

S. 2010

At the request of Mr. KERRY, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 2010, a bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions.

S.J. RES. 29

At the request of Mr. UDALL of New Mexico, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S.J. Res. 29, a joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

S. RES. 232

At the request of Mr. MENENDEZ, the name of the Senator from Wisconsin (Mr. JOHNSON) was added as a cosponsor of S. Res. 232, a resolution recognizing the continued persecution of Falun Gong practitioners in China on the 12th anniversary of the campaign by the Chinese Communist Party to suppress the Falun Gong movement, recognizing the Tuidang movement whereby Chinese citizens renounce their ties to the Chinese Communist Party and its affiliates, and calling for an immediate end to the campaign to persecute Falun Gong practitioners.

S. RES. 310

At the request of Ms. COLLINS, the name of the Senator from Massachusetts (Mr. BROWN) 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.

At the request of Ms. MIKULSKI, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. Res. 310, *supra*.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 2032. A bill to amend the Higher Education Act of 1965 regarding proprietary institutions of higher education in order to protect students and taxpayers; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN. 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. 2032

*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 "Protecting Our Students and Taxpayers Act" or "POST Act".

#### SEC. 2. 85/15 RULE.

(a) IN GENERAL.—Section 102(b) of the Higher Education Act of 1965 (20 U.S.C. 1002(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking "and" after the semicolon;

(B) in subparagraph (E), by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(F) meets the requirements of paragraph (2).";

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following:

"(2) REVENUE SOURCES.—

"(A) IN GENERAL.—In order to qualify as a proprietary institution of higher education under this subsection, an institution shall derive not less than 15 percent of the institution's revenues from sources other than Federal funds, as calculated in accordance with subparagraphs (B) and (C).

"(B) FEDERAL FUNDS.—In this paragraph, the term 'Federal funds' means any Federal financial assistance provided, under this Act or any other Federal law, through a grant, contract, subsidy, loan, guarantee, insurance, or other means to a proprietary institution, including Federal financial assistance that is disbursed or delivered to an institution or on behalf of a student or to a student to be used to attend the institution, except that such term shall not include any monthly housing stipend provided under the Post-9/11 Veterans Educational Assistance Program under chapter 33 of title 38, United States Code.

"(C) IMPLEMENTATION OF NON-FEDERAL REVENUE REQUIREMENT.—In making calculations under subparagraph (A), an institution of higher education shall—

"(i) use the cash basis of accounting;

"(ii) consider as revenue only those funds generated by the institution from—

"(I) tuition, fees, and other institutional charges for students enrolled in programs eligible for assistance under title IV;

"(II) activities conducted by the institution that are necessary for the education and training of the institution's students, if such activities are—

"(aa) conducted on campus or at a facility under the control of the institution;

"(bb) performed under the supervision of a member of the institution's faculty; and

"(cc) required to be performed by all students in a specific educational program at the institution; and

"(III) a contractual arrangement with a Federal agency for the purpose of providing job training to low-income individuals who are in need of such training;

"(iii) presume that any Federal funds that are disbursed or delivered to an institution on behalf of a student or directly to a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits such funds to the student's account or pays such funds directly to the student, except to the extent that the student's tuition, fees, or other institutional charges are satisfied by—

"(I) grant funds provided by an outside source that—

"(aa) has no affiliation with the institution; and

"(bb) shares no employees with the institution; and

"(II) institutional scholarships described in clause (v);

"(iv) include no loans made by an institution of higher education as revenue to the school, except for payments made by students on such loans;

"(v) include a scholarship provided by the institution—

"(I) only if the scholarship is in the form of monetary aid based upon the academic achievements or financial need of students, disbursed to qualified student recipients during each fiscal year from an established restricted account; and

"(II) only to the extent that funds in that account represent designated funds, or income earned on such funds, from an outside source that—

"(aa) has no affiliation with the institution; and

"(bb) shares no employees with the institution; and

"(vi) exclude from revenues—

"(I) the amount of funds the institution received under part C of title IV, unless the institution used those funds to pay a student's institutional charges;

"(II) the amount of funds the institution received under subpart 4 of part A of title IV;

"(III) the amount of funds provided by the institution as matching funds for any Federal program;

"(IV) the amount of Federal funds provided to the institution to pay institutional charges for a student that were refunded or returned; and

"(V) the amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

"(D) REPORT TO CONGRESS.—Not later than July 1, 2012, and by July 1 of each succeeding year, the Secretary shall submit to the authorizing committees a report that contains, for each proprietary institution of higher education that receives assistance under title IV and as provided in the audited financial statements submitted to the Secretary by each institution pursuant to the requirements of section 487(c)—

"(i) the amount and percentage of such institution's revenues received from Federal funds; and

"(ii) the amount and percentage of such institution's revenues received from other sources.".

