),''.

(B) Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended in the matter preceding paragraph (1)—

(i) in clause (xii), by striking ''or'' at the end;

(ii) in clause (xiii), by adding ''or'' at the end; and

(iii) by inserting after clause (xiii) the following new clause:

''(xiv) individuals who are eligible for home and community-based services under needs-based criteria established under paragraph (1)(A) of section 1915(i), or who are eligible for home and community-based services under paragraph (6) of such section, and who will receive home and community-based services pursuant to a State plan amendment under such subsection,''.

(e) ELIMINATION OF OPTION TO LIMIT NUMBER OF ELIGIBLE INDIVIDUALS OR LENGTH OF PERIOD FOR GRANDFATHERED INDIVIDUALS IF ELIGIBILITY CRITERIA IS MODIFIED.—Paragraph (1) of section 1915(i) of such Act (42 U.S.C. 1396n(i)) is amended—

(1) by striking subparagraph (C) and inserting the following:

''(C) PROJECTION OF NUMBER OF INDIVIDUALS TO BE PROVIDED HOME AND COMMUNITY-BASED SERVICES.—The State submits to the Secretary, in such form and manner, and upon such frequency as the Secretary shall specify, the projected number of individuals to be provided home and community-based services.''; and

(2) in subclause (II) of subparagraph (D)(ii), by striking ''to be eligible for such services for a period of at least 12 months beginning on the date the individual first received medical assistance for such services'' and inserting ''to continue to be eligible for such services after the effective date of the modification and until such time as the individual no longer meets the standard for receipt of such services under such pre-modified criteria''.

(f) ELIMINATION OF OPTION TO WAIVE STATEWIDENESS.—Paragraph (3) of section 1915(i) of such Act (42 U.S.C. 1396n(3)) is amended by striking ''section 1902(a)(1) (relating to statewideness) and''.

(g) EFFECTIVE DATE.—The amendments made by this section take effect on the first day of the first fiscal year quarter that begins after the date of enactment of this Act.

SEC. 102. STATE OPTION TO PROVIDE HOME AND COMMUNITY-BASED SERVICES TO INDIVIDUALS FOR WHOM SUCH SERVICES ARE LIKELY TO PREVENT, DELAY, OR DECREASE THE LIKELIHOOD OF AN INDIVIDUAL'S NEED FOR INSTITUTIONALIZED CARE.

(a) STATE PLAN AMENDMENT REQUIRED.—

(1) IN GENERAL.—Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended by adding at the end the following new subsection:

''(k) STATE PLAN AMENDMENT OPTION TO PROVIDE HOME AND COMMUNITY-BASED SERVICES TO INDIVIDUALS FOR WHOM SUCH SERVICES ARE LIKELY TO PREVENT, DELAY, OR DECREASE THE LIKELIHOOD OF AN INDIVIDUAL'S NEED FOR INSTITUTIONALIZED CARE.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, a State that has an approved State plan amendment under subsection (i) may provide, through a State plan amendment for the provision of medical assistance for home and community-based services that are within the scope of services described in paragraph (4)(B) of subsection (c) for which the Secretary has the authority to approve a waiver and do not include room or board to individuals—

''(A) who are not otherwise eligible for medical assistance under the State plan or under a waiver of such plan;

''(B) whose income does not exceed 300 percent of the supplemental security income benefit rate established by section 1611(b)(1); and

''(C) who satisfy such needs-based criteria for determining eligibility for medical assistance for such services as the State shall establish in accordance with paragraph (2).

''(2) REQUIREMENT FOR NEEDS-BASED CRITERIA.—In establishing needs-based criteria for purposes of determining eligibility for medical assistance for home and community-based services under this subsection, a State shall specify the specific physical, mental, cognitive, or intellectual impairments, or the inability of an individual to perform 1 or more specific activities of daily living (as defined in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986) or the need for significant assistance to perform such activities, for which the State determines that the provision of home and community-based services are reasonably expected to prevent, delay, or decrease the likelihood of an individual's need for institutionalized care.

''(3) APPLICATION OF SAME REQUIREMENTS FOR PROVIDING HOME AND COMMUNITY-BASED

SERVICES UNDER SUBSECTION (i).—Subject to paragraphs (4) and (5), a State shall provide home and community-based services to individuals under this paragraph in the same manner and subject to the same requirements as apply to the provision of home and community-based services to individuals under subsection (i).

''(4) AUTHORITY TO LIMIT NUMBER OF INDIVIDUALS.—A State may limit the number of individuals who are eligible to receive home and community-based services under this subsection and may establish waiting lists for the receipt of such services.

''(5) AUTHORITY TO OFFER DIFFERENT TYPE, AMOUNT, DURATION, OR SCOPE OF HOME AND COMMUNITY-BASED SERVICES.—A State may offer home and community-based services to individuals under this subsection that differ in type, amount, duration, or scope from the home and community-based services offered for individuals under paragraph (1)(A) of subsection (i) and, if applicable, under paragraph (6) of such subsection.''.

(2) OPTIONAL CATEGORICALLY NEEDY GROUP; STATE OPTION TO LIMIT BENEFITS TO HOME AND COMMUNITY-BASED SERVICES OR TO PROVIDE FULL MEDICAL ASSISTANCE.—

(A) IN GENERAL.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended—

(i) in subparagraph (A)(ii), as amended by section 101(d)(1)—

(I) in subclause (XIX), by striking ''or'' at the end;

(II) in subclause (XX), by adding ''or'' at the end; and

(III) by inserting after subclause (XX), the following new subclause:

''(XXI) who are eligible for home and community-based services under section 1915(k) and who will receive home and community-based services pursuant to a State plan amendment under such subsection;''; and

(ii) in the matter following subparagraph (G)—

(I) by striking ''and (XIV)'' and inserting ''(XIV)''; and

(II) by inserting '', and (XV) at the option of the State, the medical assistance made available to an individual described in section 1915 (k) who is eligible for medical assistance only because of subparagraph (A)(ii)(XXI) may be limited to medical assistance for home and community-based services described in a State plan amendment submitted under that section'' before the semicolon.

(B) CONFORMING AMENDMENTS.—

(i) Section 1903(f)(4) of the Social Security Act (42 U.S.C. 1396b(f)(4)), as amended by section 101(d)(2)(A), is amended in the matter preceding subparagraph (A), by inserting ''1902(a)(10)(A)(ii)(XXI),'' after ''1902(a)(10)(A)(ii)(XX),''.

(ii) Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)), as amended by section 101(d)(2)(B), is amended in the matter preceding paragraph (1)—

(I) in clause (xiii), by striking ''or'' at the end;

(II) in clause (xiv), by adding ''or'' at the end; and

(iii) by inserting after clause (xiv) the following new clause:

''(xv) who are eligible for home and community-based services under section 1915(k) and who will receive home and community-based services pursuant to a State plan amendment under such subsection,''.

(b) EFFECTIVE DATE.—The amendments made by this section take effect on the first day of the first fiscal year quarter that begins after the date of enactment of this Act.

SEC. 103. IMPLEMENTATION ASSISTANCE GRANTS FOR STATES ELECTING TO PROVIDE HOME AND COMMUNITY-BASED SERVICES UNDER MEDICAID THROUGH THE STATE PLAN AMENDMENT OPTION.

(a) AUTHORITY TO AWARD GRANTS.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall award grants to eligible States to provide incentives to States for the implementation of State plan amendments that meet the requirements of section 1915(i) of the Social Security Act (42 U.S.C. 1396n(i)).

(b) ELIGIBLE STATE.—For purposes of this section, an eligible State is a State that—

(1) has an approved State plan amendment described in subsection (a); and

(2) submits an application to the Secretary, in such form and manner as the Secretary shall require, specifying the costs the State will incur in implementing such amendment and such additional information as the Secretary may require.

