

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5109

To establish a tax, regulatory, and legal structure in the United States that encourages small businesses to expand and innovate, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2010

Mr. KIRK (for himself, Mr. SESSIONS, Mr. LEE of New York, Mr. GERLACH, Mr. DENT, Mr. SHIMKUS, Mr. SENSENBRENNER, and Mr. BARTON of Texas) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Small Business, Financial Services, Rules, Education and Labor, Energy and Commerce, the Judiciary, Oversight and Government Reform, and Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To establish a tax, regulatory, and legal structure in the United States that encourages small businesses to expand and innovate, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Small Business Bill of Rights”.

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

- Sec. 1. Short title; table of contents.  
 Sec. 2. Purpose.

TITLE I—LOWER TAX ENVIRONMENT

Subtitle A—Alternative Minimum Tax Relief

- Sec. 101. Extension of alternative minimum tax relief for nonrefundable personal credits.  
 Sec. 102. Extension of increased alternative minimum tax exemption amount.

Subtitle B—Capital Gains

- Sec. 111. Extension of reduction in taxes on dividends and capital gains.  
 Sec. 112. Temporary reduction of capital gains tax on qualified small business stock.

Subtitle C—Tax Benefits for Start-Ups

- Sec. 121. Increase in amount allowed as deduction for start-up expenditures.

Subtitle D—Miscellaneous

- Sec. 131. GAO to certify no burden on small business concerns.  
 Sec. 132. Exemption from taxes imposed after the date of enactment of this Act.

TITLE II—LIMITATION ON REGULATIONS

- Sec. 201. Limitation on regulations.

TITLE III—BUSINESS GROWTH FOR THE NEXT GENERATION

- Sec. 301. Postponement of termination of estate tax and generation-skipping transfer taxes.

TITLE IV—PROTECTING THE SECRET BALLOT

- Sec. 401. Findings.  
 Sec. 402. National Labor Relations Act.  
 Sec. 403. Regulations.

TITLE V—HEALTHCARE: EXPANDING CHOICE AND LOWERING COSTS

- Sec. 501. Findings and purpose.  
 Sec. 502. Encouraging speedy resolution of claims.  
 Sec. 503. Compensating patient injury.  
 Sec. 504. Maximizing patient recovery.  
 Sec. 505. Additional health benefits.  
 Sec. 506. Punitive damages.  
 Sec. 507. Authorization of payment of future damages to claimants in health care lawsuits.  
 Sec. 508. Definitions.  
 Sec. 509. Effect on other laws.

- Sec. 510. State flexibility and protection of States' rights.
- Sec. 511. Applicability; effective date.
- Sec. 512. Sense of congress.
- Sec. 513. Cooperative governing of individual health insurance coverage.
- Sec. 514. SECA tax deduction for health insurance costs.

#### TITLE VI—WORKFORCE INTEGRITY

- Sec. 601. E-verify program made permanent.
- Sec. 602. Verification under E-verify program made possible over telephone.
- Sec. 603. Grace period to correct paperwork.

#### TITLE VII—INTELLECTUAL PROPERTY PROTECTION

- Sec. 701. Limits on patent legislation.
- Sec. 702. Expedited patent filing procedures for small business concerns.

#### TITLE VIII—INCENTIVES FOR ENERGY EFFICIENCY

##### Subtitle A—Vehicles

- Sec. 801. Consumer incentives to purchase advanced technology vehicles.

##### Subtitle B—Extensions

- Sec. 811. Make permanent the tax credit for residential energy-efficient property.
- Sec. 812. Make permanent the energy efficiency credit for existing homes.
- Sec. 813. Make permanent the energy efficiency commercial buildings deduction.

#### TITLE IX—GUIDANCE ABOUT NEW RULES

- Sec. 901. Guidance and advice about new rules.

#### TITLE X—SMALL BUSINESS PROVISIONS

##### Subtitle A—Small Business General Provisions

- Sec. 1001. Administration prohibited from capping executive compensation.
- Sec. 1002. Reduction of regulatory burden.
- Sec. 1003. Litigation burden on small business concerns to be limited to current levels.
- Sec. 1004. Expansion of volunteer representation and benchmark reports.
- Sec. 1005. Mentoring and networking.
- Sec. 1006. Name of program changed to SCORE.
- Sec. 1007. Authorization of appropriations.

##### Subtitle B—Small Business Goals

- Sec. 1011. Small business goals.
- Sec. 1012. Agency goal negotiation.
- Sec. 1013. Procedures and methods for goal achievement.
- Sec. 1014. Reporting requirements.

##### Subtitle C—Contract Bundling

- Sec. 1021. Definitions of bundling of contract requirements.
- Sec. 1022. Justification.

- Sec. 1023. Appeals.
- Sec. 1024. Third-party review.

Subtitle D—Small Business Subcontracting

- Sec. 1031. Good faith compliance with subcontracting plans.
- Sec. 1032. Limitations on subcontracting.
- Sec. 1033. Criminal violations.

TITLE XI—OFFSETS

- Sec. 1101. Transfer of unobligated stimulus funds.

TITLE XII—DEBT REDUCTION

- Sec. 1201. Repeal of the Troubled Asset Relief Program.

TITLE XIII—DEFINITIONS

- Sec. 1301. Definitions.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to do the following:

3 (1) Protect secret ballots in union elections.

4 (2) Lower health costs with lawsuit reforms and  
5 interstate competition.

6 (3) Lower energy costs with credits for efficient  
7 equipment and hybrids.

8 (4) Permit children to continue business with  
9 low/no death tax.

10 (5) Exempt small businesses from capital gains  
11 tax for 10 years.

12 (6) Make immigration laws easy to comply with.

13 (7) Create a Patent Office fast lane for small  
14 business innovation.

15 (8) SBA to limit Federal paperwork for small  
16 businesses to 200 hours annually.

17 (9) Prevent AMT from taxing the middle class.

1           (10) Reduce deficit to encourage jobs and im-  
2           prove credit.

3                           **TITLE I—LOWER TAX**  
4                           **ENVIRONMENT**  
5           **Subtitle A—Alternative Minimum**  
6                           **Tax Relief**

7   **SEC. 101. EXTENSION OF ALTERNATIVE MINIMUM TAX RE-**  
8                           **LIEF FOR NONREFUNDABLE PERSONAL**  
9                           **CREDITS.**

10           (a) **IN GENERAL.**—Paragraph (2) of section 26(a) of  
11 the Internal Revenue Code of 1986 (relating to special  
12 rule for taxable years 2000 through 2009) is amended—

13                   (1) by striking “or 2009” and inserting “2009,  
14                   2010, or 2011”, and

15                   (2) by striking “2009” in the heading thereof  
16                   and inserting “2011”.

17           (b) **EFFECTIVE DATE.**—The amendments made by  
18 this section shall apply to taxable years beginning after  
19 December 31, 2009.

20   **SEC. 102. EXTENSION OF INCREASED ALTERNATIVE MIN-**  
21                           **IMUM TAX EXEMPTION AMOUNT.**

22           (a) **IN GENERAL.**—Subparagraphs (A) and (B) of  
23 section 55(d)(1) of the Internal Revenue Code of 1986 (re-  
24 lating to exemption amount) are both amended by striking  
25 “2009” and inserting “2009, 2010, and 2011”.

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

## 4 **Subtitle B—Capital Gains**

### 5 **SEC. 111. EXTENSION OF REDUCTION IN TAXES ON DIVI-** 6 **DENDS AND CAPITAL GAINS.**

7 Section 303 of the Jobs and Growth Tax Relief Rec-  
8 onciliation Act of 2003 is amended by striking “December  
9 31, 2010” and inserting “December 31, 2011”.

### 10 **SEC. 112. TEMPORARY REDUCTION OF CAPITAL GAINS TAX** 11 **ON QUALIFIED SMALL BUSINESS STOCK.**

12 (a) TEMPORARY REDUCED RATE FOR QUALIFIED  
13 SMALL BUSINESS STOCK.—Subparagraph (A)(ii) of sec-  
14 tion 1(h)(4) of the Internal Revenue Code of 1986 is  
15 amended to read as follows:

16 “(ii) in the case of any taxable year  
17 beginning after December 31, 2020, sec-  
18 tion 1202 gain, over”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 subsection (a) shall apply to taxable years beginning after  
21 December 31, 2010.

1     **Subtitle C—Tax Benefits for Start-**  
 2                                   **Ups**

3     **SEC. 121. INCREASE IN AMOUNT ALLOWED AS DEDUCTION**  
 4                                   **FOR START-UP EXPENDITURES.**

5             (a) IN GENERAL.—Subsection (b) of section 195 of  
 6 the Internal Revenue Code of 1986 is amended by adding  
 7 at the end the following:

8                     “(3) SPECIAL RULE FOR TAXABLE YEARS BE-  
 9             GINNING IN 2009, 2010, OR 2011.—In the case of a  
 10 taxable year beginning in 2009, 2010, or 2011,  
 11 paragraph (1)(A)(ii) shall be applied—

12                             “(A) by substituting ‘\$20,000’ for  
 13                             ‘\$5,000’; and

14                             “(B) by substituting ‘\$75,000’ for  
 15                             ‘\$50,000’.”

16             (b) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to amounts paid or incurred in tax-  
 18 able years beginning after the date of the enactment of  
 19 this Act.

20                                   **Subtitle D—Miscellaneous**

21     **SEC. 131. GAO TO CERTIFY NO BURDEN ON SMALL BUSI-**  
 22                                   **NESS CONCERNS.**

23             Clause 3 of Rule XIII of the Rules of the House of  
 24 Representatives is amended by adding at the end the fol-  
 25 lowing new paragraph:

1       “(i)(1) Each report of a committee on a public bill  
2 or a public joint resolution shall contain a statement by  
3 the Comptroller General that certifies that such bill or res-  
4 olution will not cause an increase in the number of unem-  
5 ployed individuals in the United States.

6       “(2) A bill or joint resolution that does not contain  
7 a statement required under subparagraph (1) may not be  
8 considered as passed or agreed to unless so determined  
9 by a vote of not less than three-fifths of the Members vot-  
10 ing, a quorum being present.”.

11 **SEC. 132. EXEMPTION FROM TAXES IMPOSED AFTER THE**  
12 **DATE OF ENACTMENT OF THIS ACT.**

13       A small business concern is exempt from any amend-  
14 ment to the Internal Revenue Code of 1986 enacted after  
15 the date of enactment of this Act that would result in any  
16 increase in the amount of Federal taxes due from that  
17 small business concern.

18 **TITLE II—LIMITATION ON**  
19 **REGULATIONS**

20 **SEC. 201. LIMITATION ON REGULATIONS.**

21       (a) IN GENERAL.—The Administrator, acting  
22 through the Chief Counsel of the Office of Advocacy of  
23 the Small Business Administration, is authorized to pro-  
24 vide such support as may be necessary with regard to any  
25 Federal regulation to ensure that a small business concern



1 is not required to expend more than a total of 200 man-  
2 hours annually on applications, filings, petitions, or other  
3 paperwork submitted to Federal departments or agencies.

4 (b) COMMONLY REQUIRED INFORMATION FORM.—  
5 Support provided under subsection (a) shall include the  
6 establishment of a form on the public Internet Web site  
7 of the Administrator, by means of which a small business  
8 concern may provide to the Administrator information  
9 that the Administrator determines to be frequently re-  
10 quired as part of any applications, filings, petitions, or  
11 other paperwork described in subsection (a). The Adminis-  
12 trator shall use information so provided to assist in the  
13 expedited completion of such applications, filings, peti-  
14 tions, or other paperwork.

15 **TITLE III—BUSINESS GROWTH**  
16 **FOR THE NEXT GENERATION**

17 **SEC. 301. POSTPONEMENT OF TERMINATION OF ESTATE**  
18 **TAX AND GENERATION-SKIPPING TRANSFER**  
19 **TAXES.**

20 (a) APPLICATION OF EGTRRA SUNSET.—Section  
21 901(a)(2) of title IX of the Economic Growth and Tax  
22 Relief Reconciliation Act of 2001 is amended by striking  
23 “December 31, 2010” and inserting “December 31,  
24 2015”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to the estates of decedents dying,  
3 gifts made, or generation-skipping transfers, after Decem-  
4 ber 31, 2010.

