

of S. 667, a bill to ensure that organizations with religious or moral convictions are allowed to continue to provide services for children.

S. 674

At the request of Mrs. MURRAY, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 674, a bill to expand programs with respect to women's health.

S. 683

At the request of Mr. PAUL, the name of the Senator from Nevada (Mr. HELLER) was added as a cosponsor of S. 683, a bill to extend the principle of federalism to State drug policy, provide access to medical marijuana, and enable research into the medicinal properties of marijuana.

S. 686

At the request of Mr. GRASSLEY, the name of the Senator from Indiana (Mr. COATS) was added as a cosponsor of S. 686, a bill to amend the Internal Revenue Code of 1986 to provide a limitation on certain aliens from claiming the earned income tax credit.

S. 698

At the request of Mr. ENZI, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 698, a bill to restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

AMENDMENT NO. 271

At the request of Mr. PORTMAN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of amendment No. 271 proposed to S. 178, a bill to provide justice for the victims of trafficking.

AMENDMENT NO. 279

At the request of Mr. SULLIVAN, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of amendment No. 279 intended to be proposed to S. 178, a bill to provide justice for the victims of trafficking.

AMENDMENT NO. 281

At the request of Mr. RUBIO, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 281 intended to be proposed to S. 178, a bill to provide justice for the victims of trafficking.

AMENDMENT NO. 284

At the request of Mr. VITTER, the name of the Senator from Georgia (Mr. PERDUE) was added as a cosponsor of amendment No. 284 proposed to S. 178, a bill to provide justice for the victims of trafficking.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 702. A bill to strengthen the prohibitions on insider trading, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. REED. Mr. President, I am joined by Senator MENENDEZ in introducing the Stop Illegal Insider Trading Act to

finally define the offense of insider trading. The need for this legislation is long overdue because, in the absence of a statutory definition, an inconsistent and complicated body of common law has developed as the courts have used varying interpretations of anti-fraud statutes in order to decide insider trading cases.

For illustrative purposes, consider the following example. A financial analyst receives information from an insider at XYZ Corporation, which contains XYZ's earnings before this information is publicly released. This analyst then shares this inside information with his portfolio manager who subsequently trades in XYZ stock.

Based on this hypothetical, I suspect most Americans would be skeptical about someone who learned of a company's earnings before this information was publicly released and then subsequently traded on such information. Indeed, I believe most would agree that such a person was given an unfair advantage in our securities markets.

However, on December 10, 2014, the United States Court of Appeals for the Second Circuit in *United States v. Newman* decided that the portfolio managers in this case were not guilty of insider trading because as the *New York Times* summarized it, "prosecutors had to show that both men knew that the original source of the inside information had breached a fiduciary duty and had received a personal benefit in return."

This decision defies common sense. It should not matter whether someone, who traded on material information that was not publicly available, knew whether the source of such information breached a fiduciary duty and additionally received a personal benefit in return for sharing this inside information. Such a decision is one of many that has caused too many of our citizens to lose faith in government and our courts. Indeed, some prosecutors have noted that the Second Circuit's decision in *Newman* "might make it difficult to file charges against a parent who passes on a confidential stock tip to one of his children without receiving anything in return." This is plainly not right and contributes to a larger sense of injustice.

The greater irony, however, is that those who deal with insider trading law the most agree that something must be done to restore reason.

For example, Duke Law School Professor James D. Cox noted that "all studies of significant corporate events document that a significant portion of the market movement associated with corporate events occurs before the event is announced; for example, forty to fifty percent of the price gain associated with a merger or takeover occurs before the transaction's announcement . . . One can thus surmise not only that corporate insiders are not very good about keeping secrets, but that their tippees are delighted that they do not. That is, remote tippees are likely

both pervasive and truly are insidious. Newman pours gas onto this raging fire."

Most ironically, Judge Barrington Parker of the Second Circuit Court of Appeals who delivered the *Newman* opinion remarked during oral arguments, "I'm concerned the government's position on key points of the law seems to vary based depending on which judge you're talking to."

Moreover, University of North Carolina Law School Professor Thomas Lee Hazen recently stated, "no matter how narrow or broad people believe the definition of insider trading should be, virtually everyone is now in agreement that we'd be a lot better off if Congress would simply bite the bullet and define it . . . the situation is a mess. That's how you end up with cases like *Newman*."