(c) AMOUNT AND DURATION OF GRANTS.—

(1) AMOUNT.—The Secretary shall determine the amount to be awarded all eligible States under this section for a fiscal year based on the applications submitted by such States and the amount available for such fiscal year under subsection (d).

(2) LIMITATION ON DURATION OF AWARD.—A State may receive a grant under this section for not more than 3 consecutive fiscal years.

(d) APPROPRIATIONS.—There are appropriated, from any funds in the Treasury not otherwise appropriated, $40,000,000 for each of fiscal years 2009 through 2013 for making grants to States under this section. Funds appropriated under this subsection for a fiscal year shall remain available for expenditure through September 30, 2013.

TITLE II—STATE GRANTS TO FACILITATE HOME AND COMMUNITY-BASED SERVICES AND PROMOTE HEALTH

SEC. 201. REAUTHORIZATION OF MEDICAID TRANSFORMATION GRANTS AND EXPANSION OF PERMISSIBLE USES IN ORDER TO FACILITATE THE PROVISION OF HOME AND COMMUNITY-BASED AND OTHER LONG-TERM CARE SERVICES.

(a) 2-YEAR REAUTHORIZATION; INCREASED FUNDING.—Section 1903(z)(4)(A) of the Social Security Act (42 U.S.C. 1396b(z)(4)(A)) is amended—

(1) in clause (i), by striking ''and'' at the end;

(2) in clause (ii), by striking the period at the end and inserting ''; and''; and

(3) by inserting after clause (ii), the following new clauses:

''(iii) $150,000,000 for fiscal year 2009; and

''(iv) $150,000,000 for fiscal year 2010.''.

(b) EXPANSION OF PERMISSIBLE USES.—Section 1903(z)(2) of the Social Security Act (42 U.S.C. 1396b(z)(2)) is amended by adding at the end the following new subparagraphs:

''(G)(i) Methods for ensuring the availability and accessibility of home and community-based services in the State, recognizing multiple delivery options that take into account differing needs of individuals, through the creation or designation (in consultation with organizations representing elderly individuals and individuals of all ages with physical, mental, cognitive, or intellectual impairments, and organizations representing the long-term care workforce, including organized labor, and health care and direct service providers) of one or more statewide or regional public entities or nonprofit organizations (such as fiscal intermediaries, agencies with choice, home care commissions, public authorities, worker associations, consumer-owned and controlled organizations (including representatives of individuals with severe intellectual or cognitive impairment), area agencies on aging, independent living centers, aging and disability resource centers, or other disability organizations) which may —

''(I) develop programs where qualified individuals provide home- and community-based services while solely or jointly employed by recipients of such services;

''(II) facilitate the training and recruitment of qualified health and direct service professionals and consumers who use services;

''(III) recommend or develop a system to set wages and benefits, and recommend commensurate reimbursement rates;

''(IV) with meaningful ongoing involvement from consumers and workers (or their respective representatives), develop procedures for the appropriate screening of workers, create a registry or registries of available workers, including policies and procedures to ensure no interruption of care for eligible individuals;

''(V) assist consumers in identifying workers;

''(VI) act as a fiscal intermediary;

''(VII) assist workers in finding employment, including consumer-directed employment;

''(VIII) provide funding for disability organizations, aging organizations, or other organizations, to assume roles that promote consumers' ability to acquire the necessary skills for directing their own services and financial resources; or

''(IX) create workforce development plans on a regional or statewide basis (or both), to ensure a sufficient supply of qualified home and community-based services workers, including reviews and analyses of actual and potential worker shortages, training and retention programs for home and community-based services workers (which may include, as determined appropriate by the State, allowing participation in such training to count as an allowable work activity under the State temporary assistance for needy families program funded under part A of title IV), and plans to assist consumers with finding and retaining qualified workers.

''(ii) Nothing in clause (i) shall be construed as prohibiting the use of funds made available to carry out this subparagraph for start-up costs associated with any of the activities described in subclauses (I) through (IX), as requiring any consumer to hire workers who are listed in a worker registry developed with such funds, or to limit the ability of consumers to hire or fire their own workers.

''(H) Methods for providing an integrated and efficient system of long-term care through a review of the Federal, State, local, and private long-term care resources, services, and supports available to elderly individuals and individuals of all ages with physical, mental, cognitive, or intellectual impairments and the development and implementation of a plan to fully integrate such resources, services, and supports by aggregating such resources, services, and supports to create a consumer-centered and cost-effective resource and delivery system and expanding the availability of home and community-based services, and that is designed to result in administrative savings, consolidation of common activities, and the elimination of redundant processes.''.

(c) ALLOCATION OF FUNDS.—

(1) ELIMINATION OF CURRENT LAW REQUIREMENTS FOR ALLOCATION OF FUNDS.—Section 1903(z)(4)(B) of the Social Security Act (42 U.S.C. 1396b(z)(4)(B)) is amended by striking the second and third sentences.

(2) ASSURANCE OF FUNDS TO FACILITATE THE PROVISION OF HOME AND COMMUNITY-BASED SERVICES AND INTEGRATED SYSTEMS OF LONG-

TERM CARE.—Section 1903(z)(4)(B) of the Social Security Act (42 U.S.C. 1396b(z)(4)(B)), as amended by paragraph (1), is amended by inserting after the first sentence the following new sentence: ''Such method shall provide that 50 percent of such funds shall be allocated among States that design programs to adopt the innovative methods described in subparagraph (G) or (H) (or both) of paragraph (2).''.

(d) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2008.

SEC. 202. HEALTH PROMOTION GRANTS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE MEDICAID BENEFICIARY.—The term ''eligible Medicaid beneficiary'' means an individual who is enrolled in the State Medicaid plan under title XIX of the Social Security Act and—

(A) has attained the age of 60 and is not a resident of a nursing facility; or

(B) is an adult with a physical, mental, cognitive, or intellectual impairment.

(2) ELIGIBLE STATE.—The term ''eligible State'' means a State that submits an application to the Secretary for a grant under this section, in such form and manner as the Secretary shall require.

(3) EVIDENCE- AND COMMUNITY-BASED HEALTH PROMOTION PROGRAM.—The term ''evidence- and community-based health promotion program'' means a community-based program (such as a program for chronic disease self-management, physical or mental activity, falls prevention, smoking cessation, or dietary modification) that has been objectively evaluated and found to improve health outcomes or meet health promotion goals by preventing, delaying, or decreasing the severity of physical, mental, cognitive, or intellectual impairment and that meets generally accepted standards for best professional practice.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(b) AUTHORITY TO CONDUCT DEMONSTRATION PROJECT.—The Secretary shall award grants on a competitive basis to eligible States to conduct in accordance with this section an evidence- and community-based health promotion program that is designed to achieve the following objectives with respect to eligible Medicaid beneficiaries:

(1) LIFESTYLE CHANGES.—To empower eligible Medicaid beneficiaries to take more control over their own health through lifestyle changes that have proven effective in reducing the effects of chronic disease and slowing the progression of disability.

(2) DIFFUSION.—To mobilize the Medicaid, aging, disability, public health, and nonprofit networks at the State and local levels to accelerate the translation of credible research into practice through the deployment of low-cost evidence-based health promotion and disability prevention programs at the community level.

(c) SELECTION AND AMOUNT OF GRANT AWARDS.—In awarding grants to eligible States under this section and determining the amount of the awards, the Secretary shall—

(1) take into consideration the manner and extent to which the eligible State proposes to achieve the objectives specified in subsection (b); and

(2) give preference to eligible States proposing—

(A) programs through public service provider organizations or other organizations with expertise in serving eligible Medicaid beneficiaries;

(B) strong State-level collaboration across, Medicaid agencies, State units on aging, State independent living councils, State associations of Area Agencies on Aging, and State agencies responsible for public health; or

(C) interventions that have already demonstrated effectiveness and replicability in a community-based, non-medical setting.