5 **TITLE IV—PROTECTING THE**  
6 **SECRET BALLOT**

7 **SEC. 401. FINDINGS.**

8 Congress finds that—

9 (1) the right of employees under the National  
10 Labor Relations Act to choose whether to be rep-  
11 resented by a labor organization by way of secret  
12 ballot election conducted by the National Labor Re-  
13 lations Board is among the most important protec-  
14 tions afforded under Federal labor law;

15 (2) the right of employees to choose by secret  
16 ballot is the only method that ensures a choice free  
17 of coercion, intimidation, irregularity, or illegality;  
18 and

19 (3) the recognition of a labor organization by  
20 using a private agreement, rather than a secret bal-  
21 lot election overseen by the National Labor Relations  
22 Board, threatens the freedom of employees to choose  
23 whether to be represented by a labor organization  
24 and severely limits the ability of the National Labor  
25 Relations Board to ensure the protection of workers.

1 **SEC. 402. NATIONAL LABOR RELATIONS ACT.**

2 (a) **RECOGNITION OF REPRESENTATIVE.**—

3 (1) **IN GENERAL.**—Section 8(a)(2) of the Na-  
4 tional Labor Relations Act (29 U.S.C. 158(a)(2)) is  
5 amended by inserting before the colon the following:  
6 “or to recognize or bargain collectively with a labor  
7 organization that has not been selected by a major-  
8 ity of such employees in a secret ballot election con-  
9 ducted by the National Labor Relations Board in ac-  
10 cordance with section 9”.

11 (2) **APPLICATION.**—The amendment made by  
12 subsection (a) shall not apply to collective bar-  
13 gaining relationships in which a labor organization  
14 with majority support was lawfully recognized before  
15 the date of the enactment of this Act.

16 (b) **ELECTION REQUIRED.**—

17 (1) **IN GENERAL.**—Section 8(b) of the National  
18 Labor Relations Act (29 U.S.C. 158(b)) is amend-  
19 ed—

20 (A) by striking “and” at the end of para-  
21 graph (6);

22 (B) by striking the period at the end of  
23 paragraph (7) and inserting “; and”; and

24 (C) by adding at the end the following:

25 “(8) to cause or attempt to cause an employer  
26 to recognize or bargain collectively with a represent-

1       ative of a labor organization that has not been se-  
2       lected by a majority of such employees in a secret  
3       ballot election conducted by the National Labor Re-  
4       lations Board in accordance with section 9.”.

5               (2) APPLICATION.—The amendment made by  
6       paragraph (1) shall not apply to collective bar-  
7       gaining relationships that were recognized before the  
8       date of the enactment of this Act.

9       (c) SECRET BALLOT ELECTION.—Section 9(a) of the  
10      National Labor Relations Act (29 U.S.C. 159(a)), is  
11      amended—

12              (1) by inserting “(1)” after “(a)”;

13              (2) by inserting after “designated or selected”  
14      the following: “by a secret ballot election conducted  
15      by the National Labor Relations Board in accord-  
16      ance with this section”; and

17              (3) by adding at the end the following:

18              “(2) The secret ballot election requirement of  
19      paragraph (1) shall not apply to collective bar-  
20      gaining relationships that were recognized before the  
21      date of the enactment of the Small Business Bill of  
22      Rights.”.

23      **SEC. 403. REGULATIONS.**

24              Not later than 6 months after the date of the enact-  
25      ment of this Act, the National Labor Relations Board

1 shall review and revise all regulations promulgated before  
2 such date to implement the amendments made in this Act  
3 to the National Labor Relations Act.

4 **TITLE V—HEALTHCARE: EX-**  
5 **PANDING CHOICE AND LOW-**  
6 **ERING COSTS**

7 **SEC. 501. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—

9 (1) EFFECT ON HEALTH CARE ACCESS AND  
10 COSTS.—Congress finds that our current civil justice  
11 system is adversely affecting patient access to health  
12 care services, better patient care, and cost-efficient  
13 health care, in that the health care liability system  
14 is a costly and ineffective mechanism for resolving  
15 claims of health care liability and compensating in-  
16 jured patients, and is a deterrent to the sharing of  
17 information among health care professionals which  
18 impedes efforts to improve patient safety and quality  
19 of care.

20 (2) EFFECT ON INTERSTATE COMMERCE.—

21 Congress finds that the health care and insurance  
22 industries are industries affecting interstate com-  
23 merce and the health care liability litigation systems  
24 existing throughout the United States are activities  
25 that affect interstate commerce by contributing to

1 the high costs of health care and premiums for  
2 health care liability insurance purchased by health  
3 care system providers.

4 (3) EFFECT ON FEDERAL SPENDING.—Con-  
5 gress finds that the health care liability litigation  
6 systems existing throughout the United States have  
7 a significant effect on the amount, distribution, and  
8 use of Federal funds because of—

9 (A) the large number of individuals who  
10 receive health care benefits under programs op-  
11 erated or financed by the Federal Government;

12 (B) the large number of individuals who  
13 benefit because of the exclusion from Federal  
14 taxes of the amounts spent to provide them  
15 with health insurance benefits; and

16 (C) the large number of health care pro-  
17 viders who provide items or services for which  
18 the Federal Government makes payments.

19 (b) PURPOSE.—It is the purpose of this title to imple-  
20 ment reasonable, comprehensive, and effective health care  
21 liability reforms designed to—

22 (1) improve the availability of health care serv-  
23 ices in cases in which health care liability actions  
24 have been shown to be a factor in the decreased  
25 availability of services;

1           (2) reduce the incidence of “defensive medi-  
2           cine” and lower the cost of health care liability in-  
3           surance, all of which contribute to the escalation of  
4           health care costs;

5           (3) ensure that persons with meritorious health  
6           care injury claims receive fair and adequate com-  
7           pensation, including reasonable noneconomic dam-  
8           ages;

9           (4) improve the fairness and cost-effectiveness  
10          of our current health care liability system to resolve  
11          disputes over, and provide compensation for, health  
12          care liability by reducing uncertainty in the amount  
13          of compensation provided to injured individuals; and

14          (5) provide an increased sharing of information  
15          in the health care system which will reduce unin-  
16          tended injury and improve patient care.

17 **SEC. 502. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

18          The time for the commencement of a health care law-  
19          suit shall be 3 years after the date of manifestation of  
20          injury or 1 year after the claimant discovers, or through  
21          the use of reasonable diligence should have discovered, the  
22          injury, whichever occurs first. In no event shall the time  
23          for commencement of a health care lawsuit exceed 3 years  
24          after the date of manifestation of injury unless tolled for  
25          any of the following—

- 1 (1) upon proof of fraud;
- 2 (2) intentional concealment; or
- 3 (3) the presence of a foreign body, which has no
- 4 therapeutic or diagnostic purpose or effect, in the
- 5 person of the injured person.

6 Actions by a minor shall be commenced within 3 years  
7 from the date of the alleged manifestation of injury except  
8 that actions by a minor under the full age of 6 years shall  
9 be commenced within 3 years of manifestation of injury  
10 or prior to the minor's 8th birthday, whichever provides  
11 a longer period. Such time limitation shall be tolled for  
12 minors for any period during which a parent or guardian  
13 and a health care provider or health care organization  
14 have committed fraud or collusion in the failure to bring  
15 an action on behalf of the injured minor.

16 **SEC. 503. COMPENSATING PATIENT INJURY.**

17 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL  
18 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any  
19 health care lawsuit, nothing in this title shall limit a claim-  
20 ant's recovery of the full amount of the available economic  
21 damages, notwithstanding the limitation in subsection (b).

22 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any  
23 health care lawsuit, the amount of noneconomic damages,  
24 if available, may be as much as \$250,000, regardless of  
25 the number of parties against whom the action is brought



1 or the number of separate claims or actions brought with  
2 respect to the same injury.

3 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC  
4 DAMAGES.—For purposes of applying the limitation in  
5 subsection (b), future noneconomic damages shall not be  
6 discounted to present value. The jury shall not be in-  
7 formed about the maximum award for noneconomic dam-  
8 ages. An award for noneconomic damages in excess of  
9 \$250,000 shall be reduced either before the entry of judg-  
10 ment, or by amendment of the judgment after entry of  
11 judgment, and such reduction shall be made before ac-  
12 counting for any other reduction in damages required by  
13 law. If separate awards are rendered for past and future  
14 noneconomic damages and the combined awards exceed  
15 \$250,000, the future noneconomic damages shall be re-  
16 duced first.

17 (d) FAIR SHARE RULE.—In any health care lawsuit,  
18 each party shall be liable for that party's several share  
19 of any damages only and not for the share of any other  
20 person. Each party shall be liable only for the amount of  
21 damages allocated to such party in direct proportion to  
22 such party's percentage of responsibility. Whenever a  
23 judgment of liability is rendered as to any party, a sepa-  
24 rate judgment shall be rendered against each such party  
25 for the amount allocated to such party. For purposes of

1 this section, the trier of fact shall determine the propor-  
2 tion of responsibility of each party for the claimant's  
3 harm.

4 **SEC. 504. MAXIMIZING PATIENT RECOVERY.**

5 (a) COURT SUPERVISION OF SHARE OF DAMAGES  
6 ACTUALLY PAID TO CLAIMANTS.—In any health care law-  
7 suit, the court shall supervise the arrangements for pay-  
8 ment of damages to protect against conflicts of interest  
9 that may have the effect of reducing the amount of dam-  
10 ages awarded that are actually paid to claimants. In par-  
11 ticular, in any health care lawsuit in which the attorney  
12 for a party claims a financial stake in the outcome by vir-  
13 tue of a contingent fee, the court shall have the power  
14 to restrict the payment of a claimant's damage recovery  
15 to such attorney, and to redirect such damages to the  
16 claimant based upon the interests of justice and principles  
17 of equity. In no event shall the total of all contingent fees  
18 for representing all claimants in a health care lawsuit ex-  
19 ceed the following limits:

20 (1) 40 percent of the first \$50,000 recovered by  
21 all such claimants.

22 (2) 33 $\frac{1}{3}$  percent of the next \$50,000 recovered  
23 by all such claimants.

24 (3) 25 percent of the next \$500,000 recovered  
25 by all such claimants.

1           (4) 15 percent of any amount by which the re-  
2       covery by all such claimants is in excess of  
3       \$600,000.

4       (b) **APPLICABILITY.**—The limitations in this section  
5       shall apply whether the recovery is by judgment, settle-  
6       ment, mediation, arbitration, or any other form of alter-  
7       native dispute resolution. In a health care lawsuit involv-  
8       ing a minor or incompetent person, a court retains the  
9       authority to authorize or approve a fee that is less than  
10      the maximum permitted under this section. The require-  
11      ment for court supervision in the first two sentences of  
12      subsection (a) applies only in civil actions.

13      **SEC. 505. ADDITIONAL HEALTH BENEFITS.**

14      In any health care lawsuit involving injury or wrong-  
15      ful death, any party may introduce evidence of collateral  
16      source benefits. If a party elects to introduce such evi-  
17      dence, any opposing party may introduce evidence of any  
18      amount paid or contributed or reasonably likely to be paid  
19      or contributed in the future by or on behalf of the oppos-  
20      ing party to secure the right to such collateral source bene-  
21      fits. No provider of collateral source benefits shall recover  
22      any amount against the claimant or receive any lien or  
23      credit against the claimant's recovery or be equitably or  
24      legally subrogated to the right of the claimant in a health  
25      care lawsuit involving injury or wrongful death. This sec-

1 tion shall apply to any health care lawsuit that is settled  
2 as well as a health care lawsuit that is resolved by a fact  
3 finder. This section shall not apply to section 1862(b) of  
4 the Social Security Act (42 U.S.C. 1395y(b)) or section  
5 1902(a)(25) of such Act (42 U.S.C. 1396a(a)(25)).

