S. 1204

At the request of Mr. COBURN, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. 1204, a bill to amend the Patient Protection and Affordable Care Act to protect rights of conscience with regard to requirements for coverage of specific items and services, to amend the Public Health Service Act to prohibit certain abortion-related discrimination in governmental activities, and for other purposes.

S. 1208

At the request of Mr. TESTER, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1208, a bill to require meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 1215

At the request of Mr. LEAHY, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. 1215, a bill to strengthen privacy protections, accountability, and oversight related to domestic surveillance conducted pursuant to the USA PATRIOT Act and the Foreign Intelligence Surveillance Act of 1978.

S. 1218

At the request of Mr. WARNER, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 1218, a bill to establish a State Energy Race to the Top Initiative to assist energy policy innovation in the States to promote the goal of doubling electric and thermal energy productivity by January 1, 2030.

S. 1228

At the request of Mr. WYDEN, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 1228, a bill to establish a program to provide incentive payments to participating Medicare beneficiaries who voluntarily establish and maintain better health.

S. 1254

At the request of Mr. NELSON, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 1254, a bill to amend the Harmful Algal Blooms and Hypoxia Research and Control Act of 1998, and for other purposes.

S. 1271

At the request of Mr. RUBIO, the name of the Senator from Massachusetts (Ms. WARREN) was added as a cosponsor of S. 1271, a bill to direct the President to establish guidelines for the United States foreign assistance programs, and for other purposes.

S. 1279

At the request of Ms. LANDRIEU, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. 1279, a bill to prohibit the revocation or withholding of Federal funds to programs whose participants carry out voluntary religious activities.

S. 1335

At the request of Ms. MURKOWSKI, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 1335, a bill to protect and enhance opportunities for recreational hunting, fishing, and shooting, and for other purposes.

S. 1342

At the request of Mr. FLAKE, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of S. 1342, a bill to amend the Internal Revenue Code of 1986 to permit expensing of certain depreciable business assets for small businesses.

S. 1349

At the request of Mr. MORAN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1349, a bill to enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, increase individual savings, and for other purposes.

S. 1360

At the request of Mr. CARPER, the name of the Senator from Wisconsin (Mr. JOHNSON) was added as a cosponsor of S. 1360, a bill to amend the Improper Payments Elimination and Recovery Improvement Act of 2012, including making changes to the Do Not Pay initiative, for improved detection, prevention, and recovery of improper payments to deceased individuals, and for other purposes.

S. 1378

At the request of Mr. BLUNT, the name of the Senator from South Carolina (Mr. SCOTT) was added as a cosponsor of S. 1378, a bill to amend title 5, United States Code, to provide for investigative leave requirements with respect to Senior Executive Service employees, and for other purposes.

S. RES. 69

At the request of Mr. INHOFE, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. Res. 69, a resolution calling for the protections of religious minority rights and freedoms in the Arab world.

S. RES. 164

At the request of Mr. UDALL of Colorado, the name of the Senator from Tennessee (Mr. CORKER) was added as a cosponsor of S. Res. 164, a resolution designating October 30, 2013, as a national day of remembrance for nuclear weapons program workers.

S. RES. 165

At the request of Mr. DURBIN, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Res. 165, a resolution calling for the release from prison of former Prime Minister of Ukraine Yulia Tymoshenko in light of the recent European Court of Human Rights ruling.

S. RES. 199

At the request of Mr. COONS, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. Res. 199, a resolution celebrating the 200th August Quarterly Festival taking place from August 18, 2013, through August 25, 2013, in Wilmington, Delaware.

AMENDMENT NO. 1814

At the request of Mr. COCHRAN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of amendment No. 1814 intended to be proposed to S. 1243, an original bill making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2014, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REED (for himself and Mr. JOHANNS):

S. 1387. A bill to establish a pilot program to authorize the Secretary of Housing and Urban Development to make grants to nonprofit organizations to rehabilitate and modify homes of disabled and low-income veterans; to the Committee on Banking, Housing, and Urban Affairs.

Mr. REED. Mr. President, I am proud to be once again reintroducing the Housing Assistance for Veterans Act, HAVEN Act, with my colleague, Senator JOHANNS.

Last year, we joined forces to successfully pass this legislation as an amendment during the Senate's consideration of the National Defense Authorization Act, NDAA. Unfortunately, due to concerns by some on the Veterans' Affairs Committee, it was not included in the final version of the NDAA. Those concerns have been addressed in this version of the HAVEN Act, and I would like to thank the Veterans' Affairs Committee for working cooperatively with us to strengthen the legislation.

Our veterans have made many personal sacrifices in service to our Nation, and we must honor our commitment to provide them with the care they have earned and deserve. One such way is to ensure that they have access to adequate housing.

According to Rebuilding Together, 5.5 million of our veterans are disabled, and one and a half million are at risk of homelessness. In my home State of Rhode Island, according to the U.S. Census Bureau, there are more than 19,000 veterans with disabilities, each of whom face their own unique challenges in terms of their housing needs.