(d) USE OF FUNDS.—An eligible State awarded a grant under this section shall use the funds awarded to develop, implement, and sustain high quality evidence- and community-based health promotion programs. As a condition of being awarded such a grant, an eligible State shall agree to—

(1) implement such programs in at least 3 geographic areas of the State; and

(2) develop the infrastructure and partnerships that will be necessary over the long-term to effectively embed evidence-and community-based health promotion programs for eligible Medicaid beneficiaries within the statewide health, aging, disability, and long-term care systems.

(e) TECHNICAL ASSISTANCE.—The Secretary shall provide assistance to eligible States awarded grants under this section, subgrantees and their partners, program organizers, and others in developing evidence-and community-based health promotion programs.

(f) PAYMENTS TO ELIGIBLE STATES; CARRYOVER OF UNUSED GRANT AMOUNTS.—

(1) PAYMENTS.—For each calendar quarter of a fiscal year that begins during the period for which an eligible State is awarded a grant under this section, the Secretary shall pay to the State from its grant award for such fiscal year an amount equal to the lesser of—

(A) the amount of qualified expenditures made by the State for such quarter; or

(B) the total amount remaining in such grant award for such fiscal year (taking into account the application of paragraph (2)).

(2) CARRYOVER OF UNUSED AMOUNTS.—Any portion of a State grant award for a fiscal year under this section remaining available at the end of such fiscal year shall remain available for making payments to the State for the next 4 fiscal years, subject to paragraph (3).

(3) REAWARDING OF CERTAIN UNUSED AMOUNTS.—In the case of a State that the Secretary determines has failed to meet the conditions for continuation of a demonstration project under this section in a succeeding year, the Secretary shall rescind the grant award for each succeeding year, together with any unspent portion of an award for prior years, and shall add such amounts to the appropriation for the immediately succeeding fiscal year for grants under this section.

(4) PREVENTING DUPLICATION OF PAYMENT.—The payment under a demonstration project with respect to qualified expenditures shall be in lieu of any payment with respect to such expenditures that would otherwise be paid to the State under section 1903(a) of the Social Security Act (42 U.S.C. 1396a(a)). Nothing in the previous sentence shall be construed as preventing a State from being paid under such section for expenditures in a grant year for which payment is available under such section 1903(a) after amounts available to pay for such expenditures under the grant awarded to the State under this section for the fiscal year have been exhausted.

(g) EVALUATION.—Not later than 3 years after the date on which the first grant is awarded to an eligible State under this section, the Secretary shall, by grant, contract, or interagency agreement, conduct an evaluation of the demonstration projects carried out under this section that measures the health-related, quality of life, and cost outcomes for eligible Medicaid beneficiaries and includes information relating to the quality, infrastructure, sustainability, and effectiveness of such projects.

(h) APPROPRIATIONS.—There are appropriated, from any funds in the Treasury not otherwise appropriated, the following amounts to carry out this section:

(1) GRANTS TO STATES.—For grants to States, to remain available until expended—

(A) $4,000,000 for fiscal year 2009;

(B) $6,000,000 for fiscal year 2010;

(C) $8,000,000 for fiscal year 2011;

(D) $10,000,000 for fiscal year 2012; and

(E) $12,000,000 for fiscal year 2013.

(2) TECHNICAL ASSISTANCE.—For the provision of technical assistance through such center in accordance with subsection (e)—

(A) $800,000 for fiscal year 2009;

(B) $1,200,000 for fiscal year 2010;

(C) $1,600,000 for fiscal year 2011;

(D) $2,000,000 for fiscal year 2012; and

(E) $2,400,000 for fiscal year 2013.

(3) EVALUATION.—For conducting the evaluation required under subsection (g), $4,000,000 for fiscal year 2011.

TITLE III—LONG TERM CARE INSURANCE

SEC. 301. TREATMENT OF PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions) is amended by redesignating section 224 as section 225 and by inserting after section 223 the following new section:

''SEC. 224. PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

''(a) IN GENERAL.—In the case of an individual, there shall be allowed as a deduction an amount equal to the applicable percentage of the amount of eligible long-term care premiums (as defined in section 213(d)(10)) paid during the taxable year for coverage for the taxpayer and the taxpayer's spouse and dependents under a qualified long-term care insurance contract (as defined in section 7702B(b)).

''(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage shall be determined in accordance with the following table:

''For taxable years beginning in calendar year—	The applicable percentage is—
2010 or 2011	25
2012	35
2013	65
2014 or thereafter	100.

''(c) COORDINATION WITH OTHER DEDUCTIONS.—Any amount paid by a taxpayer for any qualified long-term care insurance contract to which subsection (a) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 162(l) or 213(a).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 62(a) of the Internal Revenue Code of 1986 is amended by inserting before the last sentence at the end the following new paragraph:

''(22) PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.—The deduction allowed by section 224.''.

(2) The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following new items:

''Sec. 224. Premiums on qualified long-term care insurance contracts.

''Sec. 225. Cross reference.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 302. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE NEEDS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal

Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25D the following new section:

"SEC. 25E. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE NEEDS.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable credit amount multiplied by the number of applicable individuals with respect to whom the taxpayer is an eligible caregiver for the taxable year.

''(2) APPLICABLE CREDIT AMOUNT.—For purposes of paragraph (1), the applicable credit amount shall be determined in accordance with the following table:

"For taxable years beginning in calendar year—	The applicable credit amount is—
2010	$1,000
2011	1,500
2012	2,000
2013	2,500
2014 or thereafter	3,000.

''(b) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—The amount of the credit allowable under subsection (a) shall be reduced (but not below zero) by $100 for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income exceeds the threshold amount. For purposes of the preceding sentence, the term 'modified adjusted gross income' means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

''(2) THRESHOLD AMOUNT.—For purposes of paragraph (1), the term 'threshold amount' means—

''(A) $150,000 in the case of a joint return, and

''(B) $75,000 in any other case.

''(3) INDEXING.—In the case of any taxable year beginning in a calendar year after 2010, each dollar amount contained in paragraph (2) shall be increased by an amount equal to the product of—

''(A) such dollar amount, and

''(B) the medical care cost adjustment determined under section 213(d)(10)(B)(ii) for the calendar year in which the taxable year begins, determined by substituting 'August 2009' for 'August 1996' in subclause (II) thereof.

If any increase determined under the preceding sentence is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

''(c) DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE INDIVIDUAL.—

''(A) IN GENERAL.—The term 'applicable individual' means, with respect to any taxable year, any individual who has been certified, before the due date for filing the return of tax for the taxable year (without extensions), by a physician (as defined in section 1861(r)(1) of the Social Security Act) as being an individual with long-term care needs described in subparagraph (B) for a period—

''(i) which is at least 180 consecutive days, and

''(ii) a portion of which occurs within the taxable year.

Notwithstanding the preceding sentence, a certification shall not be treated as valid unless it is made within the 39½ month period ending on such due date (or such other period as the Secretary prescribes).

''(B) INDIVIDUALS WITH LONG-TERM CARE NEEDS.—An individual is described in this subparagraph if the individual meets any of the following requirements:

''(i) The individual is at least 6 years of age and—

''(I) is unable to perform (without substantial assistance from another individual) at least 3 activities of daily living (as defined in section 7702B(c)(2)(B)) due to a loss of functional capacity, or

''(II) requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment and is unable to perform, without reminding or cuing assistance, at least 1 activity of daily living (as so defined) or to the extent provided in regulations prescribed by the Secretary (in consultation with the Secretary of Health and Human Services), is unable to engage in age appropriate activities.