6 **SEC. 506. PUNITIVE DAMAGES.**

7 (a) IN GENERAL.—Punitive damages may, if other-  
8 wise permitted by applicable State or Federal law, be  
9 awarded against any person in a health care lawsuit only  
10 if it is proven by clear and convincing evidence that such  
11 person acted with malicious intent to injure the claimant,  
12 or that such person deliberately failed to avoid unneces-  
13 sary injury that such person knew the claimant was sub-  
14 stantially certain to suffer. In any health care lawsuit for  
15 which no judgment for compensatory damages is rendered  
16 against such person, no punitive damages may be awarded  
17 with respect to the claim in such lawsuit. No demand for  
18 punitive damages shall be included in a health care lawsuit  
19 as initially filed. A court may allow a claimant to file an  
20 amended pleading for punitive damages only upon a mo-  
21 tion by the claimant and after a finding by the court, upon  
22 review of supporting and opposing affidavits or after a  
23 hearing, after weighing the evidence, that the claimant has  
24 established by a substantial probability that the claimant  
25 will prevail on the claim for punitive damages. At the re-

1 quest of any party in a health care lawsuit, the trier of  
2 fact shall consider in a separate proceeding—

3 (1) whether punitive damages are to be award-  
4 ed and the amount of such award; and

5 (2) the amount of punitive damages following a  
6 determination of punitive liability.

7 If a separate proceeding is requested, evidence relevant  
8 only to the claim for punitive damages, as determined by  
9 applicable State law, shall be inadmissible in any pro-  
10 ceeding to determine whether compensatory damages are  
11 to be awarded.

12 (b) DETERMINING AMOUNT OF PUNITIVE DAM-  
13 AGES.—

14 (1) FACTORS CONSIDERED.—In determining  
15 the amount of punitive damages, if awarded, in a  
16 health care lawsuit, the trier of fact shall consider  
17 only the following:

18 (A) The severity of the harm caused by the  
19 conduct of such party.

20 (B) The duration of the conduct or any  
21 concealment of it by such party.

22 (C) The profitability of the conduct to such  
23 party.

24 (D) The number of products sold or med-  
25 ical procedures rendered for compensation, as

1 the case may be, by such party, of the kind  
2 causing the harm complained of by the claim-  
3 ant.

4 (E) Any criminal penalties imposed on  
5 such party, as a result of the conduct com-  
6 plained of by the claimant.

7 (F) The amount of any civil fines assessed  
8 against such party as a result of the conduct  
9 complained of by the claimant.

10 (2) MAXIMUM AWARD.—The amount of punitive  
11 damages, if awarded, in a health care lawsuit may  
12 be as much as \$250,000 or as much as two times  
13 the amount of economic damages awarded, which-  
14 ever is greater. The jury shall not be informed of  
15 this limitation.

16 (c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT  
17 COMPLY WITH FDA STANDARDS.—

18 (1) LIABILITY OF CERTAIN MANUFACTURERS,  
19 DISTRIBUTORS, AND SUPPLIERS.—

20 (A) IN GENERAL.—No punitive damages  
21 may be awarded against the manufacturer or  
22 distributor of a medical product, or a supplier  
23 of any component or raw material of such med-  
24 ical product, based on a claim that such prod-  
25 uct caused the claimant's harm where—

1 (i)(I) such medical product was sub-  
2 ject to premarket approval, clearance, or li-  
3 censure by the Food and Drug Administra-  
4 tion with respect to the safety of the for-  
5 mulation or performance of the aspect of  
6 such medical product which caused the  
7 claimant's harm or the adequacy of the  
8 packaging or labeling of such medical  
9 product; and

10 (II) such medical product was so ap-  
11 proved, cleared, or licensed; or

12 (ii) such medical product is generally  
13 recognized among qualified experts as safe  
14 and effective pursuant to conditions estab-  
15 lished by the Food and Drug Administra-  
16 tion and applicable Food and Drug Admin-  
17 istration regulations, including without  
18 limitation those related to packaging and  
19 labeling, unless the Food and Drug Admin-  
20 istration has determined that such medical  
21 product was not manufactured or distrib-  
22 uted in substantial compliance with appli-  
23 cable Food and Drug Administration stat-  
24 utes and regulations.

1           (B) RULE OF CONSTRUCTION.—Subpara-  
2 graph (A) may not be construed as establishing  
3 the obligation of the Food and Drug Adminis-  
4 tration to demonstrate affirmatively that a  
5 manufacturer, distributor, or supplier referred  
6 to in such subparagraph meets any of the con-  
7 ditions described in such subparagraph.

8           (2) LIABILITY OF HEALTH CARE PROVIDERS.—  
9 A health care provider who prescribes, or who dis-  
10 penses pursuant to a prescription, a medical product  
11 approved, licensed, or cleared by the Food and Drug  
12 Administration shall not be named as a party to a  
13 product liability lawsuit involving such product and  
14 shall not be liable to a claimant in a class action  
15 lawsuit against the manufacturer, distributor, or  
16 seller of such product. Nothing in this paragraph  
17 prevents a court from consolidating cases involving  
18 health care providers and cases involving products li-  
19 ability claims against the manufacturer, distributor,  
20 or product seller of such medical product.

21           (3) PACKAGING.—In a health care lawsuit for  
22 harm which is alleged to relate to the adequacy of  
23 the packaging or labeling of a drug which is required  
24 to have tamper-resistant packaging under regula-  
25 tions of the Secretary of Health and Human Serv-



1 ices (including labeling regulations related to such  
2 packaging), the manufacturer or product seller of  
3 the drug shall not be held liable for punitive dam-  
4 ages unless such packaging or labeling is found by  
5 the trier of fact by clear and convincing evidence to  
6 be substantially out of compliance with such regula-  
7 tions.

8 (4) EXCEPTION.—Paragraph (1) shall not  
9 apply with respect to any health care lawsuit in  
10 which—

11 (A) a person, before or after premarket ap-  
12 proval, clearance, or licensure of such medical  
13 product, knowingly misrepresented to or with-  
14 held from the Food and Drug Administration  
15 information that is required to be submitted  
16 under the Federal Food, Drug, and Cosmetic  
17 Act (21 U.S.C. 301 et seq.) or section 351 of  
18 the Public Health Service Act (42 U.S.C. 262)  
19 that is material and is causally related to the  
20 harm which the claimant allegedly suffered; or

21 (B) a person made an illegal payment to  
22 an official of the Food and Drug Administra-  
23 tion for the purpose of either securing or main-  
24 taining approval, clearance, or licensure of such  
25 medical product.

1 **SEC. 507. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**  
2 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**  
3 **SUITS.**

4 (a) IN GENERAL.—In any health care lawsuit, if an  
5 award of future damages, without reduction to present  
6 value, equaling or exceeding \$50,000 is made against a  
7 party with sufficient insurance or other assets to fund a  
8 periodic payment of such a judgment, the court shall, at  
9 the request of any party, enter a judgment ordering that  
10 the future damages be paid by periodic payments. In any  
11 health care lawsuit, the court may be guided by the Uni-  
12 form Periodic Payment of Judgments Act promulgated by  
13 the National Conference of Commissioners on Uniform  
14 State Laws.

15 (b) APPLICABILITY.—This section applies to all ac-  
16 tions which have not been first set for trial or retrial be-  
17 fore the date of the enactment of this title.

18 **SEC. 508. DEFINITIONS.**

19 In this title:

20 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-  
21 TEM; ADR.—The term “alternative dispute resolution  
22 system” or “ADR” means a system that provides  
23 for the resolution of health care lawsuits in a man-  
24 ner other than through a civil action brought in a  
25 State or Federal court.

1           (2) CLAIMANT.—The term “claimant” means  
2 any person who brings a health care lawsuit, includ-  
3 ing a person who asserts or claims a right to legal  
4 or equitable contribution, indemnity, or subrogation,  
5 arising out of a health care liability claim or action,  
6 and any person on whose behalf such a claim is as-  
7 serted or such an action is brought, whether de-  
8 ceased, incompetent, or a minor.

9           (3) COLLATERAL SOURCE BENEFITS.—The  
10 term “collateral source benefits” means any amount  
11 paid or reasonably likely to be paid in the future to,  
12 or on behalf of, the claimant, or any service, prod-  
13 uct, or other benefit provided or reasonably likely to  
14 be provided in the future to, or on behalf of, the  
15 claimant, as a result of the injury or wrongful death,  
16 pursuant to—

17                   (A) any State or Federal health, sickness,  
18 income-disability, accident, or workers’ com-  
19 pensation law;

20                   (B) any health, sickness, income-disability,  
21 or accident insurance that provides health bene-  
22 fits or income-disability coverage;

23                   (C) any contract or agreement of any  
24 group, organization, partnership, or corporation  
25 to provide, pay for, or reimburse the cost of

1 medical, hospital, dental, or income-disability  
2 benefits; and

3 (D) any other publicly or privately funded  
4 program.

5 (4) COMPENSATORY DAMAGES.—The term  
6 “compensatory damages” means objectively  
7 verifiable monetary losses incurred as a result of the  
8 provision of, use of, or payment for (or failure to  
9 provide, use, or pay for) health care services or med-  
10 ical products, such as past and future medical ex-  
11 penses, loss of past and future earnings, cost of ob-  
12 taining domestic services, loss of employment, and  
13 loss of business or employment opportunities, dam-  
14 ages for physical and emotional pain, suffering, in-  
15 convenience, physical impairment, mental anguish,  
16 disfigurement, loss of enjoyment of life, loss of soci-  
17 ety and companionship, loss of consortium (other  
18 than loss of domestic service), hedonic damages, in-  
19 jury to reputation, and all other nonpecuniary losses  
20 of any kind or nature. The term “compensatory  
21 damages” includes economic damages and non-  
22 economic damages, as such terms are defined in this  
23 section.

24 (5) CONTINGENT FEE.—The term “contingent  
25 fee” includes all compensation to any person or per-

1        sons which is payable only if a recovery is effected  
2        on behalf of one or more claimants.

3            (6) ECONOMIC DAMAGES.—The term “economic  
4        damages” means objectively verifiable monetary  
5        losses incurred as a result of the provision of, use  
6        of, or payment for (or failure to provide, use, or pay  
7        for) health care services or medical products, such as  
8        past and future medical expenses, loss of past and  
9        future earnings, cost of obtaining domestic services,  
10       loss of employment, and loss of business or employ-  
11       ment opportunities.

12           (7) HEALTH CARE LAWSUIT.—The term  
13        “health care lawsuit” means any health care liability  
14        claim concerning the provision of health care goods  
15        or services or any medical product affecting inter-  
16        state commerce, or any health care liability action  
17        concerning the provision of health care goods or  
18        services or any medical product affecting interstate  
19        commerce, brought in a State or Federal court or  
20        pursuant to an alternative dispute resolution system,  
21        against a health care provider, a health care organi-  
22        zation, or the manufacturer, distributor, supplier,  
23        marketer, promoter, or seller of a medical product,  
24        regardless of the theory of liability on which the  
25        claim is based, or the number of claimants, plain-

1 tiffs, defendants, or other parties, or the number of  
2 claims or causes of action, in which the claimant al-  
3 leges a health care liability claim. Such term does  
4 not include a claim or action which is based on  
5 criminal liability; which seeks civil fines or penalties  
6 paid to Federal, State, or local government; or which  
7 is grounded in antitrust.

8 (8) HEALTH CARE LIABILITY ACTION.—The  
9 term “health care liability action” means a civil ac-  
10 tion brought in a State or Federal court or pursuant  
11 to an alternative dispute resolution system, against  
12 a health care provider, a health care organization, or  
13 the manufacturer, distributor, supplier, marketer,  
14 promoter, or seller of a medical product, regardless  
15 of the theory of liability on which the claim is based,  
16 or the number of plaintiffs, defendants, or other par-  
17 ties, or the number of causes of action, in which the  
18 claimant alleges a health care liability claim.

19 (9) HEALTH CARE LIABILITY CLAIM.—The  
20 term “health care liability claim” means a demand  
21 by any person, whether or not pursuant to ADR,  
22 against a health care provider, health care organiza-  
23 tion, or the manufacturer, distributor, supplier, mar-  
24 keter, promoter, or seller of a medical product, in-  
25 cluding, but not limited to, third-party claims, cross-

1 claims, counter-claims, or contribution claims, which  
2 are based upon the provision of, use of, or payment  
3 for (or the failure to provide, use, or pay for) health  
4 care services or medical products, regardless of the  
5 theory of liability on which the claim is based, or the  
6 number of plaintiffs, defendants, or other parties, or  
7 the number of causes of action.