The Department of Veterans Affairs, VA, has programs that assist veterans in adapting and improving their homes, but unfortunately, these programs do not extend assistance to all veterans with disabilities. It is clear we must do more, and with this legislation, we are seeking to serve all veterans with disabilities, regardless of the severity of the disability and whether the disability is service-connected.

The HAVEN Act will give veterans the opportunity to renovate and modify their existing homes by installing wheelchair ramps, widening doors, reequipping rooms, and making necessary additions and adjustments to existing structures—all so that these homes are safer and more suitable for our veterans.

Our legislation encourages key stakeholders, such as the Department of Housing and Urban Development, the VA, housing non-profits, and veterans service organizations, to work together to serve our veterans. In order to extend the reach of this Federal funding, grant recipients would be expected to either match Federal funding or make in-kind contributions, through encouraging volunteers to help make repairs or engaging businesses to donate needed supplies.

This bill is supported by the American Legion, Veterans of Foreign Wars, Vietnam Veterans of America, Paralyzed Veterans of America, VetsFirst, a program of United Spinal Association, Iraq and Afghanistan Veterans of America, Habitat for Humanity, and Rebuilding Together. I thank Senator JOHANNS for working with me on this important bill, and I look forward to working with him and the rest of our colleagues to pass this legislation.

By Mr. LEVIN (for himself, Mr. DURBIN, Ms. STABENOW, and Mr. BROWN):

S. 1388. A bill to require the Secretary of Health and Human Services, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Energy, to conduct a study on the public health and environmental impacts of the production, transportation, storage, and use of petroleum coke, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. LEVIN. Mr. President, I am introducing today, with my colleagues Senators Durbin, Stabenow, and Brown, the Petroleum Coke Transparency and Public Health Study Act, which would require the Department of Health and Human Services to conduct a study on the health and environmental impacts of petroleum coke. This bill, which is a companion to a bill introduced by Representative PETERS on June 6, 2013, was motivated by a situation in Detroit.

In March 2013, large piles of uncontained petroleum coke stored along the banks of the Detroit River became publicly visible, raising questions about the potential environmental and public health impacts. Sitting just feet from the Detroit River, the piles have grown to nearly three stories high over the past several months. I want to make sure that this low-grade fuel does not pose a threat to the people of Detroit or impair our waterways. The Detroit River is a valued resource that must be preserved and protected.

Petroleum coke is a byproduct of refining crude oil into liquid fuels such as gasoline and diesel. It is a commodity that can be cofired with coal to produce low-cost energy. In recent years, a number of U.S. refineries have undergone expansions in order to accommodate increases in processing crude oil, including the Marathon refinery in Detroit, MI; the Cenovus refinery in Wood River, IL; and the BP refinery in Whiting, IN.

With increases in crude oil processing in the United States and Canada, petroleum coke production is expected to rise. However, the impacts of petroleum coke on public health and the environment have not been fully assessed. Further, each State has different regulations for managing, storing, and transporting it. It is important that we understand the market projections for petroleum coke, how to properly manage it, and its potential impacts on public health and the environment.

This bill would address these key knowledge gaps by requiring a comprehensive study on petroleum coke. The study would include an analysis of the public health and environmental impacts of the production, transportation, storage, and use of petroleum coke; an assessment of best practices for storing, transporting, and managing petroleum coke; and a quantitative analysis of current and projected domestic petroleum coke production and utilization locations.

We should ensure that energy production occurs in a diligent and responsible manner and does not harm public health or our environment. With a changing energy market and limited dollars, we must have a comprehensive understanding of how to effectively and efficiently manage our future energy supply. This bill would give us the tools to properly manage petroleum coke production with good environmental and public stewardship.

By Mr. KING (for himself and Mr. BLUNT):

S. 1390. A bill to establish an independent advisory committee to review certain regulations, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. KING. Mr. President, I would like to offer a few words on a bill that I am introducing today with my colleague and friend, Senator ROY BLUNT of Missouri. Upon my arrival to the Senate, Senator BLUNT and I shared a conversation in which we discovered our interest in proposing pragmatic legislation that would go about easing the ever-growing regulatory burden borne by businesses across the country. Since then, we have worked together to craft a bill that takes a reasonable approach toward thinning out older regulations that have outlived their utility, all while retaining essential congressional oversight. Today we introduce the Regulatory Improvement Act of 2013, which I believe will achieve this goal.

The Regulatory Improvement Act will create an independent Regulatory Improvement Commission that will be tasked with reviewing outdated regulations with the goals of modifying, consolidating, or repealing regulations in order to reduce compliance costs, encourage growth and innovation, and improve competitiveness. The composition of the commission will be determined by congressional leadership and the President, and the commission will be tasked with identifying a single sector or area of regulations for consideration. After extensive review involving broad public and stakeholder input, the commission will submit to Congress a report containing regulations in need of streamlining, consolidation, or repeal. This report will enjoy expedited legislative procedures and will be subject to an up-or-down vote in both houses of Congress without amendment.