''(ii) The individual is at least 2 but not 6 years of age and is unable due to a loss of functional capacity to perform (without substantial assistance from another individual) at least 2 of the following activities: eating, transferring, or mobility.

''(iii) The individual is under 2 years of age and requires specific durable medical equipment by reason of a severe health condition or requires a skilled practitioner trained to address the individual's condition to be available if the individual's parents or guardians are absent.

''(2) ELIGIBLE CAREGIVER.—

''(A) IN GENERAL.—A taxpayer shall be treated as an eligible caregiver for any taxable year with respect to the following individuals:

''(i) The taxpayer.

''(ii) The taxpayer's spouse.

''(iii) An individual with respect to whom the taxpayer is allowed a deduction under section 151(c) for the taxable year.

''(iv) An individual who would be described in clause (iii) for the taxable year if section 151(c) were applied by substituting for the exemption amount an amount equal to the sum of the exemption amount, the standard deduction under section 63(c)(2)(C), and any additional standard deduction under section 63(c)(3) which would be applicable to the individual if clause (iii) applied.

''(v) An individual who would be described in clause (iii) for the taxable year if—

''(I) the requirements of clause (iv) are met with respect to the individual, and

''(II) the requirements of subparagraph (B) are met with respect to the individual in lieu of the support test under subsection (c)(1)(D) or (d)(1)(C) of section 152.

''(B) RESIDENCY TEST.—The requirements of this subparagraph are met if an individual has as his principal place of abode the home of the taxpayer and—

''(i) in the case of an individual who is an ancestor or descendant of the taxpayer or the taxpayer's spouse, is a member of the taxpayer's household for over half the taxable year, or

''(ii) in the case of any other individual, is a member of the taxpayer's household for the entire taxable year.

''(C) SPECIAL RULES WHERE MORE THAN 1 ELIGIBLE CAREGIVER.—

''(i) IN GENERAL.—If more than 1 individual is an eligible caregiver with respect to the same applicable individual for taxable years ending with or within the same calendar year, a taxpayer shall be treated as the eligible caregiver if each such individual (other than the taxpayer) files a written declaration (in such form and manner as the Secretary may prescribe) that such individual will not claim such applicable individual for the credit under this section.

''(ii) NO AGREEMENT.—If each individual required under clause (i) to file a written declaration under clause (i) does not do so, the individual with the highest adjusted gross income shall be treated as the eligible caregiver.

''(iii) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of married individuals filing separately, the determination under this subparagraph as to whether the husband or wife is the eligible caregiver shall be made under the rules of clause (ii) (whether or not one of them has filed a written declaration under clause (i)).

''(d) IDENTIFICATION REQUIREMENT.—No credit shall be allowed under this section to a taxpayer with respect to any applicable individual unless the taxpayer includes the name and taxpayer identification number of such individual, and the identification number of the physician certifying such individual, on the return of tax for the taxable year.

''(e) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 6213(g)(2) of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of subparagraph (L), by striking the period at the end of subparagraph (M) and inserting '', and'', and by inserting after subparagraph (M) the following new subparagraph:

''(N) an omission of a correct TIN or physician identification required under section 25E(d) (relating to credit for taxpayers with long-term care needs) to be included on a return.''.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25D the following new item:

''Sec. 25E. Credit for taxpayers with long-term care needs.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 303. TREATMENT OF PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

(a) IN GENERAL.—

(1) CAFETERIA PLANS.—The last sentence of section 125(f) of the Internal Revenue Code of 1986 (defining qualified benefits) is amended by inserting before the period at the end ''; except that such term shall include the payment of premiums for any qualified long-term care insurance contract (as defined in section 7702B) to the extent the amount of such payment does not exceed the eligible long-term care premiums (as defined in section 213(d)(10)) for such contract''.

(2) FLEXIBLE SPENDING ARRANGEMENTS.—Section 106 of such Code (relating to contributions by an employer to accident and health plans) is amended by striking subsection (c) and redesignating subsection (d) as subsection (c).

(b) CONFORMING AMENDMENTS.—

(1) Section 6041 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(h) FLEXIBLE SPENDING ARRANGEMENT DEFINED.—For purposes of this section, a flexible spending arrangement is a benefit program which provides employees with coverage under which—

''(1) specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions), and

''(2) the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the value of such coverage.

In the case of an insured plan, the maximum amount reasonably available shall be determined on the basis of the underlying coverage.''.

(2) The following sections of such Code are each amended by striking ''section 106(d)'' and inserting ''section 106(c)'': sections 223(b)(4)(B), 223(d)(4)(C), 223(f)(3)(B), 3231(e)(11), 3306(b)(18), 3401(a)(22), 4973(g)(1), and 4973(g)(2)(B)(i).

(3) Section 6041(f)(1) of such Code is amended by striking ''(as defined in section 106(c)(2))''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 304. ADDITIONAL CONSUMER PROTECTIONS FOR LONG-TERM CARE INSURANCE.

(a) ADDITIONAL PROTECTIONS APPLICABLE TO LONG-TERM CARE INSURANCE.—Subparagraphs (A) and (B) of section 7702B(g)(2) of the Internal Revenue Code of 1986 (relating to requirements of model regulation and Act) are amended to read as follows:

''(A) IN GENERAL.—The requirements of this paragraph are met with respect to any contract if such contract meets—

''(i) MODEL REGULATION.—The following requirements of the model regulation:

''(I) Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and the requirements of section 6B of the model Act relating to such section 6A.

''(II) Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph (7) thereof.

''(III) Section 6C (relating to extension of benefits).

''(IV) Section 6D (relating to continuation or conversion of coverage).

''(V) Section 6E (relating to discontinuance and replacement of policies).

''(VI) Section 7 (relating to unintentional lapse).

''(VII) Section 8 (relating to disclosure), other than sections 8F, 8G, 8H, and 8I thereof.

''(VIII) Section 11 (relating to prohibitions against post-claims underwriting).

''(IX) Section 12 (relating to minimum standards).

''(X) Section 13 (relating to requirement to offer inflation protection).

''(XI) Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

''(XII) The provisions of section 28 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4) of this subsection.

''(ii) MODEL ACT.—The following requirements of the model Act:

''(I) Section 6C (relating to preexisting conditions).

''(II) Section 6D (relating to prior hospitalization).

''(III) The provisions of section 8 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4) of this subsection.

''(B) DEFINITIONS.—For purposes of this paragraph—

''(i) MODEL REGULATION.—The term 'model regulation' means the long-term care insurance model regulation promulgated by the National Association of Insurance Commissioners (as adopted as of December 2006).

''(ii) MODEL ACT.—The term 'model Act' means the long-term care insurance model Act promulgated by the National Association of Insurance Commissioners (as adopted as of December 2006).

''(iii) COORDINATION.—Any provision of the model regulation or model Act listed under clause (i) or (ii) of subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision.

''(iv) DETERMINATION.—For purposes of this section and section 4980C, the determination of whether any requirement of a model regulation or the model Act has been met shall be made by the Secretary.''.

(b) EXCISE TAX.—Paragraph (1) of section 4980C(c) of the Internal Revenue Code of 1986 (relating to requirements of model provisions) is amended to read as follows:

''(1) REQUIREMENTS OF MODEL PROVISIONS.—

''(A) MODEL REGULATION.—The following requirements of the model regulation must be met:

''(i) Section 9 (relating to required disclosure of rating practices to consumer).

''(ii) Section 14 (relating to application forms and replacement coverage).

''(iii) Section 15 (relating to reporting requirements).

''(iv) Section 22 (relating to filing requirements for marketing).

''(v) Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C.