8 (10) HEALTH CARE ORGANIZATION.—The term  
9 “health care organization” means any person or en-  
10 tity which is obligated to provide or pay for health  
11 benefits under any health plan, including any person  
12 or entity acting under a contract or arrangement  
13 with a health care organization to provide or admin-  
14 ister any health benefit.

15 (11) HEALTH CARE PROVIDER.—The term  
16 “health care provider” means any person or entity  
17 required by State or Federal laws or regulations to  
18 be licensed, registered, or certified to provide health  
19 care services, and being either so licensed, reg-  
20 istered, or certified, or exempted from such require-  
21 ment by other statute or regulation.

22 (12) HEALTH CARE GOODS OR SERVICES.—The  
23 term “health care goods or services” means any  
24 goods or services provided by a health care organiza-  
25 tion, provider, or by any individual working under

1 the supervision of a health care provider, that relates  
2 to the diagnosis, prevention, or treatment of any  
3 human disease or impairment, or the assessment or  
4 care of the health of human beings.

5 (13) MALICIOUS INTENT TO INJURE.—The  
6 term “malicious intent to injure” means inten-  
7 tionally causing or attempting to cause physical in-  
8 jury other than providing health care goods or serv-  
9 ices.

10 (14) MEDICAL PRODUCT.—The term “medical  
11 product” means a drug, device, or biological product  
12 intended for humans, and the terms “drug”, “de-  
13 vice”, and “biological product” have the meanings  
14 given such terms in sections 201(g)(1) and 201(h)  
15 of the Federal Food, Drug and Cosmetic Act (21  
16 U.S.C. 321(g)(1) and (h)) and section 351(a) of the  
17 Public Health Service Act (42 U.S.C. 262(a)), re-  
18 spectively, including any component or raw material  
19 used therein, but excluding health care services.

20 (15) NONECONOMIC DAMAGES.—The term  
21 “noneconomic damages” means damages for phys-  
22 ical and emotional pain, suffering, inconvenience,  
23 physical impairment, mental anguish, disfigurement,  
24 loss of enjoyment of life, loss of society and compan-  
25 ionship, loss of consortium (other than loss of do-



1       mestic service), hedonic damages, injury to reputa-  
2       tion, and all other nonpecuniary losses of any kind  
3       or nature.

4               (16) PUNITIVE DAMAGES.—The term “punitive  
5       damages” means damages awarded, for the purpose  
6       of punishment or deterrence, and not solely for com-  
7       pensatory purposes, against a health care provider,  
8       health care organization, or a manufacturer, dis-  
9       tributor, or supplier of a medical product. Punitive  
10      damages are neither economic nor noneconomic  
11      damages.

12              (17) RECOVERY.—The term “recovery” means  
13      the net sum recovered after deducting any disburse-  
14      ments or costs incurred in connection with prosecu-  
15      tion or settlement of the claim, including all costs  
16      paid or advanced by any person. Costs of health care  
17      incurred by the plaintiff and the attorneys’ office  
18      overhead costs or charges for legal services are not  
19      deductible disbursements or costs for such purpose.

20              (18) STATE.—The term “State” means each of  
21      the several States, the District of Columbia, the  
22      Commonwealth of Puerto Rico, the United States  
23      Virgin Islands, Guam, American Samoa, the Com-  
24      monwealth of the Northern Mariana Islands, the  
25      Trust Territory of the Pacific Islands, and any other

1 territory or possession of the United States, or any  
2 political subdivision thereof.

3 **SEC. 509. EFFECT ON OTHER LAWS.**

4 (a) VACCINE INJURY.—

5 (1) To the extent that title XXI of the Public  
6 Health Service Act establishes a Federal rule of law  
7 applicable to a civil action brought for a vaccine-re-  
8 lated injury or death—

9 (A) title V of this Act does not affect the  
10 application of the rule of law applicable to such  
11 an action; and

12 (B) any rule of law prescribed by title V of  
13 this Act in conflict with a rule of law of such  
14 title XXI shall not apply to such action.

15 (2) If there is an aspect of a civil action  
16 brought for a vaccine-related injury or death to  
17 which a Federal rule of law under title XXI of the  
18 Public Health Service Act does not apply, then title  
19 V of this Act or otherwise applicable law (as deter-  
20 mined under this title) will apply to such aspect of  
21 such action.

22 (b) OTHER FEDERAL LAW.—Except as provided in  
23 this section, nothing in this title shall be deemed to affect  
24 any defense available to a defendant in a health care law-  
25 suit or action under any other provision of Federal law.

1 **SEC. 510. STATE FLEXIBILITY AND PROTECTION OF**  
2 **STATES' RIGHTS.**

3 (a) **HEALTH CARE LAWSUITS.**—The provisions gov-  
4 erning health care lawsuits set forth in this title preempt,  
5 subject to subsections (b) and (c), State law to the extent  
6 that State law prevents the application of any provisions  
7 of law established by or under this title. The provisions  
8 governing health care lawsuits set forth in this title super-  
9 sede chapter 171 of title 28, United States Code, to the  
10 extent that such chapter—

11 (1) provides for a greater amount of damages  
12 or contingent fees, a longer period in which a health  
13 care lawsuit may be commenced, or a reduced appli-  
14 cability or scope of periodic payment of future dam-  
15 ages, than provided in title V of this Act; or

16 (2) prohibits the introduction of evidence re-  
17 garding collateral source benefits, or mandates or  
18 permits subrogation or a lien on collateral source  
19 benefits.

20 (b) **PROTECTION OF STATES' RIGHTS AND OTHER**  
21 **LAWS.**—

22 (1) **IN GENERAL.**—Any issue that is not gov-  
23 erned by any provision of law established by or  
24 under this title (including State standards of neg-  
25 ligence) shall be governed by otherwise applicable  
26 State or Federal law.

1           (2) LAWS THAT PROVIDE GREATER PROTEC-  
2           TIONS.—This title shall not preempt or supersede  
3           any State or Federal law that imposes greater proce-  
4           dural or substantive protections for health care pro-  
5           viders and health care organizations from liability,  
6           loss, or damages than those provided by this title or  
7           create a cause of action.

8           (c) STATE FLEXIBILITY.—No provision of this title  
9           shall be construed to preempt—

10           (1) any State law (whether effective before, on,  
11           or after the date of the enactment of this title) that  
12           specifies a particular monetary amount of compen-  
13           satory or punitive damages (or the total amount of  
14           damages) that may be awarded in a health care law-  
15           suit, regardless of whether such monetary amount is  
16           greater or lesser than is provided for under this title,  
17           notwithstanding section 503(a); or

18           (2) any defense available to a party in a health  
19           care lawsuit under any other provision of State or  
20           Federal law.

21 **SEC. 511. APPLICABILITY; EFFECTIVE DATE.**

22           This title shall apply to any health care lawsuit  
23           brought in a Federal or State court, or subject to an alter-  
24           native dispute resolution system, that is initiated on or  
25           after the date of the enactment of this title, except that

1 any health care lawsuit arising from an injury occurring  
 2 prior to the date of the enactment of this title shall be  
 3 governed by the applicable statute of limitations provisions  
 4 in effect at the time the injury occurred.

5 **SEC. 512. SENSE OF CONGRESS.**

6 It is the sense of Congress that a health insurer  
 7 should be liable for damages for harm caused when it  
 8 makes a decision as to what care is medically necessary  
 9 and appropriate.

10 **SEC. 513. COOPERATIVE GOVERNING OF INDIVIDUAL**  
 11 **HEALTH INSURANCE COVERAGE.**

12 (a) IN GENERAL.—Title XXVII of the Public Health  
 13 Service Act (42 U.S.C. 300gg et seq.) is amended by add-  
 14 ing at the end the following new part:

15 **“PART D—COOPERATIVE GOVERNING OF**  
 16 **INDIVIDUAL HEALTH INSURANCE COVERAGE**

17 **“SEC. 2795. DEFINITIONS.**

18 “In this part:

19 “(1) PRIMARY STATE.—The term ‘primary  
 20 State’ means, with respect to individual health insur-  
 21 ance coverage offered by a health insurance issuer,  
 22 the State designated by the issuer as the State  
 23 whose covered laws shall govern the health insurance  
 24 issuer in the sale of such coverage under this part.

25 An issuer, with respect to a particular policy, may

1       only designate one such State as its primary State  
2       with respect to all such coverage it offers. Such an  
3       issuer may not change the designated primary State  
4       with respect to individual health insurance coverage  
5       once the policy is issued, except that such a change  
6       may be made upon renewal of the policy. With re-  
7       spect to such designated State, the issuer is deemed  
8       to be doing business in that State.

9               “(2) SECONDARY STATE.—The term ‘secondary  
10       State’ means, with respect to individual health insur-  
11       ance coverage offered by a health insurance issuer,  
12       any State that is not the primary State. In the case  
13       of a health insurance issuer that is selling a policy  
14       in, or to a resident of, a secondary State, the issuer  
15       is deemed to be doing business in that secondary  
16       State.

17               “(3) HEALTH INSURANCE ISSUER.—The term  
18       ‘health insurance issuer’ has the meaning given such  
19       term in section 2791(b)(2), except that such an  
20       issuer must be licensed in the primary State and be  
21       qualified to sell individual health insurance coverage  
22       in that State.

23               “(4) INDIVIDUAL HEALTH INSURANCE COV-  
24       ERAGE.—The term ‘individual health insurance cov-  
25       erage’ means health insurance coverage offered in

1 the individual market, as defined in section  
2 2791(e)(1).

3 “(5) APPLICABLE STATE AUTHORITY.—The  
4 term ‘applicable State authority’ means, with respect  
5 to a health insurance issuer in a State, the State in-  
6 surance commissioner or official or officials des-  
7 ignated by the State to enforce the requirements of  
8 this title for the State with respect to the issuer.

9 “(6) HAZARDOUS FINANCIAL CONDITION.—The  
10 term ‘hazardous financial condition’ means that,  
11 based on its present or reasonably anticipated finan-  
12 cial condition, a health insurance issuer is unlikely  
13 to be able—

14 “(A) to meet obligations to policyholders  
15 with respect to known claims and reasonably  
16 anticipated claims; or

17 “(B) to pay other obligations in the normal  
18 course of business.

19 “(7) COVERED LAWS.—

20 “(A) IN GENERAL.—The term ‘covered  
21 laws’ means the laws, rules, regulations, agree-  
22 ments, and orders governing the insurance busi-  
23 ness pertaining to—

24 “(i) individual health insurance cov-  
25 erage issued by a health insurance issuer;

1           “(ii) the offer, sale, rating (including  
2           medical underwriting), renewal, and  
3           issuance of individual health insurance cov-  
4           erage to an individual;

5           “(iii) the provision to an individual in  
6           relation to individual health insurance cov-  
7           erage of health care and insurance-related  
8           services;

9           “(iv) the provision to an individual in  
10          relation to individual health insurance cov-  
11          erage of management, operations, and in-  
12          vestment activities of a health insurance  
13          issuer; and

14          “(v) the provision to an individual in  
15          relation to individual health insurance cov-  
16          erage of loss control and claims adminis-  
17          tration for a health insurance issuer with  
18          respect to liability for which the issuer pro-  
19          vides insurance.

20          “(B) EXCEPTION.—Such term does not in-  
21          clude any law, rule, regulation, agreement, or  
22          order governing the use of care or cost manage-  
23          ment techniques, including any requirement re-  
24          lated to provider contracting, network access or



1           adequacy, health care data collection, or quality  
2           assurance.

3           “(8) STATE.—The term ‘State’ means the 50  
4           States and includes the District of Columbia, the  
5           Commonwealth of Puerto Rico, the United States  
6           Virgin Islands, Guam, American Samoa, and the  
7           Commonwealth of the Northern Mariana Islands.

8           “(9) UNFAIR CLAIMS SETTLEMENT PRAC-  
9           TICES.—The term ‘unfair claims settlement prac-  
10          tices’ means only the following practices:

11                 “(A) Knowingly misrepresenting to claim-  
12                 ants and insured individuals relevant facts or  
13                 policy provisions relating to coverage at issue.

14                 “(B) Failing to acknowledge with reason-  
15                 able promptness pertinent communications with  
16                 respect to claims arising under policies.