Let me be clear: the intent of this bill is not to engage in a wholesale dismantling of the existing regulatory regime. In particular, I share some of my colleagues concerns that ''regulatory reform'' can be employed as a euphemism to disguise an undercurrent of efforts to completely undo significant legislation—from the Clean Air Act to the Affordable Care Act. I do not support such efforts. That said, I believe there is broad bipartisan consensus that regulations have a cumulative effect and that Congress has neither the expertise nor formal mechanisms through which it can effectively and expeditiously conduct retrospective analyses. A Regulatory Improvement Commission would provide a vehicle for the review of older regulations and provided much-needed relief to businesses struggling to comply with layers of competing or even duplicative regulations.

In a larger sense, this bill seeks to reclaim some of the ground that Congress has ceded to executive agencies in recent years. From my vantage point, the current regulatory structure has become akin to a fourth, unchecked branch of government. As an institution, we must find ways to reverse this disturbing trend and reestablish an appropriate role of congressional oversight. Therefore, I am glad to introduce this bipartisan bill that offers a reasonable way to revisit older regulations, and I thank Senator BLUNT for his interest and support of the proposal.

By Mr. HARKIN (for himself, Mr. GRASSLEY, and Mr. LEAHY):

S. 1391. A bill to amend the Age Discrimination in Employment Act of 1967 and other laws to clarify appropriate standards for Federal employment discrimination and retaliation claims, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, today I join with my senior colleague from Iowa, Senator GRASSLEY, and with the distinguished chair of the Judiciary

Committee, Senator LEAHY, in reintroducing the Protecting Older Workers Against Discrimination Act.

The need for this legislation was vividly demonstrated by the experience of an Iowan—Jack Gross. Mr. Gross gave the prime of his life, a quarter century of loyal service, to one company. Despite Mr. Gross's stellar work record, FBL Financial demoted him and other employees over the age of 50 and gave his job to a younger employee.

Expressly to prevent this kind of discrimination, in 1967 Congress passed the Age Discrimination in Employment Act, ADEA. Modeled from and using the same language as Title VII of the Civil Rights Act of 1964—which prohibits employment discrimination on the basis of race, sex, national origin and religion—the ADEA makes it unlawful to discriminate on the basis of age.

When Mr. Gross sought to enforce his rights under this law, a jury of Iowans heard the facts and found that his employer discriminated against him because of his age. That jury awarded him almost $47,000 in lost compensation.

The case was ultimately appealed to the Supreme Court. In June 2009, in Gross v. FBL Financial, Inc., the Court ruled against Mr. Gross, and in doing so made it harder for those with legitimate age discrimination claims to prevail under the ADEA. In fact, on remand, despite the fact Mr. Gross had established that age discrimination was a factor in his demotion, he lost his retrial.

For decades, the law was clear. In 1989, in Price Waterhouse v. Hopkins, the Court ruled that if a plaintiff seeking relief under Title VII of the Civil Rights Act demonstrated that discrimination was a ''motivating'' or ''substantial'' factor behind the employer's action, the burden shifted to the employer to show it would have taken the same action regardless of the plaintiff's membership in a protected class. As part of the Civil Rights Act of 1991, Congress codified the ''motivating factor'' standard with respect to Title VII discrimination claims.

Since the ADEA uses the same language as Title VII, was modeled from it, and had been interpreted consistent with the Civil Rights Act, courts rightly and consistently held that, like a plaintiff claiming discrimination on the basis of race, sex, religion and national origin, a victim bringing suit under the ADEA need only show that membership in a protected class was a ''motivating factor'' in an employer's action. If an employee showed that age was one factor in an employment decision, the burden was on the employer to show it had acted for a legitimate reason other than age.

In Gross, the Court, addressing a question on which it did not grant certiorari, tore up this decades' old standard. In its place, the Court imposed a standard that makes it prohibitively difficult for a victim to prove age discrimination. According to the Court, a plaintiff bears the full burden of proving that age was not only a ''motivating'' factor but the ''but for'' factor, or decisive factor. And, unfortunately, just last month the Supreme Court, in University of Texas Southwestern Medical Center v. Nassar, extended Gross to retaliation cases under Title VII of the Civil Rights Act. Moreover, lower courts have extended Gross to other civil rights claims, including cases arising under the Americans with Disabilities Act and the Rehabilitation Act.

The extremely high burden Gross imposes radically undermines workers' ability to hold employers accountable. As Professor Helen Norton testified to the HELP Committee, ''Gross entirely insulates from liability even an employer who confesses discrimination so long as that employer had another reason for its decision. By permitting employers to escape liability altogether even for a workplace admittedly infected by discrimination, with no incentive to refrain from similar discrimination in the future, the Gross rule thus undermines Congress's efforts to stop and deter workplace discrimination.''