''(vi) Section 24 (relating to suitability).

''(vii) Section 26 (relating to policyholder notifications).

''(viii) Section 27 (relating to the right to reduce coverage and lower premiums).

''(ix) Section 31 (relating to standard format outline of coverage).

''(x) Section 32 (relating to requirement to deliver shopper's guide).

''(B) MODEL ACT.—The following requirements of the model Act must be met:

''(i) Section 6F (relating to right to return).

''(ii) Section 6G (relating to outline of coverage).

''(iii) Section 6H (relating to requirements for certificates under group plans).

''(iv) Section 6J (relating to policy summary).

''(v) Section 6K (relating to monthly reports on accelerated death benefits).

''(vi) Section 7 (relating to incontestability period).

''(vii) Section 9 (relating to producer training requirements).

''(C) DEFINITIONS.—For purposes of this paragraph, the terms 'model regulation' and 'model Act' have the meanings given such terms by section 7702B(g)(2)(B).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to policies issued more than 1 year after the date of the enactment of this Act.

TITLE IV—PROMOTING AND PROTECTING COMMUNITY LIVING

SEC. 401. MANDATORY APPLICATION OF SPOUSAL IMPOVERISHMENT PROTECTIONS TO RECIPIENTS OF HOME AND COMMUNITY-BASED SERVICES.

(a) IN GENERAL.—Section 1924(h)(1)(A) of the Social Security Act (42 U.S.C. 1396r-5(h)(1)(A)) is amended by striking ''(at the option of the State)is described in section 1902(a)(10)(A)(ii)(VI)'' and inserting ''is eligible for medical assistance for home and community-based services under subsection (c), (d), (e), (i), or (k) of section 1915''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2008.

SEC. 402. STATE AUTHORITY TO ELECT TO EXCLUDE UP TO 6 MONTHS OF AVERAGE COST OF NURSING FACILITY SERVICES FROM ASSETS OR RESOURCES FOR PURPOSES OF ELIGIBILITY FOR HOME AND COMMUNITY-BASED SERVICES.

(a) IN GENERAL.—Section 1917 of the Social Security Act (42 U.S.C. 1396p) is amended by adding at the end the following new subsection:

''(i) STATE AUTHORITY TO EXCLUDE UP TO 6 MONTHS OF AVERAGE COST OF NURSING FACILITY SERVICES FROM HOME AND COMMUNITY-BASED SERVICES ELIGIBILITY DETERMINATIONS.—Nothing in this section or any other provision of this title, shall be construed as prohibiting a State from excluding from any determination of an individual's assets or resources for purposes of determining the eligibility of the individual for medical assistance for home and community-based services under subsection (c), (d), (e), (i), or (k) of section 1915 (if a State imposes an limitation on assets or resources for purposes of eligibility for such services), an amount equal to the product of the amount applicable under subsection (c)(1)(E)(ii)(II) (at the time such determination is made) and such number, not to exceed 6, as the State may elect.''.

(b) RULE OF CONSTRUCTION.—Nothing in the amendment made by subsection (a) shall be construed as affecting a State's option to apply less restrictive methodologies under section 1902(r)(2) for purposes of determining income and resource eligibility for individuals specified in that section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2008.

TITLE V—MISCELLANEOUS

SEC. 501. IMPROVED DATA COLLECTION.

(a) SECRETARIAL REQUIREMENT TO REVISE DATA REPORTING FORMS AND SYSTEMS TO ENSURE UNIFORM AND CONSISTENT REPORTING BY STATES.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall revise CMS Form 372, CMS Form 64, and CMS Form 64.9 (or any successor forms) and the Medicaid Statistical Information Statistics (MSIS) claims processing system to ensure that, with respect to any State that provides medical assistance to individuals under a waiver or State plan amendment approved under subsection (c), (d), (e), (i), (j), or (k) of section 1915 of the Social Security Act (42 U.S.C. 1396n), the State reports to the Secretary, not less than annually and in a manner that is consistent and uniform for all States (and, in the case of medical assistance provided under a waiver or State plan amendment under any such subsection for home and community-based services, in a manner that is consistent and uniform with the data required to be reported for purposes of monitoring or evaluating the provision of such services under the State plan or under a waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315) to provide such services) the following data:

(1) The total number of individuals provided medical assistance for such services under each waiver to provide such services conducted by the State and each State plan amendment option to provide such services elected by the State.

(2) The total amount of expenditures incurred for such services under each such waiver and State plan amendment option, disaggregated by expenditures for medical assistance and administrative or other expenditures.

(3) The types of such services provided by the State under each such waiver and State plan amendment option.

(4) The number of individuals on a waiting list (if any) to be enrolled under each such waiver and State plan amendment option or to receive services under each such waiver and State plan amendment option.

(5) With respect to home health services, private duty nursing services, case management services, and rehabilitative services provided under each such waiver and State plan amendment option, the total number of individuals provided each type of such services, the total amount of expenditures incurred for each type of services, and whether

each such service was provided for long-term care or acute care purposes.

(b) PUBLIC AVAILABILITY.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall make publicly available, in a State identifiable manner, the data described in subsection (a) through an Internet website and otherwise as the Secretary determines appropriate.

SEC. 502. GAO REPORT ON MEDICAID HOME HEALTH SERVICES AND THE EXTENT OF CONSUMER SELF-DIRECTION OF SUCH SERVICES.

(a) STUDY.—The Comptroller General of the United States shall study the provision of home health services under State Medicaid plans under title XIX of the Social Security Act. Such study shall include an examination of the extent to which there are variations among the States with respect to the provision of home health services in general under State Medicaid plans, including the extent to which such plans impose limits on the types of services that a home health aide may provide a Medicaid beneficiary and the extent to which States offer consumer self-direction of such services or allow for other consumer-oriented policies with respect to such services.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the results of the study conducted under subsection (a), together with such recommendations for legislative or administrative changes as the Comptroller General determines appropriate in order to provide home health services under State Medicaid plans in accordance with identified best practices for the provision of such services.

Mr. GRASSLEY. Mr. President, I am pleased to join my colleague Senator KERRY today to introduce the Empowered at Home Act. This bill is a continuation of efforts that I undertook in 2005 to improve access to home and community based services for those needing long-term care. This is an important piece of legislation that continues our efforts to make cost-effective home and community based care options more available to those who need it.

In 2005, I introduced the Improving Long-term Care Choices Act with Senator BAYH. That legislation set forth a series of proposals aimed at improving the accessibility of long-term care insurance and promoting awareness about the protection that long-term care insurance can offer. It also sought to broaden the availability of the types of long-term care services such as home and community-based care, which many people prefer to institutional care.

The year 2005 ended up being a very important year for health policy as it relates to Americans who need extensive care. In the Deficit Reduction Act of 2005, Congress passed into law the Family Opportunity Act, the Money Follows the Person initiative, and many critical pieces of the Improving Long-term Care Choices Act. With the bill I am introducing today with Senator KERRY, I hope to set us on the path to completing the work we started in 2005.

Making our long-term care system more efficient is a critical goal as we consider the future of health care. There are more than 35 million Americans, roughly 12 percent of the U.S. population, over the age of 65. This number is expected to increase dramatically over the next few decades as the baby boomers age and life expectancy increases. According to the U.S. Administration on Aging, by the year 2030, there will be more than 70 million elderly persons in the United States. As the U.S. population ages, more and more Americans will require long-term care services.

The need for long-term care will also be affected by the number of individuals under the age of 65 who may require a lifetime of care. Currently, almost half of all Americans who need long-term care services are individuals with disabilities under the age of 65. This number includes over 5 million working-age adults and approximately 400,000 children.