(b) REPEAL OF EXISTING REQUIREMENTS.—Section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094) is amended—

(1) in subsection (a)—

(A) by striking paragraph (24);

(B) by redesignating paragraphs (25) through (29) as paragraphs (24) through (28), respectively;

(C) in paragraph (24)(A)(ii) (as redesignated by subparagraph (B)), by striking "subsection (e)" and inserting "subsection (d)"; and

(D) in paragraph (26) (as redesignated by subparagraph (B)), by striking "subsection (h)" and inserting "subsection (g)";

(2) by striking subsection (d);

(3) by redesignating subsections (e) through (j) as subsections (d) through (i), respectively;

(4) in subsection (f)(1) (as redesignated by paragraph (3)), by striking "subsection (e)(2)" and inserting "subsection (d)(2)"; and

(5) in subsection (g)(1) (as redesignated by paragraph (3)), by striking "subsection (a)(27)" in the matter preceding subparagraph (A) and inserting "subsection (a)(26)".

(c) CONFORMING AMENDMENTS.—The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(1) in section 152 (20 U.S.C. 1019a)—

(A) in subsection (a)(1)(A), by striking "subsections (a)(27) and (h) of section 487" and inserting "subsections (a)(26) and (g) of section 487"; and

(B) in subsection (b)(1)(B)(i)(I), by striking "section 487(e)" and inserting "section 487(d)";

(2) in section 153(c)(3) (20 U.S.C. 1019b(c)(3)), by striking "section 487(a)(25)" each place the term appears and inserting "section 487(a)(24)";

(3) in section 496(c)(3)(A) (20 U.S.C. 1099b(c)(3)(A)), by striking "section 487(f)" and inserting "section 487(e)"; and

(4) in section 498(k)(1) (20 U.S.C. 1099c(k)(1)), by striking “section 487(f)” and inserting “section 487(e)”.

By Mr. LEVIN:

S. 2033. A bill to amend the Internal Revenue Code of 1986 to end the costly derivatives blended rate loophole, and for other purposes; to the Committee on Finance.

Mr. LEVIN. Mr. President, the coming year is certain to be focused on two problems: the need to restore prosperity for American working families, and the need to reduce our budget deficit. Our challenge is to accomplish these goals together, and not to pursue one at the expense of the other. As I have said repeatedly to this Senate, I believe the only way we can successfully achieve both goals is to pursue deficit reduction strategies that do not rely solely on slashing federal spending and attacking programs that help build opportunity for the middle class. We must recognize that revenue, as well as spending cuts, must be part of our strategy, and we must ensure that the sacrifices that surely will be needed to reduce the deficit fall not just on middle-class Americans, but are spread equitably, and ask for contributions from those who have benefitted so greatly from policies enacted in the past.

Today I introduce the Closing the Derivatives Blended Rate Loophole Act. This bill meets the twin tests of helping to reduce the deficit while promoting the interests of American families. It would put an end to a tax loophole that epitomizes how our tax code too often favors short-term speculation over investment in economic growth and job creation. This loophole showers benefits on short-term traders of certain financial instruments, but does nothing to promote economic growth and raises the tax burden on American families.

What is the derivatives blended rate? It's an example of how the complexities of the tax code can grant breaks for the few at the expense of the many. Here is how it works.

Generally speaking, taxpayers are allowed to claim the lower long-term capital gains tax rate on earnings only if those earnings come from the sale of assets that they have held for more than a year. The reason is simple: we tax long-term capital gains at a lower rate because we want to encourage the long-term investment that helps our economy grow.

But under Section 1256 of the Internal Revenue Code, traders in certain derivatives contracts have managed to win themselves an exemption from the distinction between short-term and long-term capital gains. Under this section, traders in those derivatives can claim 60 percent of their income as long-term capital gains, no matter how briefly they hold the asset. This “blended” tax rate applies if the trader holds the asset for 11 months or 11 hours.

The details may be complex, but the bottom line is that this treatment

bestows a substantial tax break on those who typically hold the covered derivatives for only a brief period. It encourages and rewards short-term speculation in complicated financial products and does little, if anything, to help our economy grow and create jobs. In fact, the increasing focus of our financial markets on short-term profit through trades that last just minutes or seconds threatens real damage to our economy. This speculation is hardly the sort of activity that our tax code should subsidize.