Bear in mind, unlawful discrimination is often difficult to detect. Obviously, those who discriminate do not often admit they are acting for discriminatory reasons. Employers rarely post signs saying, for example, ''older workers need not apply.'' To the contrary, they go out of their way to conceal their true intent. The employer is in the best position to offer an explanation of why a decision that involves discrimination or retaliation was actually motivated by legitimate reasons. As Professor Norton testified, ''[s]uch burden shifting appropriately recognizes and responds to employers' greater access to information that is key to proving or disproving an element of a particular claim . . .'' By putting the entire burden on the worker to demonstrate the absence or insignificance of other factors, the court in effect has freed employers to discriminate or retaliate.

Unfortunately, as Mr. Gross and his colleagues know all too well, age discrimination does indeed occur. Countless thousands of American workers who are not yet ready to voluntarily retire find themselves jobless or passed over for promotions because of age discrimination. Older workers often face stereotypes: That they are not as productive as younger workers; that they cannot learn new skills; that they somehow have a lesser need for income to provide for their families.

Indeed, according to an AARP study, 60% of older workers have reported that they or someone they know has faced age discrimination in the workplace. According to the Equal Employment Opportunity Commission, in Fiscal Year 2012, over 2,800 age discrimination complaints were filed, a more than 20 percent increase from just five years ago. Given the stereotypes that older workers face, it is no surprise that on average they remain unemployed for more than twice as long as all unemployed workers.

The Protecting Older Workers Against Discrimination Act reiterates the principle that Congress established when it passed the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Rehabilitation Act and the Americans with Disabilities Act—when making employment decisions it is illegal for race, sex, national origin, religion, age or disability to be a factor.

The bill repudiates the Supreme Court's Gross v. FBL Financial decision and will restore the law to what it was for decades. It makes clear that when an employee shows discrimination was a ''motivating factor'' behind a decision, the burden is properly on the employer to show the same decision would have been made regardless of discrimination or retaliation. And, like the Civil Rights Act of 1991 with respect to discrimination cases under Title VII, if the employer meets that burden, the employer remains liable, but remedies are limited.

This is a common sense, bipartisan bill. In fact, the Civil Rights Act of 1991, key provisions of which served as a model for this legislation, passed the Senate on a bipartisan basis 93–5. Further, we are introducing this bill only after countless hours of consultation with civil rights stakeholders and representatives of the business community. Moreover, this bill addresses the concerns that were raised about an earlier version of the bill at a hearing held before the Health, Education, Labor, and Pensions Committee in March 2010.

In fact, I want to comment on two changes from that earlier version of this bill introduced in the last Congress. Since October 2009, when Senator LEAHY and I first introduced the Protecting Older Workers Against Discrimination Act, we have had the benefit of nearly three and a half years of lower court application of the Gross decision.

The 2009 bill would have expressly amended the ADEA to make clear that the analytical framework set out in McDonnell Douglas v. Green applied to that statute. Even though, before Gross, every Court of Appeals had held that McDonnell Douglas had applied to age claims, this clarification was meant to address a footnote in Gross in which the Court arguably questioned the applicability of McDonnell Douglas to the ADEA. Since the bill was first introduced, however, every lower court that has examined the issue has continued to apply McDonnell Douglas to the ADEA. As a result, because McDonnell Douglas applies to the ADEA already, we deem it unnecessary to amend the statute.

Second, the initial bill expressly amended only the ADEA. Since Gross, however, lower courts have applied the Court's reasoning in that decision to

other statutes. Because the most notable application has been to the ADA, Rehabilitation Act and Title VII retaliation claims, those statutes are expressly amended here too.

Finally, in Gross, the Court defended the Court's departure from well-established law by noting that it ''cannot ignore Congress' decision to amend Title VII's relevant provisions but not make similar changes to the ADEA.'' In other words, the Court found that because Congress, in the Civil Rights Act of 1991, codified the ''motivating factor'' framework for discrimination claims under Title VII, but not for the ADEA, Congress somehow must have intended Price Waterhouse not to apply to any statute but Title VII.

Because of the Court's reasoning, I want to emphasize that this bill in no way questions the motivating factor framework for other anti-discrimination and anti-retaliation statutes that are not expressly covered by the legislation. As the bill's findings make clear, not only does this bill repudiate the Gross decision itself, but it expressly repudiates the reasoning underlying the decision, including the argument that Congress's failure to amend any statute other than Title VII means that Congress intended to disallow mixed motive claims under other statutes. It would be an error for a court to apply similar reasoning following passage of this bill to other statutes. The fact that other statutes are not expressly amended in this bill does not mean that Congress endorses Gross's application to any other statute.

In conclusion, this bill is very straightforward. It reiterates what Congress said in 1967 when it passed the ADEA—when making employment decisions it is illegal for age to be a factor. A person should not be judged arbitrarily because he or she was born in a certain year or earlier when he or she still has the ability to contribute as much, or more, as the next person. This bill will help ensure that all our citizens will have an equal opportunity, commensurate with their abilities, for productive employment.

