

S. 2002. A bill to amend the Federal Food, Drug, and Cosmetic Act to improve the safety of Internet pharmacies; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. FEINSTEIN (for herself, Mr. LEAHY, Mr. LEE, Mr. UDALL of Colorado, Mr. KIRK, Mrs. GILLIBRAND, Mr. PAUL, Mr. COONS, Mr. DURBIN, Mr. NELSON of Florida, Mrs. SHAHEEN, Mr. UDALL of New Mexico, Mr. FRANKEN, and Mrs. MCCASKILL):

S. 2003. A bill to clarify that an authorization to use military force, a declaration of war, or any similar authority shall not authorize the detention without charge or trial of a citizen or lawful permanent resident of the United States and for other purposes; to the Committee on the Judiciary.

By Mr. UDALL of New Mexico (for himself, Mr. BINGAMAN, Mr. INOUE, and Ms. LANDRIEU):

S. 2004. A bill to grant the Congressional Gold Medal to the troops who defended Bataan during World War II; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BROWN of Massachusetts (for himself and Mr. KIRK):

S. 2005. A bill to authorize the Secretary of State to issue up to 10,500 E-3 visas per year to Irish nationals; to the Committee on the Judiciary.

By Mr. LAUTENBERG:

S. 2006. A bill to amend the Surface Transportation and Uniform Relocation Assistance Act of 1987 to authorize the Secretary of Transportation to permit Federal regulation and review of tolls and toll increases on certain surface transportation facilities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BAUCUS (for himself, Mr. HATCH, Mr. KERRY, Mr. LUGAR, Mr. WYDEN, Mr. BLUNT, Mr. DURBIN, Mr. BROWN of Massachusetts, Mr. CARDIN, Mr. ISAKSON, Mr. COONS, and Mr. THUNE):

S. 2007. A bill to amend the African Growth and Opportunity Act to extend the third-country fabric rule, to add South Sudan to the list of countries eligible for designation under that Act, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Ms. SNOWE:

S. Res. 348. A resolution expressing the sense of the Senate that the Secretary of the Treasury should take actions to increase the transparency and accountability of the Small Business Lending Fund Program; to the Committee on Small Business and Entrepreneurship.

ADDITIONAL COSPONSORS

S. 195

At the request of Mr. ROCKEFELLER, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 195, a bill to reinstate Federal matching of State spending of child support incentive payments.

S. 249

At the request of Mr. HATCH, the name of the Senator from Nevada (Mr. HELLER) was added as a cosponsor of S. 249, a bill to amend the Endangered Species Act of 1973 to provide that Act shall not apply to any gray wolf (*Canis lupus*).

S. 431

At the request of Mr. PRYOR, the names of the Senator from California (Mrs. BOXER), the Senator from Iowa (Mr. GRASSLEY), the Senator from Virginia (Mr. WARNER), the Senator from Wisconsin (Mr. KOHL), the Senator from New Jersey (Mr. MENENDEZ) and the Senator from South Dakota (Mr. THUNE) were added as cosponsors of S. 431, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first Federal law enforcement agency, the United States Marshals Service.

S. 750

At the request of Mr. DURBIN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 750, a bill to reform the financing of Senate elections, and for other purposes.

S. 810

At the request of Ms. CANTWELL, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 810, a bill to prohibit the conducting of invasive research on great apes, and for other purposes.

S. 1181

At the request of Mr. GRASSLEY, the name of the Senator from Arkansas (Mr. BOOZMAN) was added as a cosponsor of S. 1181, a bill to require the Secretary of the Treasury to mint coins in commemoration of the National Future Farmers of America Organization and the 85th anniversary of the founding of the National Future Farmers of America Organization.

S. 1392

At the request of Ms. COLLINS, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1392, a bill to provide additional time for the Administrator of the Environmental Protection Agency to issue achievable standards for industrial, commercial, and institutional boilers, process heaters, and incinerators, and for other purposes.

S. 1468

At the request of Mrs. SHAHEEN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1468, a bill to amend title XVIII of the Social Security Act to improve access to diabetes self-management training by authorizing certified diabetes educators to provide diabetes self-management training services, including as part of telehealth services, under part B of the Medicare program.