17                 “(C) Failing to adopt and implement rea-  
18                 sonable standards for the prompt investigation  
19                 and settlement of claims arising under policies.

20                 “(D) Failing to effectuate prompt, fair,  
21                 and equitable settlement of claims submitted in  
22                 which liability has become reasonably clear.

23                 “(E) Refusing to pay claims without con-  
24                 ducting a reasonable investigation.

1           “(F) Failing to affirm or deny coverage of  
2           claims within a reasonable period of time after  
3           having completed an investigation related to  
4           those claims.

5           “(G) A pattern or practice of compelling  
6           insured individuals or their beneficiaries to in-  
7           stitute suits to recover amounts due under its  
8           policies by offering substantially less than the  
9           amounts ultimately recovered in suits brought  
10          by them.

11          “(H) A pattern or practice of attempting  
12          to settle or settling claims for less than the  
13          amount that a reasonable person would believe  
14          the insured individual or his or her beneficiary  
15          was entitled by reference to written or printed  
16          advertising material accompanying or made  
17          part of an application.

18          “(I) Attempting to settle or settling claims  
19          on the basis of an application that was materi-  
20          ally altered without notice to, or knowledge or  
21          consent of, the insured.

22          “(J) Failing to provide forms necessary to  
23          present claims within 15 calendar days of a re-  
24          quest with reasonable explanations regarding  
25          their use.

1           “(K) Attempting to cancel a policy in less  
2           time than that prescribed in the policy or by the  
3           law of the primary State.

4           “(10) FRAUD AND ABUSE.—The term ‘fraud  
5           and abuse’ means an act or omission committed by  
6           a person who, knowingly and with intent to defraud,  
7           commits, or conceals any material information con-  
8           cerning, one or more of the following:

9           “(A) Presenting, causing to be presented,  
10          or preparing with knowledge or belief that it  
11          will be presented to or by an insurer, a rein-  
12          surer, broker or its agent, false information as  
13          part of, in support of or concerning a fact ma-  
14          terial to one or more of the following:

15               “(i) An application for the issuance or  
16               renewal of an insurance policy or reinsur-  
17               ance contract.

18               “(ii) The rating of an insurance policy  
19               or reinsurance contract.

20               “(iii) A claim for payment or benefit  
21               pursuant to an insurance policy or reinsur-  
22               ance contract.

23               “(iv) Premiums paid on an insurance  
24               policy or reinsurance contract.

1           “(v) Payments made in accordance  
2           with the terms of an insurance policy or  
3           reinsurance contract.

4           “(vi) A document filed with the com-  
5           missioner or the chief insurance regulatory  
6           official of another jurisdiction.

7           “(vii) The financial condition of an in-  
8           surer or reinsurer.

9           “(viii) The formation, acquisition,  
10          merger, reconsolidation, dissolution, or  
11          withdrawal from one or more lines of in-  
12          surance or reinsurance in all or part of a  
13          State by an insurer or reinsurer.

14          “(ix) The issuance of written evidence  
15          of insurance.

16          “(x) The reinstatement of an insur-  
17          ance policy.

18          “(B) Solicitation or acceptance of new or  
19          renewal insurance risks on behalf of an insurer,  
20          reinsurer, or other person engaged in the busi-  
21          ness of insurance by a person who knows or  
22          should know that the insurer or other person  
23          responsible for the risk is insolvent at the time  
24          of the transaction.

1           “(C) Transaction of the business of insur-  
2           ance in violation of laws requiring a license, cer-  
3           tificate of authority, or other legal authority for  
4           the transaction of the business of insurance.

5           “(D) Attempt to commit, aiding or abet-  
6           ting in the commission of, or conspiracy to com-  
7           mit the acts or omissions specified in this para-  
8           graph.

9   **“SEC. 2796. APPLICATION OF LAW.**

10       “(a) IN GENERAL.—The covered laws of the primary  
11 State shall apply to individual health insurance coverage  
12 offered by a health insurance issuer in the primary State  
13 and in any secondary State, but only if the coverage and  
14 issuer comply with the conditions of this section with re-  
15 spect to the offering of coverage in any secondary State.

16       “(b) EXEMPTIONS FROM COVERED LAWS IN A SEC-  
17 ONDARY STATE.—Except as provided in this section, a  
18 health insurance issuer with respect to its offer, sale, rat-  
19 ing (including medical underwriting), renewal, and  
20 issuance of individual health insurance coverage in any  
21 secondary State is exempt from any covered laws of the  
22 secondary State (and any rules, regulations, agreements,  
23 or orders sought or issued by such State under or related  
24 to such covered laws) to the extent that such laws would—

1           “(1) make unlawful, or regulate, directly or in-  
2           directly, the operation of the health insurance issuer  
3           operating in the secondary State, except that any  
4           secondary State may require such an issuer—

5                   “(A) to pay, on a nondiscriminatory basis,  
6                   applicable premium and other taxes (including  
7                   high-risk-pool assessments) which are levied on  
8                   insurers and surplus lines insurers, brokers, or  
9                   policyholders under the laws of the State;

10                   “(B) to register with and designate the  
11                   State insurance commissioner as its agent solely  
12                   for the purpose of receiving service of legal doc-  
13                   uments or process;

14                   “(C) to submit to an examination of its fi-  
15                   nancial condition by the State insurance com-  
16                   missioner in any State in which the issuer is  
17                   doing business to determine the issuer’s finan-  
18                   cial condition, if—

19                           “(i) the State insurance commissioner  
20                           of the primary State has not done an ex-  
21                           amination within the period recommended  
22                           by the National Association of Insurance  
23                           Commissioners; and

24                           “(ii) any such examination is con-  
25                           ducted in accordance with the examiners’

1 handbook of the National Association of  
2 Insurance Commissioners and is coordi-  
3 nated to avoid unjustified duplication and  
4 unjustified repetition;

5 “(D) to comply with a lawful order  
6 issued—

7 “(i) in a delinquency proceeding com-  
8 menced by the State insurance commis-  
9 sioner if there has been a finding of finan-  
10 cial impairment under subparagraph (C);

11 or

12 “(ii) in a voluntary dissolution pro-  
13 ceeding;

14 “(E) to comply with an injunction issued  
15 by a court of competent jurisdiction, upon a pe-  
16 tition by the State insurance commissioner al-  
17 leging that the issuer is in hazardous financial  
18 condition;

19 “(F) to participate, on a nondiscriminatory  
20 basis, in any insurance insolvency guaranty as-  
21 sociation or similar association to which a  
22 health insurance issuer in the State is required  
23 to belong;

24 “(G) to comply with any State law regard-  
25 ing fraud and abuse (as defined in section

1           2795(10)), except that if the State seeks an in-  
2           junction regarding the conduct described in this  
3           subparagraph, such injunction must be obtained  
4           from a court of competent jurisdiction;

5           “(H) to comply with any State law regard-  
6           ing unfair claims settlement practices (as de-  
7           fined in section 2795(9)); or

8           “(I) to comply with the applicable require-  
9           ments for independent review under section  
10          2798 with respect to coverage offered in the  
11          State;

12          “(2) require any individual health insurance  
13          coverage issued by the issuer to be countersigned by  
14          an insurance agent or broker residing in that sec-  
15          ondary State; or

16          “(3) otherwise discriminate against the issuer  
17          issuing insurance in both the primary State and in  
18          any secondary State.

19          “(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A  
20          health insurance issuer shall provide the following notice,  
21          in 12-point bold type, in any insurance coverage offered  
22          in a secondary State under this part by such a health in-  
23          surance issuer and at renewal of the policy, with the 5  
24          blank spaces therein being appropriately filled with the  
25          name of the health insurance issuer, the name of primary



1 State, the name of the secondary State, the name of the  
2 secondary State, and the name of the secondary State, re-  
3 spectively, for the coverage concerned:

4 “‘Notice’

5 “‘This policy is issued by XXXXXX and is gov-  
6 erned by the laws and regulations of the State of  
7 XXXXXX, and it has met all the laws of that State  
8 as determined by that State’s Department of Insur-  
9 ance. This policy may be less expensive than others  
10 because it is not subject to all of the insurance laws  
11 and regulations of the State of XXXXXX, including  
12 coverage of some services or benefits mandated by  
13 the law of the State of XXXXXX. Additionally, this  
14 policy is not subject to all of the consumer protec-  
15 tion laws or restrictions on rate changes of the State  
16 of XXXXXX. As with all insurance products, before  
17 purchasing this policy, you should carefully review  
18 the policy and determine what health care services  
19 the policy covers and what benefits it provides, in-  
20 cluding any exclusions, limitations, or conditions for  
21 such services or benefits.’.

22 “(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS  
23 AND PREMIUM INCREASES.—

24 “(1) IN GENERAL.—For purposes of this sec-  
25 tion, a health insurance issuer that provides indi-

1       vidual health insurance coverage to an individual  
2       under this part in a primary or secondary State may  
3       not upon renewal—

4               “(A) move or reclassify the individual in-  
5               sured under the health insurance coverage from  
6               the class such individual is in at the time of  
7               issue of the contract based on the health-status-  
8               related factors of the individual; or

9               “(B) increase the premiums assessed the  
10              individual for such coverage based on a health-  
11              status-related factor or change of a health-sta-  
12              tus-related factor or the past or prospective  
13              claim experience of the insured individual.

14             “(2) CONSTRUCTION.—Nothing in paragraph  
15             (1) shall be construed to prohibit a health insurance  
16             issuer—

17               “(A) from terminating or discontinuing  
18               coverage or a class of coverage in accordance  
19               with subsections (b) and (c) of section 2742;

20               “(B) from raising premium rates for all  
21               policyholders within a class based on claims ex-  
22               perience;

23               “(C) from changing premiums or offering  
24               discounted premiums to individuals who engage  
25               in wellness activities at intervals prescribed by

1 the issuer, if such premium changes or incen-  
2 tives—

3 “(i) are disclosed to the consumer in  
4 the insurance contract;

5 “(ii) are based on specific wellness ac-  
6 tivities that are not applicable to all indi-  
7 viduals; and

8 “(iii) are not obtainable by all individ-  
9 uals to whom coverage is offered;

10 “(D) from reinstating lapsed coverage; or

11 “(E) from retroactively adjusting the rates  
12 charged an insured individual if the initial rates  
13 were set based on material misrepresentation by  
14 the individual at the time of issue.

15 “(e) PRIOR OFFERING OF POLICY IN PRIMARY  
16 STATE.—A health insurance issuer may not offer for sale  
17 individual health insurance coverage in a secondary State  
18 unless that coverage is currently offered for sale in the  
19 primary State.

20 “(f) LICENSING OF AGENTS OR BROKERS FOR  
21 HEALTH INSURANCE ISSUERS.—Any State may require  
22 that a person acting, or offering to act, as an agent or  
23 broker for a health insurance issuer with respect to the  
24 offering of individual health insurance coverage obtain a  
25 license from that State, with commissions or other com-

1 pension subject to the provisions of the laws of that  
2 State, except that a State may not impose any qualifica-  
3 tion or requirement which discriminates against a non-  
4 resident agent or broker.

5 “(g) DOCUMENTS FOR SUBMISSION TO STATE IN-  
6 SURANCE COMMISSIONER.—Each health insurance issuer  
7 issuing individual health insurance coverage in both pri-  
8 mary and secondary States shall submit—

9 “(1) to the insurance commissioner of each  
10 State in which it intends to offer such coverage, be-  
11 fore it may offer individual health insurance cov-  
12 erage in such State—

13 “(A) a copy of the plan of operation or fea-  
14 sibility study or any similar statement of the  
15 policy being offered and its coverage (which  
16 shall include the name of its primary State and  
17 its principal place of business);

18 “(B) written notice of any change in its  
19 designation of its primary State; and

20 “(C) written notice from the issuer of the  
21 issuer’s compliance with all the laws of the pri-  
22 mary State; and

23 “(2) to the insurance commissioner of each sec-  
24 ondary State in which it offers individual health in-  
25 surance coverage, a copy of the issuer’s quarterly fi-

1       nancial statement submitted to the primary State,  
2       which statement shall be certified by an independent  
3       public accountant and contain a statement of opin-  
4       ion on loss and loss adjustment expense reserves  
5       made by—

6               “(A) a member of the American Academy  
7               of Actuaries; or

8               “(B) a qualified loss reserve specialist.