We also lose significant tax revenue by allowing this tax break—a revenue loss that means we must either ask for more from American families, or add to the deficit. What's more, this misguided policy contributes to the basic unfairness that characterizes too much of our tax code, by providing an unusual and unnecessary tax break to a small group of financial speculators. Instead of encouraging growth and investment, these loopholes contribute to what Warren Buffett has called the “coddling” of the wealthy and well-placed.

Closing this loophole is a common-sense, mainstream idea. I ask my colleagues to heed the advice of the tax experts at the American Bar Association's Tax Section, who wrote in December to the tax-writing committees of the House and Senate:

We are aware of no policy reason to provide preferential treatment for these gains and losses. Lower capital gains rates are intended to encourage long-term investments in capital assets such as stock. Whatever the merits of extending preferential rates to derivative financial instruments generally, we do not believe that there is a policy basis for providing those preferential rates to taxpayers who have not made such long-term investments.

Ending this loophole by passage of the Closing the Derivatives Blended Rate Loophole Act would not solve all the problems in our tax code, nor end our deficit dilemma. But it would be another important step toward a saner, fairer tax code. It would demonstrate that Congress shares the concerns of so many Americans that the tax system is too often stacked against the interests of working families and in favor of the privileged few. It would end a policy that encourages short-term speculation over long-term investment in growth. It would provide a down-payment on the revenue we need to restore if we are to engage in serious deficit reduction and avoid slashing critical programs. I urge my colleagues to join me in the effort to pass it.

By Mr. MCCONNELL (for himself, Mrs. HUTCHISON, Mr. LEE, Mr. HATCH, Mr. BARRASSO, Mr. CORNYN, Ms. AYOTTE, Mr. MORAN, Mr. ALEXANDER, Mr. CRAPO, Mr. RUBIO, Mr. COATS, Mr. ENZI, Mr. SESSIONS, Mr. BURR, Mr. VITTER, Mr. ISAKSON, Mr. BLUNT, Mr. BOOZMAN, Mr. KYL, Mr. MCCAIN, Mr. SHELBY, Mr. WICKER, Mr. CHAMBLISS, Mr.

LUGAR, Mr. RISCH, Mr. ROBERTS, Mr. INHOFE, Mr. GRASSLEY, Mr. KIRK, and Mr. GRAHAM):

S.J. Res. 34. A joint resolution relating to the disapproval of the President's exercise of authority to increase the debt limit, as submitted under section 3101A of title 31, United States Code, on January 12, 2012; placed on the calendar.

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

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

S.J. RES. 34

*Resolved by the Senate and House of Representatives of the United States of America Congress assembled, That Congress disapproves of the President's exercise of authority to increase the debt limit on January 12, 2012, as exercised pursuant to the certification under section 3101A(a) of title 31, United States Code.*

## SUBMITTED RESOLUTIONS

SENATE RESOLUTION 352—EXPRESSING THE SENSE OF THE SENATE THAT THE UNITED STATES SHOULD WORK WITH THE GOVERNMENT OF HAITI TO ADDRESS GENDER-BASED VIOLENCE AGAINST WOMEN AND CHILDREN

Mrs. GILLIBRAND submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 352

Whereas, since 1993, research has shown tens of thousands of women and girls have been victims of sexual or gender-based violence in Haiti, particularly in times of conflict or natural disaster;

Whereas approximately 50 percent of the victims are adolescent girls under the age of 18, with many of the cases involving the use of weapons, gang rape, and death threats for reporting the crime;

Whereas members of many medical professions are insufficiently trained to attend to the special needs of victims of gender-based violence, whether they be children or adults;

Whereas some medical providers report as many as 20 percent of adolescent victims they have treated for sexual violence become pregnant from their rape;

Whereas some women's rights groups in Haiti have witnessed dramatic increases in rates of sexual violence in many of the displacement camps formed after the earthquake;

Whereas the January 12, 2010, earthquake in Haiti increased the economic and social vulnerabilities of many women who are now unable to protect their young children from sexual predators, thereby increasing their risk for sexual violence;

Whereas, according to data from public interest law firms litigating cases of sexual violence, significant gender-based barriers to justice continue to exist at all levels of the justice system in Haiti;

Whereas an effective, transparent, and impartial judicial system is key to the administration of justice, and the failure to ensure