S. 1497

At the request of Ms. KLOBUCHAR, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 1497, a bill to amend title XVIII of the Social Security Act to extend for 3 years reasonable cost contracts under Medicare.

S. 1606

At the request of Mr. PORTMAN, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S.

1606, a bill to reform the process by which Federal agencies analyze and formulate new regulations and guidance documents.

S. 1680

At the request of Mr. CONRAD, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1680, a bill to amend title XVIII of the Social Security Act to protect and preserve access of Medicare beneficiaries in rural areas to health care providers under the Medicare program, and for other purposes.

S. 1871

At the request of Mr. BROWN of Massachusetts, the name of the Senator from Illinois (Mr. KIRK) was added as a cosponsor of S. 1871, a bill to prohibit commodities and securities trading based on nonpublic information relating to Congress, to require additional reporting by Members and employees of Congress of securities transactions, and for other purposes.

S. 1903

At the request of Mrs. GILLIBRAND, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1903, a bill to prohibit commodities and securities trading based on nonpublic information relating to Congress, to require additional reporting by Members and employees of Congress of securities transactions, and for other purposes.

S. 1925

At the request of Mr. LEAHY, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1925, a bill to reauthorize the Violence Against Women Act of 1994.

S. 1956

At the request of Mr. THUNE, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1956, a bill to prohibit operators of civil aircraft of the United States from participating in the European Union's emissions trading scheme, and for other purposes.

S. 1959

At the request of Mr. BURR, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 1959, a bill to require a report on the designation of the Haqqani Network as a foreign terrorist organization and for other purposes.

S. 1984

At the request of Mr. KERRY, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of S. 1984, a bill to establish a commission to develop a national strategy and recommendations for reducing fatalities resulting from child abuse and neglect.

S. 1994

At the request of Mr. SCHUMER, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1994, a bill to prohibit deceptive practices in Federal elections.

S. RES. 310

At the request of Ms. MIKULSKI, the name of the Senator from Idaho (Mr.

CRAPO) was added as a cosponsor of S. Res. 310, a resolution designating 2012 as the “Year of the Girl” and Congratulating Girl Scouts of the USA on its 100th anniversary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KOHL:

S. 2000. A bill to amend the copyright law to secure the rights of artists of works of visual art to provide for royalties, and for other purposes; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce the Equity for Visual Artists Act of 2011. This bill would enable visual artists to benefit from their copyrights in a meaningful way similar to other creators of literary and artistic works such as authors, playwrights and composers. It provides for the payment of a copyright royalty long recognized in international law to be paid at the time a work of visual art is sold at auction in the United States. Half of this royalty payment will go directly to the artists or their estate and the other half will be made available to nonprofit American art museums as an endowment to be used by them to purchase the works of living American artists so that these works may be freely enjoyed by everyone.

Like all authors, the primary legal right of an artist in his or her work is the copyright. Yet, visual artists stand alone within America's creative community in their inability to gain any significant income under existing copyright law. As an example, creators of music will collect nearly \$2 billion in copyright royalty payments this year. By contrast, America's visual artists receive only a tiny amount of copyright income, primarily when their works are reproduced in publications such as museum catalogues. Visual art often generates money only when the original work itself is first sold. The vast majority of money-making sales are not by artists themselves but by collectors, dealers and auction houses who trade in their works after their first sale. Under current law artists receive no income from these sales.

For nearly 100 years international copyright law under the Berne Convention on Literary and Artistic Works, of which the United States is a party, has given artists a right to royalties each time their works are resold. However, unlike other rights protected under the Convention, individual countries are not required to recognize the artists' resale right. While over 40 other countries, including all members of the European Union, provide their artists with income from resale of their works, the United States does not. Under the Convention's reciprocity rule, these countries will only pay royalties to artists from countries that also recognize the resale right. As a result, American artists receive no money from these sales.

In 1990, Congress enacted the Visual Artists Rights Act that asked the

Copyright Office to study the issue of resale royalties and report back with recommendations. The Copyright Office reported back to Congress that creation of new artworks would be encouraged by adoption of the Berne Convention provisions on resale rights, but it recommended that we wait to see whether the European Union would first require all of its member countries to join those like France and Germany who had long provided their artists with such a right. In 2001, the European Union decided to make resale royalties mandatory throughout its territory, underpinning the Copyright Office's initial conclusions about the positive effects of introducing resale rights. In 2006, the United Kingdom was the last EU country to implement its law.