Long-term care for elderly and disabled individuals, including care at home and in nursing homes, represents almost 40 percent of Medicaid expenditures. Contrary to general assumptions, it is Medicaid, not Medicare, that pays for the largest portion of long-term care for the elderly. Over 65 percent of Medicaid long-term care expenditures support elderly and disabled individuals in nursing facilities and institutions. Although most people who need long-term care prefer to remain at home, Medicaid spending for long-term care remains heavily weighted toward institutional care.

Section 6086 of the Deficit Reduction Act of 2005 (DRA, P.L. 109–171) was based on the Improving Long-term Care Choices Act. The DRA provision authorized a new optional benefit under Medicaid that allows States to extend home and community-based services to Medicaid beneficiaries under the section 1915(i) Home and Community-Based Services State Option. Under this authority, States can offer Medicaid-covered home and community-based services under a State's Medicaid plan without obtaining a section 1915(c) home and community-based waiver. Eligibility for these section 1915(i) services may be extended only to Medicaid beneficiaries already enrolled in the program whose income does not exceed 150 percent of the Federal poverty level.

To date, only one State, my own State of Iowa, has sought to take advantage of the provision authorized through the DRA. While we had hoped far more States would participate, we know that the relatively low income cap, 150 percent, in the DRA provision creates an administrative complexity that has not made the option appealing for States.

In this bill we are introducing today, the income eligibility standard would be raised for access to covered services under section 1915(i) to persons who qualify for Medicaid because their income does not exceed a specified level established by the State up to 300 percent of the maximum Supplemental Security Income, SSI, payment applicable to a person living at home. This will significantly increase the number of people eligible for these services. States will be able to align their institutional and home and community-based care income eligibility levels.

The bill would also establish two new optional eligibility pathways into Medicaid. These groups would be eligible for section 1915(i) home and community-based services as well as services offered under a State's broader Medicaid program. Under this bill, States with an approved 1915(k) State plan amendment would have the option to extend Medicaid eligibility to individuals: (1) who are not otherwise eligible for medical assistance; (2) whose income does not exceed 300 percent of the supplemental security income benefit rate; and (3) who would satisfy State-established needs-based criteria based upon a State's determination that the provision of home and community-based services would reasonably be expected to prevent, delay, or decrease the need for institutionalized care. Under this new eligibility pathway, States could choose to either limit Medicaid benefits to those home and community-based services offered under section 1915(k) or allow eligibles to access services available under a State's broader Medicaid program in addition to the 1915(k) benefits. These changes will give the States the option of exploring the use of an interventional use of home and community-based services. If States have the flexibility to provide the benefit as contemplated in the bill, they can try to delay the need for institutional care and people in their homes longer.

As the number of Americans reaching retirement age grows proportionally larger, ultimately the number of Americans needing more extensive care will grow. Many of those Americans will look to Medicaid for assistance. States need more tools to provide numerous options to people in need so that they can stay in their own homes as long as possible.

The cost of providing long-term care in an institutional setting is far more expensive care than providing care in the home. States will benefit from having options before them that allow them to keep people appropriately in home settings longer. The more States learn how to use those tools, the more states and ultimately the Federal taxpayer will benefit from reduced costs for institutional care.

I am also pleased that this bill will include key provisions from S. 2337, the Long-Term Care Affordability and Security Act of 2007. The bill includes important tax provisions that I introduced in previous Congresses as well—most recently, the Improving Long-term Care Choices Act of 2005, introduced in the 109 Congress.

Research shows that the elderly population will nearly double by 2030. By 2050, the population of those aged 85

and older will have grown by more than 300 percent. Research also shows that the average age at which individuals need long-term care services, such as home health care or a private room at a nursing home, is 75. Currently, the average annual cost for a private room at a nursing home is more than $75,000. This cost is expected to be in excess of $140,000 by 2030.

Based on these facts, we can see that our Nation needs to prepare its citizens for the challenges they may face in old age. One way to prepare for these challenges is by encouraging more Americans to obtain long-term care insurance coverage. To date, only 10 percent of seniors have long-term care insurance policies, and only 7 percent of all private-sector employees are offered long-term care insurance as a voluntary benefit.

Under current law, employees may pay for certain health-related benefits, which may include health insurance premiums, co-pays, and disability or life insurance, on a pre-tax basis under cafeteria plans and flexible spending arrangements, ''FSAs''. Essentially, an employee may elect to reduce his or her annual salary to pay for these benefits, and the employee doesn't pay taxes on the amounts used to pay these costs. Employees, however, are explicitly prohibited from paying for the cost of long-term care insurance coverage tax free.

Our bill would allow employers, for the first time, to offer qualified long-term care insurance to employees under FSAs and cafeteria plans. This means employees would be permitted to pay for qualified long-term care insurance premiums on a tax-free basis. This would make it easier for employees to purchase long-term care insurance, which many find unaffordable. This should also encourage younger individuals to purchase long-term care insurance. The younger the person is at the time the long-care insurance contract is purchased, the lower the insurance premium.

Our bill also allows an individual taxpayer to deduct the cost of their long-term care insurance policy. In other words, the individual can reduce their gross income by the premiums that they pay for a long-term care policy, and therefore, pay less in taxes. This tax benefit for long-term care insurance should encourage more individuals to purchase these policies. It certainly makes a policy more affordable, especially for younger individuals. This would allow a middle-aged taxpayer to start planning for the future now.

Finally, a provision that is included in our bill that I am really proud of is one that provides a tax credit to long-term caregivers. Long-term caregivers could include the taxpayer, him- or herself. Senator KERRY and I recognize that these taxpayers—who have long-term care needs, yet are taking care of themselves—should be provided extra assistance. Also, taxpayers taking care of a family member with long-term care needs would also be eligible for the tax credit. These taxpayers should be given a helping hand. As our population continues to age, the least that we can do is provide a tax benefit for these struggling individuals.

By Mrs. FEINSTEIN (for herself and Mr. SMITH):

S. 3330. A bill to amend the Internal Revenue Code of 1986 to modify the deduction for domestic production activities for film and television productions, and for other purposes; to the Committee on Finance.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce legislation to stimulate domestic film production and create jobs. I am pleased to be joined by my colleague from Oregon, Senator GORDON SMITH.

Our bill, the Domestic Film Production Equity Act of 2008, would expand a tax deduction, known as the section 199 domestic production incentive, for qualifying U.S. film producers.

In 2008, this deduction will be worth 6 percent of a domestic manufacturer's qualifying production activities. It will increase to nine percent in 2010.

Specifically, our bill would expand the production incentive to allow studios to include wages paid to full-time short-term employees, including U.S. actors, writers, directors, and production personnel in determining the limit on the deduction amount.

The bill will treat films produced by partnerships between several studios as qualified property, each partner must have at least 20 percent interest in a project to qualify.

The bill will deduct income from the licensing of copyrights and trademarks relating to films; and lastly, the bill will deduct income from films and TV programs broadcast over the Internet.

Most film production companies receive only a limited benefit from the production incentive because the industry relies heavily on short-term contract work, and because many films are produced by multiple studios through partnerships.

As a matter of fairness, these domestic production incentives should be extended to fully benefit an industry that employs over 1.3 million Americans.

Filming a movie is different than traditional domestic manufacturing because short-term contract workers, including actors, writers, directors, and production personnel often work full-time on projects; multiple studios often produce one project; studios generate significant licensing fees associated with copyrights and trademarks related to films; and a number of media, including the Internet may be used to view each film or production.

Our bill takes these circumstances into account to modernize this section of the tax code.

The film industry is an important asset to the American economy.

More than 1.3 million Americans work in motion picture and television production.

In 2005, these jobs provided $30.24 billion in wages, with employees earning an average salary of $73,000.

Of these employees, 231,000 were short-term contractors, often working multiple projects each year.