9       “(h) POWER OF COURTS TO ENJOIN CONDUCT.—

10       Nothing in this section shall be construed to affect the  
11       authority of any Federal or State court to enjoin—

12               “(1) the solicitation or sale of individual health  
13       insurance coverage by a health insurance issuer to  
14       any person or group who is not eligible for such in-  
15       surance; or

16               “(2) the solicitation or sale of individual health  
17       insurance coverage that violates the requirements of  
18       the law of a secondary State which are described in  
19       subparagraphs (A) through (H) of section  
20       2796(b)(1).

21       “(i) POWER OF SECONDARY STATES TO TAKE AD-  
22       MINISTRATIVE ACTION.—Nothing in this section shall be  
23       construed to affect the authority of any State to enjoin  
24       conduct in violation of that State’s laws described in sec-  
25       tion 2796(b)(1).

1 “(j) STATE POWERS TO ENFORCE STATE LAWS.—

2 “(1) IN GENERAL.—Subject to the provisions of  
3 subsection (b)(1)(G) (relating to injunctions) and  
4 paragraph (2), nothing in this section shall be con-  
5 strued to affect the authority of any State to make  
6 use of any of its powers to enforce the laws of such  
7 State with respect to which a health insurance issuer  
8 is not exempt under subsection (b).

9 “(2) COURTS OF COMPETENT JURISDICTION.—

10 If a State seeks an injunction regarding the conduct  
11 described in paragraphs (1) and (2) of subsection  
12 (h), such injunction must be obtained from a Fed-  
13 eral or State court of competent jurisdiction.

14 “(k) STATES’ AUTHORITY TO SUE.—Nothing in this  
15 section shall affect the authority of any State to bring ac-  
16 tion in any Federal or State court.

17 “(l) GENERALLY APPLICABLE LAWS.—Nothing in  
18 this section shall be construed to affect the applicability  
19 of State laws generally applicable to persons or corpora-  
20 tions.

21 “(m) GUARANTEED AVAILABILITY OF COVERAGE TO  
22 HIPAA-ELIGIBLE INDIVIDUALS.—To the extent that a  
23 health insurance issuer is offering coverage in a primary  
24 State that does not accommodate residents of secondary  
25 States or does not provide a working mechanism for resi-

1 dents of a secondary State, and the issuer is offering cov-  
2 erage under this part in such secondary State which has  
3 not adopted a qualified high-risk pool as its acceptable al-  
4 ternative mechanism (as defined in section 2744(c)(2)),  
5 the issuer shall, with respect to any individual health in-  
6 surance coverage offered in a secondary State under this  
7 part, comply with the guaranteed availability requirements  
8 for eligible individuals in section 2741.

9 **“SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**  
10 **BEFORE ISSUER MAY SELL INTO SECONDARY**  
11 **STATES.**

12 “A health insurance issuer may not offer, sell, or  
13 issue individual health insurance coverage in a secondary  
14 State if the State insurance commissioner does not use  
15 a risk-based capital formula for the determination of cap-  
16 ital and surplus requirements for all health insurance  
17 issuers.

18 **“SEC. 2798. INDEPENDENT EXTERNAL APPEALS PROCE-**  
19 **DURES.**

20 “(a) **RIGHT TO EXTERNAL APPEAL.**—A health insur-  
21 ance issuer may not offer, sell, or issue individual health  
22 insurance coverage in a secondary State under the provi-  
23 sions of this title unless—

24 “(1) both the secondary State and the primary  
25 State have legislation or regulations in place estab-

1 lishing an independent review process for individuals  
2 who are covered by individual health insurance cov-  
3 erage, or

4 “(2) in any case in which the requirements of  
5 subparagraph (A) are not met with respect to the ei-  
6 ther of such States, the issuer provides an inde-  
7 pendent review mechanism substantially identical (as  
8 determined by the applicable State authority of such  
9 State) to that prescribed in the ‘Health Carrier Ex-  
10 ternal Review Model Act’ of the National Association  
11 of Insurance Commissioners for all individuals who  
12 purchase insurance coverage under the terms of this  
13 part, except that, under such mechanism, the review  
14 is conducted by an independent medical reviewer, or  
15 a panel of such reviewers, with respect to whom the  
16 requirements of subsection (b) are met.

17 “(b) QUALIFICATIONS OF INDEPENDENT MEDICAL  
18 REVIEWERS.—In the case of any independent review  
19 mechanism referred to in subsection (a)(2)—

20 “(1) IN GENERAL.—In referring a denial of a  
21 claim to an independent medical reviewer, or to any  
22 panel of such reviewers, to conduct independent  
23 medical review, the issuer shall ensure that—



1           “(A) each independent medical reviewer  
2           meets the qualifications described in paragraphs  
3           (2) and (3);

4           “(B) with respect to each review, each re-  
5           viewer meets the requirements of paragraph (4)  
6           and the reviewer, or at least 1 reviewer on the  
7           panel, meets the requirements described in  
8           paragraph (5); and

9           “(C) compensation provided by the issuer  
10          to each reviewer is consistent with paragraph  
11          (6).

12          “(2) LICENSURE AND EXPERTISE.—Each inde-  
13          pendent medical reviewer shall be a physician  
14          (allopathic or osteopathic) or health care profes-  
15          sional who—

16                 “(A) is appropriately credentialed or li-  
17                 censed in 1 or more States to deliver health  
18                 care services; and

19                 “(B) typically treats the condition, makes  
20                 the diagnosis, or provides the type of treatment  
21                 under review.

22          “(3) INDEPENDENCE.—

23                 “(A) IN GENERAL.—Subject to subpara-  
24                 graph (B), each independent medical reviewer  
25                 in a case shall—

1 “(i) not be a related party (as defined  
2 in paragraph (7));

3 “(ii) not have a material familial, fi-  
4 nancial, or professional relationship with  
5 such a party; and

6 “(iii) not otherwise have a conflict of  
7 interest with such a party (as determined  
8 under regulations).

9 “(B) EXCEPTION.—Nothing in subpara-  
10 graph (A) shall be construed to—

11 “(i) prohibit an individual, solely on  
12 the basis of affiliation with the issuer,  
13 from serving as an independent medical re-  
14 viewer if—

15 “(I) a nonaffiliated individual is  
16 not reasonably available;

17 “(II) the affiliated individual is  
18 not involved in the provision of items  
19 or services in the case under review;

20 “(III) the fact of such an affili-  
21 ation is disclosed to the issuer and the  
22 enrollee (or authorized representative)  
23 and neither party objects; and

24 “(IV) the affiliated individual is  
25 not an employee of the issuer and

1 does not provide services exclusively or  
2 primarily to or on behalf of the issuer;

3 “(ii) prohibit an individual who has  
4 staff privileges at the institution where the  
5 treatment involved takes place from serv-  
6 ing as an independent medical reviewer  
7 merely on the basis of such affiliation if  
8 the affiliation is disclosed to the issuer and  
9 the enrollee (or authorized representative),  
10 and neither party objects; or

11 “(iii) prohibit receipt of compensation  
12 by an independent medical reviewer from  
13 an entity if the compensation is provided  
14 consistent with paragraph (6).

15 “(4) PRACTICING HEALTH CARE PROFESSIONAL  
16 IN SAME FIELD.—

17 “(A) IN GENERAL.—In a case involving  
18 treatment, or the provision of items or serv-  
19 ices—

20 “(i) by a physician, a reviewer shall be  
21 a practicing physician (allopathic or osteo-  
22 pathic) of the same or similar specialty, as  
23 a physician who, acting within the appro-  
24 priate scope of practice within the State in  
25 which the service is provided or rendered,

1 typically treats the condition, makes the  
2 diagnosis, or provides the type of treat-  
3 ment under review; or

4 “(ii) by a nonphysician health care  
5 professional, the reviewer, or at least 1  
6 member of the review panel, shall be a  
7 practicing nonphysician health care profes-  
8 sional of the same or similar specialty as  
9 the nonphysician health care professional  
10 who, acting within the appropriate scope of  
11 practice within the State in which the serv-  
12 ice is provided or rendered, typically treats  
13 the condition, makes the diagnosis, or pro-  
14 vides the type of treatment under review.

15 “(B) PRACTICING DEFINED.—For pur-  
16 poses of this paragraph, the term ‘practicing’  
17 means, with respect to an individual who is a  
18 physician or other health care professional, that  
19 the individual provides health care services to  
20 individual patients on average at least 2 days  
21 per week.

22 “(5) PEDIATRIC EXPERTISE.—In the case of an  
23 external review relating to a child, a reviewer shall  
24 have expertise under paragraph (2) in pediatrics.

1           “(6) LIMITATIONS ON REVIEWER COMPENSA-  
2           TION.—Compensation provided by the issuer to an  
3           independent medical reviewer in connection with a  
4           review under this section shall—

5                   “(A) not exceed a reasonable level; and

6                   “(B) not be contingent on the decision ren-  
7                   dered by the reviewer.

8           “(7) RELATED PARTY DEFINED.—For purposes  
9           of this section, the term ‘related party’ means, with  
10          respect to a denial of a claim under a coverage relat-  
11          ing to an enrollee, any of the following:

12                   “(A) The issuer involved, or any fiduciary,  
13                   officer, director, or employee of the issuer.

14                   “(B) The enrollee (or authorized represent-  
15                   ative).

16                   “(C) The health care professional that pro-  
17                   vides the items or services involved in the de-  
18                   nial.

19                   “(D) The institution at which the items or  
20                   services (or treatment) involved in the denial  
21                   are provided.

22                   “(E) The manufacturer of any drug or  
23                   other item that is included in the items or serv-  
24                   ices involved in the denial.

1           “(F) Any other party determined under  
2           any regulations to have a substantial interest in  
3           the denial involved.

4           “(8) DEFINITIONS.—For purposes of this sub-  
5           section:

6           “(A) ENROLLEE.—The term ‘enrollee’  
7           means, with respect to health insurance cov-  
8           erage offered by a health insurance issuer, an  
9           individual enrolled with the issuer to receive  
10          such coverage.

11          “(B) HEALTH CARE PROFESSIONAL.—The  
12          term ‘health care professional’ means an indi-  
13          vidual who is licensed, accredited, or certified  
14          under State law to provide specified health care  
15          services and who is operating within the scope  
16          of such licensure, accreditation, or certification.

17       **“SEC. 2799. ENFORCEMENT.**

18          “(a) IN GENERAL.—Subject to subsection (b), with  
19          respect to specific individual health insurance coverage the  
20          primary State for such coverage has sole jurisdiction to  
21          enforce the primary State’s covered laws in the primary  
22          State and any secondary State.

23          “(b) SECONDARY STATE’S AUTHORITY.—Nothing in  
24          subsection (a) shall be construed to affect the authority

1 of a secondary State to enforce its laws as set forth in  
2 the exception specified in section 2796(b)(1).

3 “(c) COURT INTERPRETATION.—In reviewing action  
4 initiated by the applicable secondary State authority, the  
5 court of competent jurisdiction shall apply the covered  
6 laws of the primary State.

7 “(d) NOTICE OF COMPLIANCE FAILURE.—In the case  
8 of individual health insurance coverage offered in a sec-  
9 ondary State that fails to comply with the covered laws  
10 of the primary State, the applicable State authority of the  
11 secondary State may notify the applicable State authority  
12 of the primary State.”.

13 (b) EFFECTIVE DATE.—The amendment made by  
14 subsection (a) shall apply to individual health insurance  
15 coverage offered, issued, or sold after the date that is one  
16 year after the date of the enactment of this Act.

17 (c) GAO ONGOING STUDY AND REPORTS.—

18 (1) STUDY.—The Comptroller General of the  
19 United States shall conduct an ongoing study con-  
20 cerning the effect of the amendment made by sub-  
21 section (a) on—

22 (A) the number of uninsured and under-  
23 insured;

1           (B) the availability and cost of health in-  
2           surance policies for individuals with preexisting  
3           medical conditions;

4           (C) the availability and cost of health in-  
5           surance policies generally;

6           (D) the elimination or reduction of dif-  
7           ferent types of benefits under health insurance  
8           policies offered in different States; and

9           (E) cases of fraud or abuse relating to  
10          health insurance coverage offered under such  
11          amendment and the resolution of such cases.