In order to make the administration of a resale right as simple as possible, the bill would take 7 percent of any sale \$10,000 or more from only the most public and easily accountable transactions, auction sales, and divide the amount by artists or their beneficiaries and non-profit museums to purchase American art. The legislation would apply only to sales by entities that have \$25 million per year of cumulative sales of visual art. It also excludes entities that solely conduct business in online auctions over the Internet. The bill gives primary responsibility for collecting and distributing royalties to non-governmental collecting societies with oversight by the Copyright Office and reporting requirements to Congress.

This legislation is a long overdue step in fulfilling our obligation under the Berne Convention to award visual artists the benefits derived from the resale of their works, a right that literary and musical artists have enjoyed for decades. Under current law, visual artists are denied royalties for lucrative sales of their art, and this bill is a meaningful start for providing them with just compensation. It is only fair that, as stipulated by international law, visual artists profit from the appreciation in value of their work.

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. 2000

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 “Equity for Visual Artists Act of 2011”.

SEC. 2. DEFINITIONS.

Section 101 of title 17, United States Code, is amended by—

(1) inserting after the definition of “architectural work” the following:

“For purposes of section 106(b), ‘auction’ means a public sale run by an entity that sells to the highest bidder works of visual art in which the cumulative amount of such works sold during the previous year is more than \$25,000,000 and does not solely conduct

the sale of visual art by the entity on the Internet.”.

(2) inserting after the definition of “proprietor” and prior to the definition of “pseudonymous work” the following:

“For purposes of section 106(b), ‘price’ is the aggregate of all installments paid in cash or in-kind by or on behalf of a purchaser for a work as the result of auction of that work.”;

(3) inserting at the end of the definition of “Publication” the following: “For purposes of section 106(b), in the case of a work of visual art as defined in this section, a publication does not include photographic reproductions or other images of the work, including castings of a sculptural work, made or distributed prior to January 1, 1978, in connection with the exhibition of such work by a gallery or museum, whether for purposes of sale of the original work, or in connection with any publication authorized by a gallery or museum in possession of the work regardless of whether such publication was with the consent of the author. In no other circumstances is a work of visual art considered to have been published prior to January 1, 1978, unless such publication has been authorized by the express written consent of the author of such work.”;

(4) inserting after the definition of “registration” and prior to the definition of “sound recordings” the following:

“For purposes of sections 106(b) and 701(b)(5), ‘sale’ means transfer of ownership or physical possession of a work as the result of the auction of that work.”; and

(5) amending paragraph (1) of the definition of a “work of visual art” to read as follows:

“(1) a painting, drawing, print, sculpture, or photograph, existing either in the original embodiment or in a limited edition of 200 copies or fewer that bear the signature or other identifying mark of the author and are consecutively numbered by the author, or, in the case of a sculpture in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or”.

SEC. 3. EXCLUSIVE RIGHTS.

Section 106 of title 17, United States Code, is amended by—

(1) inserting “(a)” before “Subject to sections 107 through 122”; and

(2) adding at the end the following:

“(b)(1) In this subsection, the term ‘net royalty’ means the royalty amount collected less administrative expenses of the visual artists’ collecting society. In no case shall the administrative expenses of the visual artists’ collecting society subtracted from the royalty amount collected exceed 18 percent.

“(2) Whenever a work of visual art is sold as the result of auction of that work by someone other than the artist who is the author of the work, the entity that collects the money or other consideration paid for the sale of the work shall, within 90 days of collecting such money or other consideration, pay out of the proceeds of the sale a royalty equal to 7 percent of the price. Such royalty shall be paid to a visual artists’ collecting society. The collecting society shall distribute, no fewer than 4 times per year, 50 percent of the net royalty to the artist or his or her successor as copyright owner. After payment to the artist or his or her successor as copyright owner, the remaining 50 percent of the net royalty shall be deposited into an escrow account established by the collecting society for the purposes of funding purchases by nonprofit art museums in the United States of works of visual art authored by living artists domiciled in the United States. The right to receive such royalty and the obligation to deposit the remaining share of