California was the primary location for 365 film productions in 2005. This generated $42.2 billion in economic activity for my State.

Our bill would help studios continue to provide opportunities to these talented actors, writers, directors, and production personnel in America.

Expanding the Section 199 deduction to include these four categories is also a response to the competitive business of captivating an increasingly technology-adept viewing audience.

The film industry, like the music industry, is increasingly seeing their sales move to digital formats via the internet. On iTunes—an online digital music store operated by Apple—around 50,000 movies are rented or sold each day.

Moreover, by not allowing film studios to take advantage of domestic production tax incentives, we risk losing more operations abroad.

For example, Canada currently provides domestic film producers with a tax credit worth 15 percent of qualifying production costs. Foreign studios with operations in Canada may also receive a tax credit worth up to 16 percent of wages paid to Canadian residents.

The film industry plays a unique role in our society.

The world recognizes Hollywood as the center of the entertainment industry. Millions of tourists annually travel from across the globe to visit the sites that embody the golden age of film.

Hollywood film studios are American institutions that continue to produce some of the finest films in the world.

Needless to say, it is critical that studios continue to film in my State and across the country. If not, the golden age of Hollywood and the economic activity it brings may be a part of the past.

We are fortunate to have a vibrant domestic film industry.

This legislation will help ensure that the U.S. entertainment industry continues to be the world leader.

American workers and our economy stand to benefit.

Efforts to expand the production incentive for domestic films have enjoyed broad bi-partisan support. Our bill is similar to a provision included in the tax extenders package which passed the House overwhelmingly by a vote of 263–160 in May.

I am hopeful that the Senate will move quickly to enact this much-needed modernization of the tax code.

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

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

S. 3330

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 ''Domestic Film Production Equity Act of 2008''.

SEC. 2. PROVISIONS RELATED TO FILM AND TELEVISION PRODUCTIONS.

(a) MODIFICATIONS TO DEDUCTION FOR DOMESTIC ACTIVITIES.—

(1) DETERMINATION OF W-2 WAGES.—Paragraph (2) of section 199(b) of the Internal Revenue Code of 1986 (relating to W-2 wages) is amended by adding at the end the following new subparagraph:

''(D) SPECIAL RULE FOR QUALIFIED FILM.—In the case of a qualified film, such term shall include compensation for services performed in the United States by actors, production personnel, directors, and producers.''.

(2) DEFINITION OF QUALIFIED FILM.—Paragraph (6) of section 199(c) of such Code (relating to qualified film) is amended by adding at the end the following: ''A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section.''.

(3) PARTNERSHIPS.—Subparagraph (A) of section 199(d)(1) of such Code (relating to partnerships and S corporations) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) in the case of each partner of a partnership, or shareholder of an S corporation, who owns (directly or indirectly) at least 20 percent of the capital interests in such partnership or of the stock of such S corporation—

''(I) such partner or shareholder shall be treated as having engaged directly in any film produced by such partnership or S corporation, and

''(II) such partnership or S corporation shall be treated as having engaged directly in any film produced by such partner or shareholder.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

By Mr. BAUCUS (for himself and Mr. CRAPO):

S. 3331. A bill to amend the Internal Revenue Code of 1986 to require that the payment of the manufacturers' excise tax on recreational equipment be paid quarterly; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I am pleased today to join with my friend Senator CRAPO to introduce an important piece of legislation that would help to strengthen the financial health of America's firearm and ammunition manufacturers, who in turn support wildlife conservation in America.

The firearm and ammunition industry pays a Federal excise tax of 11 percent on long guns and ammunition and 10 percent on handguns. The Tax and Trade Bureau in the Treasury Department collects this tax. The Bureau sends the proceeds to the U.S. Fish and Wildlife Service, where they are deposited into the Wildlife Restoration Trust Fund, also known as the Pittman-Robertson Trust Fund.

The tax is a major source of conservation funding in America. Since 1991, the firearm and ammunition industry has contributed about $3 billion to the Pittman-Robertson Fund.

Of all the industries that pay excise taxes on the sale of their products to support wildlife conservation efforts, firearms and ammunition manufacturers are the only ones that have to pay excise taxes every 2 weeks. Other industries, such as archery and fishing, pay their tax every 3 months.

This frequent payment obligation imposes a costly and inequitable burden on the firearms and ammunition industry. Manufacturers spend thousands of additional man-hours just to administer the paperwork associated with making the bi-weekly excise payments.

According to the National Shooting Sports Foundation, changing the deposit schedule from a bi-weekly to quarterly payment would save the industry an estimated $21.6 million dollars a year. That's money that the industry could use for investment in researching and developing new products, purchasing new manufacturing plants and equipment, and communicating with the hunting and shooting sports community.

Let me take a moment to explain what this legislation does not do. It does not reduce the firearm and ammunition industry's excise tax rates. It simply adds fairness to the tax code.

It is important for my Colleagues to understand the history and nature of the firearm and ammunition excise tax. During the Great Depression, hunters and conservationists recognized that overharvesting of wildlife would destroy America's treasured wildlife and natural habitats. Sportsmen, state wildlife agencies, and the firearm and ammunition industries lobbied Congress to extend the existing 10 percent excise tax and impose a new 11 percent excise tax to create a new fund. The fund was called the Pittman-Robertson Trust Fund after Senator Key Pittman of Nevada and Representative A. Willis Robertson of Virginia. President Franklin D. Roosevelt signed the legislation into law in 1937.

The industry, hunters, and conservationists came together to create this structure. They recognized the importance of conservation. And they encouraged Congress to impose a tax on their guns and ammo. It is a rare thing when taxpayers ask to be taxed. But preserving our country's wildlife habitat was and continues to be that important.

Today, more than $700 million each year is generated and used exclusively to establish, restore, and protect wildlife habitats.

Now let me explain the effect that the bill we are introducing today would have on the Pittman-Robertson Trust Fund. As the Joint Committee on Taxation explained in its revenue estimate, the net budget effect to the fund is $4 million. This is purely a result of the shift in the timing of collections, from bi-weekly to quarterly, over a 10-year budget window. Consumers of firearms and ammunition would still pay the exact same amount of tax.

The firearm and ammunition industry recognizes the 10-year $4 million loss to the trust fund. The industry developed a comprehensive 5-year proposal to ease this effect. Under the proposal, the industry would contribute $150,000 a year for the next 5 years, a total of $750,000, to the fund.

These actions again show the partnership between hunters, conservation groups, and the firearm and ammunition industry to protect conservation programs and initiatives. That is why this legislation is supported by the following groups: Archery Trade Association; Association of Fish and Wildlife Agencies; Boon and Young; Congressional Sportsmen's Foundation; Delta Waterfowl; Ducks Unlimited; National Rifle Association; National Shooting Sports Foundation, Inc.; National Wild Turkey Federation; North American Wetlands Conservation Council; Pheasants Forever; Rocky Mountain Elk Foundation; Safari Club International; Wildlife Management Institute; U.S. Fish and Wildlife Service; U.S. Sportsmen's Alliance.

I urge my Colleagues to support this legislation. I hope that we can come together, just as the industry, hunters, and conservation groups have, to pass this legislation. It's a matter of tax fairness. Let us do our part to correct this inequity in the tax code. Let us do our part to support an American business that in turn supports wildlife habitat restoration and conservation.

By Mr. STEVENS (for himself and Ms. MURKOWSKI):

S. 3333. A bill to amend the Whaling Convention Act so that it expressly applies to aboriginal subsistence whaling, and in particular, authorizes the Secretary of Commerce to set bowhead whale catch limits in the event that the IWC fails to adopt such limits; to the Committee on Commerce, Science, and Transportation.