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. 1391

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 Older Workers Against Discrimination Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) In enacting section 107 of the Civil Rights Act of 1991 (adding section 703(m) of the Civil Rights Act of 1964), Congress reaffirmed its understanding that unlawful discrimination is often difficult to detect and prove because discriminators do not usually admit their discrimination and often try to conceal their true motives. Section 703(m) of the Civil Rights Act of 1964 expressly approved so-called ''mixed motive'' claims, providing that an unlawful employment practice is established when a protected characteristic was a motivating factor for any employment practice, even though other factors also motived the practice.

(2) Congress enacted amendments to other civil rights statutes, including the Age Discrimination in Employment Act of 1967 (referred to in this section as the ''ADEA''), the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973, but Congress did not expressly amend those statutes to address mixed motive discrimination.

(3) In the case of Gross v. FBL Financial Services, Inc., 557 U.S. 167 (2009), the Supreme Court held that, because Congress did not expressly amend the ADEA to address mixed motive claims, such claims were unavailable under the ADEA, and instead the complainant bears the burden of proving that a protected characteristic or protected activity was the ''but for'' cause of an unlawful employment practice. This decision has significantly narrowed the scope of protections afforded by the statutes that were not expressly amended in 1991 to address mixed motive claims.

(b) PURPOSES.—The purposes of this Act are—

(1) to clarify congressional intent that mixed motive claims shall be available, and that a complaining party need not prove that a protected characteristic or protected activity was the ''but for'' cause of an unlawful employment practice, under the ADEA and similar civil rights provisions;

(2) to reject the Supreme Court's reasoning in the Gross decision that Congress' failure to amend any statute other than title VII of the Civil Rights Act of 1964 (with respect to discrimination claims), in enacting section 107 of the Civil Rights Act of 1991, suggests that Congress intended to disallow mixed motive claims under other statutes; and

(3) to clarify that complaining parties—

(A) may rely on any type or form of admissible evidence to establish their claims of an unlawful employment practice;

(B) are not required to demonstrate that the protected characteristic or activity was the sole cause of the employment practice; and

(C) may demonstrate an unlawful employment practice through any available method of proof or analytical framework.

SEC. 3. STANDARDS OF PROOF.

(a) AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—

(1) CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF AGE IN EMPLOYMENT PRACTICES.—Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by inserting after subsection (f) the following:

''(g)(1) Except as otherwise provided in this Act, an unlawful practice is established under this Act when the complaining party demonstrates that age or an activity protected by subsection (d) was a motivating factor for any practice, even though other factors also motivated the practice.

''(2) In establishing an unlawful practice under this Act, including under paragraph (1) or by any other method of proof, a complaining party—

''(A) may rely on any type or form of admissible evidence and need only produce evidence sufficient for a reasonable trier of fact to find that an unlawful practice occurred under this Act; and

''(B) shall not be required to demonstrate that age or an activity protected by subsection (d) was the sole cause of a practice.''.

(2) REMEDIES.—Section 7 of such Act (29 U.S.C. 626) is amended—

(A) in subsection (b)—

(i) in the first sentence, by striking ''The'' and inserting ''(1) The'';

(ii) in the third sentence, by striking ''Amounts'' and inserting the following:

''(2) Amounts'';

(iii) in the fifth sentence, by striking ''Before'' and inserting the following:

''(4) Before''; and

(iv) by inserting before paragraph (4), as designated by clause (iii) of this subparagraph, the following:

''(3) On a claim in which an individual demonstrates that age was a motivating factor for any employment practice, under section 4(g)(1), and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

''(A) may grant declaratory relief, injunctive relief (except as provided in subparagraph (B)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 4(g)(1); and

''(B) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.''; and

(B) in subsection (c)(1), by striking ''Any'' and inserting ''Subject to subsection (b)(3), any''.

(3) DEFINITIONS.—Section 11 of such Act (29 U.S.C. 630) is amended by adding at the end the following:

''(m) The term 'demonstrates' means meets the burdens of production and persuasion.''.

(4) FEDERAL EMPLOYEES.—Section 15 of such Act (29 U.S.C. 633a) is amended by adding at the end the following:

''(h) Sections 4(g) and 7(b)(3) shall apply to mixed motive claims (involving practices described in section 4(g)(1)) under this section.''.

(b) TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—

(1) CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by striking subsection (m) and inserting the following:

''(m) Except as otherwise provided in this title, an unlawful employment practice is established under this title when the complaining party demonstrates that race, color, religion, sex, or national origin or an activity protected by section 704(a) was a motivating factor for any employment practice, even though other factors also motivated the practice.''.

(2) FEDERAL EMPLOYEES.—Section 717 of such Act (42 U.S.C. 2000e–16) is amended by adding at the end the following:

''(g) Sections 703(m) and 706(g)(2)(B) shall apply to mixed motive cases (involving practices described in section 703(m)) under this section.''.