12          (2) ANNUAL REPORTS.—The Comptroller Gen-  
13          eral shall submit to Congress an annual report, after  
14          the end of each of the 5 years following the effective  
15          date of the amendment made by subsection (a), on  
16          the ongoing study conducted under paragraph (1).

17 **SEC. 514. SECA TAX DEDUCTION FOR HEALTH INSURANCE**  
18 **COSTS.**

19          (a) IN GENERAL.—Subsection (l) of section 162 of  
20          the Internal Revenue Code of 1986 (relating to special  
21          rules for health insurance costs of self-employed individ-  
22          uals) is amended by striking paragraph (4) and by redес-  
23          ignating paragraph (5) as paragraph (4).



1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to taxable years beginning after  
3 the date of the enactment of this title.

4 **TITLE VI—WORKFORCE**  
5 **INTEGRITY**

6 **SEC. 601. E-VERIFY PROGRAM MADE PERMANENT.**

7 Section 401(b) of the Illegal Immigration Reform and  
8 Immigrant Responsibility Act of 1996 (division C of Pub-  
9 lic Law 104–208; 8 U.S.C. 1324a note) is amended—

10 (1) in the subsection heading, by striking “;  
11 TERMINATION”; and

12 (2) by striking the second sentence.

13 **SEC. 602. VERIFICATION UNDER E-VERIFY PROGRAM MADE**  
14 **POSSIBLE OVER TELEPHONE.**

15 Section 404(d) of such Act is amended—

16 (1) in paragraph (3), by striking the “and” at  
17 the end;

18 (2) in paragraph (4)(C), by striking period at  
19 the end and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(5) in such a manner that the confirmation or  
22 nonconfirmation may be provided by telephone.”.

23 **SEC. 603. GRACE PERIOD TO CORRECT PAPERWORK.**

24 Any small business concern that violates any provi-  
25 sion of the Immigration and Nationality Act relating to

1 the filing of an application, petition, or other paperwork,  
2 resulting in the assessment of a fine or penalty shall not  
3 be subject to that fine or other penalty if that small busi-  
4 ness concern remedies that violation during the 30-day pe-  
5 riod beginning on the date on which notice of the violation  
6 is received by the small business concern.

7           **TITLE VII—INTELLECTUAL**  
8           **PROPERTY PROTECTION**

9   **SEC. 701. LIMITS ON PATENT LEGISLATION.**

10           It is the sense of Congress that the Congress should  
11 make no law to lessen the protections available for new  
12 products or processes under the patent laws of the United  
13 States or to reduce the term of any existing patent.

14   **SEC. 702. EXPEDITED PATENT FILING PROCEDURES FOR**  
15           **SMALL BUSINESS CONCERNS.**

16           There is established in the United States Patent and  
17 Trademark Office a Patent Ombudsman Program, which  
18 shall consist of the Patent Ombudsman Pilot Program an-  
19 nounced by the United States Patent and Trademark Of-  
20 fice on October 27, 2009, to be headed by an Ombudsman  
21 appointed by the Director of the United States Patent and  
22 Trademark Office. The duties of the Ombudsman shall in-  
23 clude providing support and services relating to patent fil-  
24 ings to small business concerns.

1       **TITLE VIII—INCENTIVES FOR**  
2               **ENERGY EFFICIENCY**  
3               **Subtitle A—Vehicles**

4       **SEC. 801. CONSUMER INCENTIVES TO PURCHASE AD-**  
5               **VANCED TECHNOLOGY VEHICLES.**

6       (a) NEW QUALIFIED HYBRID MOTOR VEHICLES.—

7               (1) EXTENSION OF ALTERNATIVE VEHICLE  
8       CREDIT.—Subsection (j) of section 30B of the Inter-  
9       nal Revenue Code of 1986, as amended by sub-  
10      section (b), is amended by striking paragraph (3).

11              (2) INCREASE IN CREDIT AMOUNT.—Subpara-  
12      graph (A) of section 30B(d)(2) of such Code is  
13      amended by striking “the sum of” and inserting  
14      “150 percent of the sum of”.

15      (b) ELIMINATION ON NUMBER OF NEW QUALIFIED  
16      HYBRID AND ADVANCED LEAN BURN TECHNOLOGY VE-  
17      HICLES ELIGIBLE FOR ALTERNATIVE MOTOR VEHICLE  
18      CREDIT.—

19              (1) IN GENERAL.—Section 30B of the Internal  
20      Revenue Code of 1986 is amended by striking sub-  
21      section (f) and by redesignating subsections (g)  
22      through (k) as subsections (f) through (j), respec-  
23      tively.

24              (2) CONFORMING AMENDMENTS.—

1 (A) Paragraphs (4) and (6) of section  
2 30B(h) of the Internal Revenue Code of 1986  
3 are each amended by striking “(determined  
4 without regard to subsection (g))” and inserting  
5 “determined without regard to subsection (f))”.

6 (B) Section 38(b)(25) of such Code is  
7 amended by striking “section 30B(g)(1)” and  
8 inserting “section 30B(f)(1)”.

9 (C) Section 55(c)(2) of such Code is  
10 amended by striking “section 30B(g)(2)” and  
11 inserting “section 30B(f)(2)”.

12 (D) Section 1016(a)(36) of such Code is  
13 amended by striking “section 30B(h)(4)” and  
14 inserting “section 30B(g)(4)”.

15 (E) Section 6501(m) of such Code is  
16 amended by striking “section 30B(h)(9)” and  
17 inserting “section 30B(g)(9)”.

18 (c) FLEXIBLE FUEL VEHICLE CREDIT.—

19 (1) IN GENERAL.—Subpart B of part IV of  
20 subchapter A of chapter 1 of the Internal Revenue  
21 Code of 1986 (relating to foreign tax credit, etc.) is  
22 amended by adding at the end the following new sec-  
23 tion:

1 **“SEC. 30E. FLEXIBLE FUEL VEHICLE CREDIT.**

2       “(a) ALLOWANCE OF CREDIT.—There shall be al-  
3 lowed as a credit against the tax imposed by this chapter  
4 for the taxable year an amount equal to the GEM flexible  
5 fuel vehicle credit.

6       “(b) GEM FLEXIBLE FUEL VEHICLE CREDIT.—

7           “(1) IN GENERAL.—For the purposes of sub-  
8 section (a), the GEM flexible fuel vehicle credit de-  
9 termined under this subsection for the taxable year  
10 is the credit amount determined under paragraph  
11 (2) with respect to a GEM flexible fuel vehicle  
12 placed in service by the taxpayer during the taxable  
13 year.

14           “(2) CREDIT AMOUNT.—In the case of a new  
15 qualified GEM flexible fuel vehicle which is a pas-  
16 senger automobile or light truck and which has a  
17 gross vehicle weight rating of not more than 8,500  
18 pounds, the amount shall be \$1,000.

19       “(c) DEFINITIONS.—For purposes of this section:

20           “(1) GEM FLEXIBLE FUEL VEHICLE.—The  
21 term ‘GEM flexible fuel vehicle’ means a motor vehi-  
22 cle warrantied by its manufacturer to operate on any  
23 combination of gasoline, E85, M85, biodiesel, and  
24 hydrogen and its blends.

1           “(2) E85.—The term ‘E85’ means a fuel blend  
2 containing 85 percent ethanol and 15 percent gaso-  
3 line by volume.

4           “(3) M85.—The term ‘M85’ means a fuel blend  
5 containing 85 percent methanol and 15 percent gas-  
6 oline by volume.”.

7           (2) CLERICAL AMENDMENT.—The table of sec-  
8 tions for subpart B of part IV of subchapter A of  
9 chapter 1 of the Internal Revenue Code of 1986 (re-  
10 lating to foreign tax credit, etc.), is amended by add-  
11 ing at the end the following new item:

“Sec. 30E. Flexible fuel vehicle credit.”.

12           (d) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to property placed in service after  
14 December 31, 2009, in taxable years ending after such  
15 date.

## 16           **Subtitle B—Extensions**

### 17   **SEC. 811. MAKE PERMANENT THE TAX CREDIT FOR RESI-** 18           **DENTIAL ENERGY-EFFICIENT PROPERTY.**

19           Section 25D is amended by striking subsection (g).

### 20   **SEC. 812. MAKE PERMANENT THE ENERGY EFFICIENCY** 21           **CREDIT FOR EXISTING HOMES.**

22           Section 25C is amended by striking subsection (g).

### 23   **SEC. 813. MAKE PERMANENT THE ENERGY EFFICIENCY** 24           **COMMERCIAL BUILDINGS DEDUCTION.**

25           Section 179D is amended by striking subsection (h).

1       **TITLE IX—GUIDANCE ABOUT**  
2                                   **NEW RULES**

3   **SEC. 901. GUIDANCE AND ADVICE ABOUT NEW RULES.**

4       (a) DETERMINATION REGARDING IMPACT OF NEW  
5 RULES.—The head of each department or agency of the  
6 Federal Government may not issue a rule until that head  
7 has conducted a study to determine whether the rule will  
8 have an unduly burdensome effect on small business con-  
9 cerns. If that head determines that such an effect would  
10 occur, the head shall submit to the Administrator, not  
11 later than the date that is 3 months after the date that  
12 determination is made, guidance on how that effect may  
13 be mitigated.

14       (b) ADVICE.—The Administrator shall, on request,  
15 provide such other advice to small business concerns about  
16 those matters as the Administrator determines appro-  
17 priate.

18       (c) PUBLICATION.—The Administrator shall publish  
19 and maintain all guidance received under subsection (a)  
20 and all advice provided under subsection (b) on the public  
21 Internet Web site of the Administrator, in a manner that  
22 ensures the continuing availability of that guidance to  
23 small business concerns.

1           **TITLE X—SMALL BUSINESS**  
2                   **PROVISIONS**  
3       **Subtitle A—Small Business General**  
4                   **Provisions**

5       **SEC. 1001. ADMINISTRATION PROHIBITED FROM CAPPING**  
6                   **EXECUTIVE COMPENSATION.**

7           In carrying out any program under the Small Busi-  
8       ness Act or the Small Business Investment Act of 1958,  
9       the Administrator may not impose any limit on executive  
10       compensation by any small business concern.

11       **SEC. 1002. REDUCTION OF REGULATORY BURDEN.**

12           (a) GAO REPORT.—The Comptroller General of the  
13       United States shall conduct a study of each regulation of  
14       each Federal agency or department to determine the bur-  
15       den that such regulation imposes on small business con-  
16       cerns. The Comptroller General shall submit a report con-  
17       taining information on such burden to the Administrator  
18       not later than the date that is 9 months after the date  
19       of enactment of this Act.

20           (b) SBA RECOMMENDATIONS.—Not later than 6  
21       months after receiving the report under subsection (a), the  
22       Administrator shall publish and maintain on the public  
23       Internet Web site of the Administrator recommendations  
24       on how to reduce the burden imposed by such regulation  
25       on small business concerns.



1           (c) REDUCTION OF PAPERWORK.—In carrying out  
2 any program under the Small Business Act or the Small  
3 Business Investment Act of 1958, the Administrator, act-  
4 ing through the Chief Counsel of the Office of Advocacy  
5 in the Small Business Administration, shall take any ac-  
6 tions the Administrator determines appropriate to reduce  
7 the amount of paperwork (including any application, fil-  
8 ing, or petition) that a small business concern may be re-  
9 quired to complete by any Federal department or agency.  
10 Such steps shall include providing for the replacement of  
11 such paperwork with electronic or telephone filing or re-  
12 porting.

13 **SEC. 1003. LITIGATION BURDEN ON SMALL BUSINESS CON-**  
14 **CERNS TO BE LIMITED TO CURRENT LEVELS.**

15           It is the sense of the Congress that the Congress  
16 should not pass legislation altering substantive or proce-  
17 dural law that causes more small business concerns to be  
18 involved in litigation.