Mr. STEVENS. Mr. President, currently, annual catch limits for subsistence whaling by Alaskan natives is set through periodic negotiations of the international whaling commission. In setting the quota, the IWC has tremendous power to influence the lives—even the survival—of these aboriginal communities.

For over 30 years I have worked with the International Whaling Commission to secure the right for native Alaskans to hunt bowhead whales and preserve their subsistence lifestyle. Currently, native Alaskans living in 10 villages on Alaska's north slope and St. Lawrence Island carry forward an ancient tradition of harvesting small numbers of bowhead whales. Not only do these whales serve as a primary source of food for the communities, but they define their very identity and culture.

The Alaska natives who rely on this subsistence hunt have complied with the mandates passed down from the IWC to ensure a sustainable and humane harvest. In fact, since the IWC

began regulating these catches, the number of bowhead whales in the Arctic has risen substantially.

The IWC, however, may not always produce the bowhead quota upon which Alaska natives depend due to political games. Over the last several years, I have seen other nations attempt to influence the U.S. position on other whaling issues at the IWC by specifically interfering with the native Alaskans bowhead quota votes. This is unacceptable. Any positions on whaling issues under IWC's purview need to be debated on their own merits. It is unthinkable to allow other countries to use The health and welfare of our Alaska natives, whose lives depend on this hunt, as leverage for influencing U.S. positions on other IWC matters.

The legislation I am introducing will ensure that native Alaskans maintain their rights to engage in subsistence whaling—an ancient practice vital to their culture and survival. This bill would amend the Whaling Convention Act of 1949 to authorize the Secretary of Commerce to issue bowhead whale catch limits for aboriginal subsistence whaling in Alaska native communities.

This bill ensures that the U.S. will continue to seek and negotiate bowhead whaling quota through the IWC. But if the IWC is unable to issue bowhead whaling quota, the Secretary of Commerce could then issue domestic aboriginal subsistence whaling permits. Such action would need to ensure consistency with IWC rules on subsistence whaling ensuring safe, sustainable, and humane hunts, and the harvest must not exceed the original subsistence needs recommended by the U.S.

The IWC has the great responsibility of ensuring that any subsistence whaling, now or in the future, is carried out in a scientifically sound and sustainable manner. I continue to support the IWC's efforts on this vital issue. yet the United States must also protect the rights of our native communities to continue their ancient subsistence bowhead harvesting. This bill strikes the proper balance between supporting IWC work and protecting our Alaska native communities. I thank my colleagues for considering this important legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 622—DESIGNATING THE WEEK BEGINNING SEPTEMBER 7, 2008, AS ''NATIONAL HISTORICALLY BLACK COLLEGES AND UNIVERSITIES WEEK''

Mr. GRAHAM (for himself, Mr. ALEXANDER, Mr. BAYH, Mr. BIDEN, Mr. BOND, Mrs. BOXER, Mr. BROWN, Mr. BROWNBACK, Mr. BUNNING, Mr. BURR, Mr. BYRD, Mr. CARDIN, Mr. CASEY, Mr. CHAMBLISS, Mr. COBURN, Mr. COCHRAN, Mr. CORNYN, Mr. DEMINT, Mr. DODD, Mrs. DOLE, Mr. DURBIN, Mrs. HUTCHISON, Mr. ISAKSON, Ms. LANDRIEU, Mr. LEVIN, Mrs. LINCOLN, Mr. MARTINEZ, Mr. MCCAIN, Mrs. MCCASKILL, Mr. MENENDEZ, Ms. MIKULSKI, Mr. NELSON of Florida, Mr. OBAMA, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SESSIONS, Mr. SPECTER, Mr. VITTER, Mr. WARNER, and Mr. WICKER) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 622

Whereas there are 103 historically Black colleges and universities in the United States;

Whereas historically Black colleges and universities provide the quality education essential to full participation in a complex, highly technological society;

Whereas historically Black colleges and universities have a rich heritage and have played a prominent role in the history of the United States;

Whereas historically Black colleges and universities have allowed many underprivileged students to attain their full potential through higher education; and

Whereas the achievements and goals of historically Black colleges and universities are deserving of national recognition: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week beginning September 7, 2008, as ''National Historically Black Colleges and Universities Week''; and

(2) calls on the people of the United States and interested groups to observe the week with appropriate ceremonies, activities, and programs to demonstrate support for historically Black colleges and universities in the United States.

SENATE RESOLUTION 623—RECOGNIZING THE IMPORTANCE OF THE ROLE OF THE LANDER TRAIL IN THE SETTLEMENT OF THE AMERICAN WEST ON THE 150TH ANNIVERSARY OF THE LANDER TRAIL

Mr. ENZI (for himself and Mr. BARRASSO) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 623

Whereas Frederick W. Lander first surveyed and supervised construction of the Lander Trail in 1858 to provide emigrants with a travelable link between the Oregon and California Trails;

Whereas 13,000 emigrants traveled on the Lander Trail during the settlement of the Western United States;

Whereas the Lander Trail was the first Federal road west of the Mississippi River;

Whereas travelers in the American West used the Lander Trail for 54 years until 1912; and

Whereas people can still experience the Lander Trail in the same setting that Frederick W. Lander first began construction in 1858: Now, therefore, be it

Resolved, That the Senate honors the important role of the Lander Trail in the settlement of the Western United States on the sesquicentennial anniversary of the Lander Trail.

Mr. ENZI. Mr. President, I rise today to recognize a part of Wyoming's history that is celebrating its one hundred and fiftieth anniversary this year. The Lander Trail, which runs for 256 miles from South Pass, WY, to Fort Hall, ID, was an important part of the expansion of the American West in the 1800s when people took up the challenge to ''go west'' and settle new territory. In 1858, Frederick W. Lander began surveying and construction for the first federally funded road west of the Mississippi to provide a better route for emigrants headed to California, Oregon, and a new life on the frontier. Today, I would like to recognize the historical role the Lander Trail played in Wyoming and the American West.

It was tough going for emigrants going west in the 1850s. The dangerous journey halfway across the country could take 6 months or more. After the Lander Trail was completed, it was a better road through easier territory. Emigrants headed to California or Oregon could cut 7 days off their journey by following the Lander Trail, and there were good sources of food, water, and forage for livestock along the way. Thirteen thousand people traveled the Lander Trail on their way to homestead in western territories or to pan for gold in California. The Lander Trail is part of the National Historic Trails system and is listed on the National Register of Historic Places.

The Lander Trail can still be seen today in Wyoming and the land looks almost the same as it did when Frederick Lander first started surveying it. The work of groups in Wyoming like the Lander Trail Foundation have ensured that the history of this unique piece of my State is being preserved and that people today can go and see and experience the Lander Trail. I would like to take this opportunity to recognize the role that the Lander Trail has played in the history of my State of Wyoming and the settlement of the American West.

AMENDMENTS SUBMITTED AND PROPOSED

SA 5114. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 3268, to amend the Commodity Exchange Act, to prevent excessive price speculation with respect to energy commodities, and for other purposes; which was ordered to lie on the table.

SA 5115. Mr. DOMENICI (for himself, Mr. VOINOVICH, and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill S. 3268, supra; which was ordered to lie on the table.

SA 5116. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 3268, supra; which was ordered to lie on the table.

SA 5117. Mr. DOMENICI (for himself and Mr. MCCONNELL) submitted an amendment intended to be proposed by him to the bill S. 3268, supra; which was ordered to lie on the table.

SA 5118. Mr. DOMENICI (for himself and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the bill S. 3268, supra; which was ordered to lie on the table.

SA 5119. Mr. GRAHAM (for himself, Mr. KYL, and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill S. 3268, supra; which was ordered to lie on the table.

SA 5120. Mr. GRAHAM submitted an amendment intended to be proposed by him