(c) AMERICANS WITH DISABILITIES ACT OF 1990.—

(1) DEFINITIONS.—Section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) is amended by adding at the end the following:

''(11) DEMONSTRATES.—The term 'demonstrates' means meets the burdens of production and persuasion.''.

(2) CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF DISABILITY IN EMPLOYMENT PRACTICES.—Section 102 of such Act (42 U.S.C. 12112) is amended by adding at the end the following:

''(e) PROOF.—

''(1) ESTABLISHMENT.—Except as otherwise provided in this Act, a discriminatory practice is established under this Act when the

complaining party demonstrates that disability or an activity protected by subsection (a) or (b) of section 503 was a motivating factor for any employment practice, even though other factors also motivated the practice.

''(2) DEMONSTRATION.—In establishing a discriminatory practice under paragraph (1) or by any other method of proof, a complaining party—

''(A) may rely on any type or form of admissible evidence and need only produce evidence sufficient for a reasonable trier of fact to find that a discriminatory practice occurred under this Act; and

''(B) shall not be required to demonstrate that disability or an activity protected by subsection (a) or (b) of section 503 was the sole cause of an employment practice.''.

(3) CERTAIN ANTIRETALIATION CLAIMS.—Section 503(c) of such Act (42 U.S.C. 12203(c)) is amended—

(A) by striking ''The remedies'' and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), the remedies''; and

(B) by adding at the end the following:

''(2) CERTAIN ANTIRETALIATION CLAIMS.—Section 107(c) shall apply to claims under section 102(e)(1) with respect to title I.''.

(4) REMEDIES.—Section 107 of such Act (42 U.S.C. 12117) is amended by adding at the end the following:

''(c) DISCRIMINATORY MOTIVATING FACTOR.—On a claim in which an individual demonstrates that disability was a motivating factor for any employment practice, under section 102(e)(1), and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

''(1) may grant declaratory relief, injunctive relief (except as provided in paragraph (2)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 102(e)(1); and

''(2) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.''.

(d) REHABILITATION ACT OF 1973.—

(1) IN GENERAL.—Sections 501(g), 503(d), and 504(d) of the Rehabilitation Act of 1973 (29 U.S.C. 791(g), 793(d), and 794(d)), are each amended by adding after the words ''title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.)'' the following: '', including the standards of causation or methods of proof applied under section 102(e) of that Act (42 U.S.C. 12112(e)),''.

(2) FEDERAL EMPLOYEES.—The amendment made by paragraph (1) to section 501(g) shall be construed to apply to all employees covered by section 501.

SEC. 4. APPLICATION.

This Act, and the amendments made by this Act, shall apply to all claims pending on or after the date of enactment of this Act.

By Mr. LEAHY (for himself, Mr. COCHRAN, Mr. CASEY, and Mr. MORAN):

S. 1395. A bill to amend the Internal Revenue Code of 1986 to permanently extend and expand the charitable deduction for contributions of food inventory; to the Committee on Finance.

Mr. LEAHY. Mr. President, I am pleased today to introduce the Good Samaritan Hunger Relief Tax Incentive Act along with Senators COCHRAN, CASEY, and MORAN. This bill is an effort I have worked on with former Senator Richard Lugar for many years and I am happy to continue the effort on behalf of hungry families nationwide this Congress.

In the wake of our Nation's economic recession, the demand on food banks, church food pantries, and soup kitchens has increased significantly. According to a study by the United States Department of Agriculture, over 50 million Americans lived in food insecure households in 2011. The same study found that households with children reported food insecurity at a much higher rate than households without children. In fact, in Vermont alone, over 12,000 children rely on food from food shelves each month.

Despite the increased demand for donated food, it is estimated that between 25 and 40 percent of the food that is produced, grown, and transported in the United States will never be consumed. This contributes to the 70 billion pounds of fit and wholesome food that are sent to landfills in the United States each year.

This bill would address this troubling trend by giving greater incentives to all businesses to donate food to nonprofit organizations that feed the hungry. The current tax code allows corporations to receive a special deduction for donations to food banks, but it excludes many other small businesses such as farmers, ranchers, and restaurant owners from the same tax incentive. Unfortunately, these businesses often find it more cost effective to throw away food than to donate it to those in need.

I am pleased beginning in 2006, Congress temporarily extended this tax incentive to most businesses, and most recently extended the provision through the end of 2013. After the provision was enacted, in the restaurant industry alone we saw a 137 percent increase in the pounds of food donated. The Good Samaritan Hunger Relief Tax Incentive Act would make this provision permanent, and would extend the deduction to farmers who often have large amounts of fresh food to donate.

This bipartisan legislation is supported by numerous organizations including Feeding America, the American Farm Bureau Federation, the Food Marketing Institute, Grocery Manufactures Association, the National Restaurant Association, the Vermont Food Bank, and Hunger Free Vermont. I hope as this Congress considers comprehensive tax legislation in the future this measure is included. We must do more to ensure that no one in America goes hungry, and increasing the amount of food available to food banks is a critical step toward meeting that goal.