This is precisely what Senator MENENDEZ and I are doing in introducing this legislation today. We are seeking to finally define the offense of insider trading with a clear and simple bright line rule. Simply put, if a person trades a security on the basis of material information that the person knows or has reason to know is not publicly available, then they have engaged in unlawful insider trading.

Under our legislation, it is irrelevant whether the trader knew of the source's fiduciary duty or whether the source derived any personal benefit. What matters is whether the trader knew or has reason to know that such trader had an unfair advantage in being given material information that was not shared with the broader public. In addition, we have taken care to ensure that those who take the time to independently develop their own information from publicly available sources can trade on this independently developed information so that publicly available information can be analyzed and interpreted without fear of liability. Lastly, because there may be situations that do not necessarily rise to the level of unlawful insider trading, we have provided the Securities and Exchange Commission with the flexibility to provide exemptions from insider trading liability as long as such exemptions are necessary or appropriate in the public interest and consistent with the protection of investors.

In short, by making it an offense for those who contribute to a securities market rigged in favor of the well connected, our legislation focuses on providing everyday investors with a fair shot at seeing some returns after investing their hard-earned savings. Incidents of insider trading, and the perceived pervasiveness of the practice, have for years served to validate the public's worst assumptions about Wall Street culture. It is time we clearly define what is appropriate under the law and take this meaningful step towards improving the integrity of our securities markets for professional traders and amateur investors alike.

I would like to thank Senator MENENDEZ for working with me on this legislation. I also thank Public Citizen, Americans for Financial Reform, and the Consumer Federation of America for their support, and I urge our colleagues to join us in supporting the Stop Illegal Insider Trading Act.

AMENDMENTS SUBMITTED AND PROPOSED

SA 285. Mr. TOOMEY (for himself and Mr. MANCHIN) submitted an amendment intended to be proposed by him to the bill S. 178, to provide justice for the victims of trafficking; which was ordered to lie on the table.

SA 286. Mr. WICKER submitted an amendment intended to be proposed by him to the bill S. 178, supra; which was ordered to lie on the table.

SA 287. Mr. WICKER submitted an amendment intended to be proposed by him to the bill S. 178, supra; which was ordered to lie on the table.

SA 288. Mr. WICKER submitted an amendment intended to be proposed by him to the bill S. 178, supra; which was ordered to lie on the table.

SA 289. Mr. ROBERTS (for himself and Mr. MORAN) submitted an amendment intended to be proposed by him to the bill S. 178, supra; which was ordered to lie on the table.

SA 290. Mr. LEAHY (for himself, Ms. COLLINS, Ms. MURKOWSKI, Ms. BALDWIN, Ms. AYOTTE, Ms. HEITKAMP, Mrs. SHAHEEN, Mr. BENNET, Mr. MURPHY, and Mr. MERKLEY) submitted an amendment intended to be proposed by him to the bill S. 178, supra; which was ordered to lie on the table.

SA 291. Mr. TOOMEY (for himself and Mr. MANCHIN) submitted an amendment intended to be proposed by him to the bill S. 178, supra; which was ordered to lie on the table.

SA 292. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill S. 178, supra; which was ordered to lie on the table.

SA 293. Ms. HIRONO submitted an amendment intended to be proposed by her to the bill S. 178, supra; which was ordered to lie on the table.

SA 294. Mr. FLAKE submitted an amendment intended to be proposed by him to the bill S. 178, supra; which was ordered to lie on the table.

SA 295. Mr. FLAKE submitted an amendment intended to be proposed by him to the bill S. 178, supra; which was ordered to lie on the table.

SA 296. Ms. KLOBUCHAR submitted an amendment intended to be proposed by her to the bill S. 178, supra; which was ordered to lie on the table.

SA 297. Mr. ALEXANDER (for himself and Mr. KIRK) submitted an amendment intended to be proposed by him to the bill S. 178, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 285. Mr. TOOMEY (for himself and Mr. MANCHIN) submitted an amendment intended to be proposed by him to the bill S. 178, to provide justice for the victims of trafficking; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE —SCHOOL EMPLOYEE BACKGROUND CHECKS

SEC. 01. SHORT TITLE.

This title may be cited as the “Protecting Students from Sexual and Violent Predators Act”.

SEC. 02. BACKGROUND CHECKS.

(a) BACKGROUND CHECKS.—Not later than 2 years after the date of enactment of this Act, each State educational agency, or local educational agency in the case of a local educational agency designated under State law, that receives funds under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) shall have in effect policies and procedures that—

(1) require that a criminal background check be conducted for each school employee that includes—

(A) a search of the State criminal registry or repository of the State in which the school employee resides;

(B) a search of State-based child abuse and neglect registries and databases of the State in which the school employee resides;

(C) a Federal Bureau of Investigation fingerprint check using the Integrated Automated Fingerprint Identification System; and

(D) a search of the National Sex Offender Registry established under section 119 of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16919);

(2) prohibit the employment of a school employee as a school employee if such employee—

(A) refuses to consent to a criminal background check under paragraph (1);

(B) makes a false statement in connection with such criminal background check;

(C) has been convicted of a felony consisting of—

(i) murder;

(ii) child abuse or neglect;

(iii) a crime against children, including child pornography;

(iv) spousal abuse;

(v) a crime involving rape or sexual assault;

(vi) kidnapping;

(vii) arson; or

(viii) physical assault, battery, or a drug-related offense, committed on or after the date that is 5 years before the date of such employee's criminal background check under paragraph (1); or

(D) has been convicted of any other crime that is a violent or sexual crime against a minor;

(3) require that each criminal background check conducted under paragraph (1) be periodically repeated or updated in accordance with State law or the policies of local educational agencies served by the State educational agency;

(4) upon request, provide each school employee who has had a criminal background check under paragraph (1) with a copy of the results of the criminal background check;

(5) provide for a timely process, by which a school employee may appeal, but which does not permit the employee to be employed as a school employee during such appeal, the results of a criminal background check conducted under paragraph (1) which prohibit the employee from being employed as a school employee under paragraph (2) to—

(A) challenge the accuracy or completeness of the information produced by such criminal background check; and

(B) establish or reestablish eligibility to be hired or reinstated as a school employee by demonstrating that the information is materially inaccurate or incomplete, and has been corrected;

(6) ensure that such policies and procedures are published on the website of the State educational agency and the website of each local educational agency served by the State educational agency; and

(7) allow a local educational agency to share the results of a school employee's criminal background check recently conducted under paragraph (1) with another

local educational agency that is considering such school employee for employment as a school employee.

(b) TRANSFER PROHIBITION.—A State educational agency, or local educational agency in the case of a local educational agency designated under State law, that receives funds under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) shall be subject to a State or local law (including regulations), or have a regulation or policy, that prohibits the transfer, or facilitation of the transfer, of any school employee if the agency knows, or has substantive reason to believe, that such employee engaged in sexual misconduct with an elementary school or secondary school student.

(c) FEES FOR BACKGROUND CHECKS.—

(1) CHARGING OF FEES.—The Attorney General, attorney general of a State, or other State law enforcement official may charge reasonable fees for conducting a criminal background check under subsection (a)(1), but such fees shall not exceed the actual costs for the processing and administration of the criminal background check.

(2) ADMINISTRATIVE FUNDS.—A local educational agency or State educational agency may use administrative funds received under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) to pay any reasonable fees charged for conducting such criminal background check.

(3) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT, NON-FEDERAL FUNDS.—A State educational agency or local educational agency using Federal funds in accordance with paragraph (2) shall use such Federal funds only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the purposes of this title, and not to supplant such funds.

(d) PROHIBITION.—Nothing in this title, or any other Federal law, regulation, policy, or directive, shall authorize the Secretary, or any other employee of the Federal Government, to regulate, provide guidance, or otherwise direct the State or local policies or procedures required under this title.

(e) DEFINITIONS.—In this title:

(1) IN GENERAL.—The terms “elementary school”, “secondary school”, “local educational agency”, “State”, and “State educational agency” have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) SCHOOL EMPLOYEE.—The term “school employee” means—

(A) a person who—

(i) is an employee of, or is seeking employment with, a local educational agency, or State educational agency, that receives Federal funds under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.); and

(ii) as a result of such employment, has (or will have) a job duty that results in unsupervised access to public elementary school or public secondary school students; or

(B)(i) any person, or an employee of any person, who has a contract or agreement to provide services with a public elementary school, public secondary school, local educational agency, or State educational agency, that receives Federal funds under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.); and

(ii) such person or employee, as a result of such contract or agreement, has a job duty that results in unsupervised access to public elementary school or public secondary school students.

SA 286. Mr. WICKER submitted an amendment intended to be proposed by him to the bill S. 178, to provide justice