By Mr. DURBIN:

S. 1399. A bill to amend the Servicemembers Civil Relief Act to extend the interest rate limitation on debt entered into during military service to debt incurred during military service to consolidate or refinance student loans incurred before military service; to the Committee on Veterans' Affairs.

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. 1399

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

SECTION 1. INTEREST RATE LIMITATION ON DEBT ENTERED INTO DURING MILITARY SERVICE TO CONSOLIDATE OR REFINANCE STUDENT LOANS INCURRED BEFORE MILITARY SERVICE.

(a) IN GENERAL.—Subsection (a) of section 207 of the Servicemembers Civil Relief Act (50 U.S.C. App. 527) is amended—

(1) in paragraph (1), by inserting ''ON DEBT INCURRED BEFORE SERVICE'' after ''LIMITATION TO 6 PERCENT'';

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(3) by inserting after paragraph (1) the following new paragraph (2):

''(2) LIMITATION TO 6 PERCENT ON DEBT INCURRED DURING SERVICE TO CONSOLIDATE OR REFINANCE STUDENT LOANS INCURRED BEFORE SERVICE.—An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, during military service to consolidate or refinance one or more student loans incurred by the servicemember before such military service shall not bear an interest at a rate in excess of 6 percent during the period of military service.'';

(4) in paragraph (3), as redesignated by paragraph (2) of this subsection, by inserting ''or (2)'' after ''paragraph (1)''; and

(5) in paragraph (4), as so redesignated, by striking ''paragraph (2)'' and inserting ''paragraph (3)''.

(b) IMPLEMENTATION OF LIMITATION.—Subsection (b) of such section is amended—

(1) in paragraph (1), by striking ''the interest rate limitation in subsection (a)'' and inserting ''an interest rate limitation in paragraph (1) or (2) of subsection (a)''; and

(2) in paragraph (2)—

(A) in the paragraph heading, by striking ''AS OF DATE OF ORDER TO ACTIVE DUTY''; and

(B) by inserting before the period at the end the following: ''in the case of an obligation or liability covered by subsection (a)(1), or as of the date the servicemember (or servicemember and spouse jointly) incurs the obligation or liability concerned under subsection (a)(2)''.

(c) STUDENT LOAN DEFINED.—Subsection (d) of such section is amended by adding at the end the following new paragraph:

''(3) STUDENT LOAN.—The term 'student loan' means the following:

''(A) A Federal student loan made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

''(B) A private student loan as that term is defined section 140(a) of the Truth in Lending Act (15 U.S.C. 1650(a)).''.

By Mr. REED (for himself and Mr. BROWN):

S. 1400. A bill to increase access to adult education to provide for economic growth; to the Committee on Finance.

Mr. REED. Mr. President, our economy will not work for individuals or for our nation unless we create and support avenues for adults to continue their education and build their skills. These are longstanding issues that I

have worked on for many years, including the last attempt to reauthorize the Workforce Investment Act. I was pleased to work with Senator Webb in the 112th Congress on the Adult Education and Economic Growth Act, and I am proud to reintroduce it today with Senator BROWN. I thank Congressman RUBÉN HINOJOSA for introducing the companion legislation in the House of Representatives.

The Adult Education and Economic Growth Act increases the investment in adult education programs; ensures better coordination among adult education programs, workforce development programs, and higher education; strengthens professional development for adult education providers; expands the use of technology in adult education programs; and provides incentives for employers to support their workers who need adult education services.

In Rhode Island, roughly 41 percent of working age adults have a college degree. By 2018, it is estimated that 61 percent of Rhode Island jobs will require some postsecondary education. We have an estimated 91,000 individuals without a high school diploma—the basic ticket to accessing postsecondary education and training.

Nationally, the numbers make a similar case for the need to invest in adult education. According to the National Commission on Adult Literacy, 80 to 90 million U.S. adults today, about half of the adult workforce, do not have the basic education and communication skills required to obtain jobs that pay a family-sustaining wage. These individuals continue to struggle in the recovering economy, with unemployment rates above 10 percent for individuals who do not have a high school diploma, compared to 7.6 percent for high school graduates and less than 4 percent for workers with bachelor's degrees.

Simply put, we will not be able to close the skills gap without a robust investment in adult education. Unfortunately, we have not been making this kind of investment. Funding has been anemic, and as a result, services reach fewer than 3 million adults annually—a fraction of the need.

The Adult Education and Economic Growth will help turn around this dire situation by increasing the authorization for adult education programs authorized under Title II of the Workforce Investment Act to $850 million and establishing a new state technology grant for adult education to upgrade the delivery system and assist adults in attaining critical digital literacy skills. This legislation requires state and local workforce investment boards to address adult education in their plans for using funds authorized under Title I of the Workforce Investment Act, including incorporating adult education into career pathways programs and offering integrated education and training programs. It also strengthens programs and services for English learners, including authorizing the Integrated English Literacy and Civics Program, and for adults with disabilities. The legislation will also build the knowledge base on what works for adult learners through a National Center for Adult Education, Literacy, and Workplace Skills. Finally, the Adult Education and Economic Growth Act will provide employers with tax incentives to invest in developing the basic skills of their employees.

In sum, the Adult Education and Economic Growth Act offers a comprehensive approach to reaching the millions of adults who need basic skills, English literacy instruction, or a secondary school diploma so that they can embark on a career pathway that leads to economic stability and success. I am pleased to have worked with the National Commission on Adult Literacy in developing this legislation. I urge my colleagues to cosponsor this bill and work with me to include its provisions in the pending reauthorization of the Workforce Investment Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 202—DESIGNATING JULY 30, 2013, AS ''NATIONAL WHISTLEBLOWER APPRECIATION DAY''

Mr. GRASSLEY (for himself and Mr. LEVIN) submitted the following resolution; which was considered and agreed to.:

S. RES. 202

Whereas, in 1777, before the passage of the Bill of Rights, 10 sailors and marines blew the whistle on fraud and misconduct harmful to the United States;

Whereas the Founding Fathers unanimously supported the whistleblowers in words and deeds, including releasing government records and providing monetary assistance for reasonable legal expenses necessary to prevent retaliation;

Whereas, on July 30, 1778, in demonstration of their full support for whistleblowers, the members of the Continental Congress unanimously enacted the first whistleblower legislation in the United States that read: ''*Resolved*, That it is the duty of all persons in the service of the United States, as well as all other the inhabitants thereof, to give the earliest information to Congress or other proper authority of any misconduct, frauds or misdemeanors committed by any officers or persons in the service of these states, which may come to their knowledge'' (legislation of July 30, 1778, reprinted in *Journals of the Continental Congress, 1774–1789*, ed. Government Printing Office (Washington, DC, 1908), 11:732);

Whereas whistleblowers risk their careers, jobs, and reputations by reporting waste, fraud, and abuse to the proper authorities;

Whereas, when providing proper authorities with lawful disclosures, whistleblowers save taxpayers in the United States billions of dollars each year and serve the public interest by ensuring that the United States remains an ethical and safe place; and

Whereas it is the public policy of the United States to encourage, in accordance with Federal law (including the Constitution, rules, and regulations) and consistent with the protection of classified information (including sources and methods of detection), honest and good faith reporting of misconduct, fraud, misdemeanors, and other crimes to the appropriate authority at the earliest time possible: Now, therefore, be it

Resolved, That the Senate—

(1) designates July 30, 2013, as ''National Whistleblower Appreciation Day''; and

(2) ensures that the Federal Government implements the intent of the Founding Fathers, as reflected in the legislation enacted on July 30, 1778, by encouraging each executive agency to recognize National Whistleblower Appreciation Day by—

(A) informing employees, contractors working on behalf of United States taxpayers, and members of the public about the legal rights of citizens of the United States to blow the whistle; and

(B) acknowledging the contributions of whistleblowers to combating waste, fraud, abuse, and violations of laws and regulations in the United States.

SENATE RESOLUTION 203—EXPRESSING THE SENSE OF THE SENATE REGARDING EFFORTS BY THE UNITED STATES TO RESOLVE THE ISRAELI-PALESTINIAN CONFLICT THROUGH A NEGOTIATED TWO-STATE SOLUTION

Mrs. FEINSTEIN (for herself, Mr. KAINE, and Mr. HEINRICH) submitted the following resolution; which was referred to the Committee on Foreign Relations.:

S. RES. 203

Whereas the special relationship between the United States and Israel is rooted in shared interests and shared values of democracy, human rights, and the rule of law;

Whereas the United States has worked for decades to strengthen Israel's security through assistance and cooperation on defense and intelligence matters in order to enhance the safety of Americans and Israelis;

Whereas the United States remains unwavering in its commitment to help Israel address the myriad challenges our ally faces, including threats from anti-Israel terrorist organizations, regional instability, horrifying violence in neighboring states, and the prospect of a nuclear-armed Iran;

Whereas, the United States continues to seek a permanent, two-state solution to resolve the conflict between Israel and Palestine as a fundamental component of our Nation's commitment to the security of Israel;

Whereas, for 20 years, Presidents of the United States from both political parties and Israeli Prime Ministers have supported a two-state solution to the Israeli-Palestinian conflict;

Whereas ending the Israeli-Palestinian conflict is vital to the interests of all parties and to peace and stability in the Middle East;

Whereas a peace agreement that establishes a Palestinian state, coexisting side-by-side with Israel in peace and security, is necessary to ensure that Israel remains a Jewish, democratic state;

Whereas, recognizing the urgency of the situation, Secretary John Kerry made 6 trips to the Middle East in his first 6 months as Secretary of State in an effort to resume negotiations toward a two-state solution;

Whereas, on July 29, 2013 representatives of Israel and Palestine engaged in face-to-face talks in order to move toward a resumption