19 **SEC. 1004. EXPANSION OF VOLUNTEER REPRESENTATION**  
20 **AND BENCHMARK REPORTS.**

21           (a) EXPANSION OF VOLUNTEER REPRESENTA-  
22 TION.—Section 8(b)(1)(B) of the Small Business Act (15  
23 U.S.C. 637(b)(1)(B)) is amended—

24                   (1) by inserting “(i)” after “(B)”; and

25                   (2) by adding at the end the following:

1           “(ii) The Administrator shall ensure that  
2           SCORE, established under this subparagraph,  
3           carries out a plan to increase the number of  
4           mentors and, on an annual basis, reports to the  
5           Administrator on the implementation of this  
6           subparagraph.”.

7           (b) BENCHMARK REPORTS.—Section 8(b)(1)(B) of  
8           the Small Business Act (15 U.S.C. 637(b)(1)(B)), as  
9           amended by this Act, is further amended by adding at the  
10          end the following:

11           “(iii) The Administrator shall ensure that  
12           SCORE, established under this subparagraph,  
13           establishes benchmarks for use in evaluating  
14           the performance of its activities and of its vol-  
15           unteers. The benchmarks shall include bench-  
16           marks related to the hours spent mentoring by  
17           volunteers and benchmarks relating to the per-  
18           formance of the persons assisted by SCORE.  
19           SCORE shall report, on an annual basis, to the  
20           Administrator the extent to which the bench-  
21           marks established under this clause are being  
22           attained.”.

1 **SEC. 1005. MENTORING AND NETWORKING.**

2 Section 8(b)(1)(B) of the Small Business Act (15  
3 U.S.C. 637(b)(1)(B)), as amended by this Act, is further  
4 amended by adding at the end the following:

5 “(iv) The Administrator shall ensure that  
6 SCORE, established under this subparagraph,  
7 establishes a mentoring program for small busi-  
8 ness concerns that provides one-on-one advice  
9 to small business concerns from qualified coun-  
10 selors. For purposes of this clause, qualified  
11 counselors are counselors with at least 10 years  
12 experience in the industry sector or area of re-  
13 sponsibility of the small business concern seek-  
14 ing advice.

15 “(v) The Administrator shall carry out a  
16 networking program through SCORE, estab-  
17 lished under this subparagraph, that provides  
18 small business concerns with the opportunity to  
19 make business contacts in their industry or geo-  
20 graphic region.”.

21 **SEC. 1006. NAME OF PROGRAM CHANGED TO SCORE.**

22 (a) NAME CHANGE.—The Small Business Act is  
23 amended as follows:

24 (1) In section 8(b)(1)(B) (15 U.S.C.  
25 637(b)(1)(B)), by striking “Executives (SCORE)”

1 and inserting “Executives (in this Act referred to as  
2 ‘SCORE’)”.

3 (2) In section 7(m)(3)(A)(i)(VIII) (15 U.S.C.  
4 636(m)(3)(A)(i)(VIII)), by striking “the Service  
5 Corps of Retired Executives” and inserting  
6 “SCORE”.

7 (3) In section 20 (15 U.S.C. 631 note)—

8 (A) in subsection (d)(1)(E), by striking  
9 “the Service Corps of Retired Executives pro-  
10 gram” and inserting “SCORE”; and

11 (B) in subsection (e)(1)(E), by striking  
12 “the Service Corps of Retired Executives pro-  
13 gram” and inserting “SCORE”.

14 (4) In section 33(b)(2) (15 U.S.C. 657c(b)(2)),  
15 by striking “Service Corps of Retired Executives”  
16 and inserting “SCORE”.

17 (b) **ELIMINATION OF ACE.**—Section 8(b)(1)(B) of  
18 the Small Business Act (15 U.S.C. 637(b)(1)(B)), as  
19 amended, is further amended by striking “and an Active  
20 Corps of Executives (ACE)”.

21 **SEC. 1007. AUTHORIZATION OF APPROPRIATIONS.**

22 Section 20 of the Small Business Act (15 U.S.C. 631  
23 note) is amended by inserting the following new subsection  
24 after subsection (e):

1 “(f) AUTHORIZATION OF APPROPRIATIONS FOR  
2 SCORE.—There is authorized to be appropriated  
3 \$11,000,000 for SCORE under section 8(b)(1) for each  
4 of the fiscal years 2010 and 2011.”.

## 5 **Subtitle B—Small Business Goals**

### 6 **SEC. 1011. SMALL BUSINESS GOALS.**

7 Section 15(g)(1) of the Small Business Act (15  
8 U.S.C. 644(g)) is amended—

9 (1) in paragraph (1), by striking “23 percent”  
10 and inserting “30 percent”; and

11 (2) by adding at the end the following:

12 “(3)(A) Notwithstanding paragraph (1), the Presi-  
13 dent may permit the National Aeronautics and Space Ad-  
14 ministration and the Department of Energy to treat the  
15 Governmentwide goal for participation by small business  
16 concerns as though such goal were 23 percent.

17 “(B) Not later than 60 days after providing permis-  
18 sion under subparagraph (A), the President shall provide  
19 notice to the Office of Advocacy in the Small Business.”.

### 20 **SEC. 1012. AGENCY GOAL NEGOTIATION.**

21 (a) NEGOTIATION.—Section 15(g)(1) of the Small  
22 Business Act (15 U.S.C. 644(g)(1)) is amended by strik-  
23 ing “The President shall annually establish Government-  
24 wide goals for procurement contracts” and inserting “The  
25 President shall before the close of each fiscal year estab-

1 lish new Governmentwide procurement goals for the fol-  
2 lowing fiscal year for procurement contracts.”.

3 (b) **MINIMUM LEVEL.**—Section 15(g)(1) of the Small  
4 Business Act (15 U.S.C. 644(g)(1)), as amended by this  
5 Act, is further amended by striking “Notwithstanding the  
6 Governmentwide goal, each agency shall have an annual  
7 goal” and inserting “Each agency shall have an annual  
8 goal, not lower than the Governmentwide goal,”.

9 **SEC. 1013. PROCEDURES AND METHODS FOR GOAL**  
10 **ACHIEVEMENT.**

11 (a) **GOAL RESPONSIBILITY.**—Section 15(g)(2) of the  
12 Small Business Act (15 U.S.C. 644(g)(2)) is amended by  
13 adding the following after the first sentence: “The goals  
14 established by the head of each agency shall be appor-  
15 tioned within the agency to a contracting office or offices  
16 (as that term is defined in section 2.101 of title 48, Code  
17 of Federal Regulations on January 1, 2009) that reports  
18 to a career appointee in the Senior Executive Service.”.

19 (b) **SENIOR EXECUTIVE SERVICE.**—

20 (1) **PURPOSES.**—Section 3131 of title 5, United  
21 States Code, is amended—

22 (A) in paragraph (13) by striking the  
23 “and” at the end;

24 (B) in paragraph (14) by striking the pe-  
25 riod at the end and inserting “; and”; and

1 (C) by adding at the end the following:

2 “(15) ensure that the Government achieves the  
3 small business procurement goals set forth in section  
4 15 of the Small Business Act (15 U.S.C. 644).”.

5 (2) TRAINING.—Section 3396(a) of title 5,  
6 United States Code, is amended by adding at the  
7 end the following: “The training provided to senior  
8 executives shall include Federal procurement policy,  
9 including the procurement provisions of the Small  
10 Business Act.”.

11 (3) LIMITATION ON SABBATICALS.—Section  
12 3396(e)(2) of title 5, United States Code is amend-  
13 ed—

14 (A) in subparagraph (B)(iii) by striking  
15 the “and” at the end;

16 (B) in subparagraph (C) by striking the  
17 period at the end and inserting “; or”; and

18 (C) by inserting after subparagraph (C)  
19 the following:

20 “(D) who oversees a contracting office that  
21 did not meet its small business procurement  
22 goals established annually in accordance with  
23 the procedures of section 15(g)(2) of the Small  
24 Business Act (15 U.S.C. 644(g)(2)).”.

1           (4) LIMITATION ON INCENTIVE AWARDS.—An  
2           employee in the Senior Executive Service shall not  
3           be eligible for any incentive award specified in sub-  
4           chapter I, chapter 45 of title 5, United States Code,  
5           if the contracting office which reports to that mem-  
6           ber of the Senior Executive Service fails to meet the  
7           procurement goals established annually in accord-  
8           ance with the procedures of section 15(g)(2) of the  
9           Small Business Act (15 U.S.C. 644(g)(2)). Any  
10          member of the Senior Executive Service, whether ca-  
11          reer or noncareer, to whom that member of the Sen-  
12          ior Executive Service reports also shall not be eligi-  
13          ble for any incentive award specified in subchapter  
14          I, chapter 45 of title 5, United States Code.

15 **SEC. 1014. REPORTING REQUIREMENTS.**

16          Section 15(h) of the Small Business Act (15 U.S.C.  
17          644(h)) is amended by adding at the end the following:

18          “(4) By November 1 of each year, the head of each  
19          Federal agency shall submit to Congress a report speci-  
20          fying the percentage of contracts awarded by that agency  
21          for the immediate preceding fiscal year that were awarded  
22          to small business concerns. If the percentage is less than  
23          the goal established by the head of the agency pursuant  
24          to this section, the head of the agency shall, in the report,  
25          explain why the agency did not reach the goal and what



1 will be done to ensure that the goal for the following fiscal  
2 year will be achieved.”.

### 3 **Subtitle C—Contract Bundling**

#### 4 **SEC. 1021. DEFINITIONS OF BUNDLING OF CONTRACT RE-** 5 **QUIREMENTS.**

6 Section 3(o) of the Small Business Act (15 U.S.C.  
7 632(o)) is amended to read as follows:

8 “(o) DEFINITIONS OF BUNDLING OF CONTRACT RE-  
9 QUIREMENTS AND RELATED TERMS.—For purposes of  
10 this Act:

11 “(1) BUNDLED CONTRACT.—

12 “(A) IN GENERAL.—The term ‘bundled  
13 contract’ means a contract or order that is en-  
14 tered into to meet procurement requirements  
15 that are consolidated in a bundling of contract  
16 requirements, without regard to its designation  
17 by the procuring agency or whether a study of  
18 the effects of the solicitation on civilian or mili-  
19 tary personnel has been made.

20 “(B) EXCEPTIONS.—The term does not in-  
21 clude—

22 “(i) a contract or order with an aggre-  
23 gate dollar value below the dollar threshold  
24 specified in paragraph (4); or

1                   “(ii) a contract or order that is en-  
2                   tered into to meet procurement require-  
3                   ments, all of which are exempted require-  
4                   ments under paragraph (5).

5                   “(2) BUNDLING OF CONTRACT REQUIRE-  
6                   MENTS.—

7                   “(A) IN GENERAL.—The term ‘bundling of  
8                   contract requirements’ means the use of any  
9                   bundling methodology to satisfy 2 or more pro-  
10                  curement requirements for new or existing  
11                  goods or services, including any construction  
12                  services, that is likely to be unsuitable for  
13                  award to a small business concern due to—

14                   “(i) the diversity, size, or specialized  
15                   nature of the elements of the performance  
16                   specified;

17                   “(ii) the aggregate dollar value of the  
18                   anticipated award;

19                   “(iii) the geographical dispersion of  
20                   the contract or order performance; or

21                   “(iv) any combination of the factors  
22                   described in clauses (i), (ii), or (iii).

23                   “(B) EXCEPTIONS.—The term does not in-  
24                   clude—

1           “(i) the use of a bundling method-  
2           ology for an anticipated award with an ag-  
3           gregate dollar value below the threshold  
4           specified in paragraph (4); or

5           “(ii) the use of a bundling method-  
6           ology to meet procurement requirements,  
7           all of which are exempted under paragraph  
8           (5).

9           “(3) BUNDLING METHODOLOGY.—The term  
10          ‘bundling methodology’ means—

11           “(A) a solicitation to obtain offers for a  
12           single contract or order, or a multiple award  
13           contract or order;

14           “(B) a solicitation of offers for the  
15           issuance of a task or a delivery order under an  
16           existing single or multiple award contract or  
17           order; or

18           “(C) the creation of any new procurement  
19           requirements that permit a consolidation of  
20           contract or order requirements.

21          “(4) DOLLAR THRESHOLD.—The term ‘dollar  
22          threshold’ means—

23           “(A) \$65,000,000 if solely for construction  
24           services; and

25           “(B) \$1,500,000 in all other cases.

1           “(5) EXEMPTED REQUIREMENTS.—The term  
2           ‘exempted requirement’ means one or more of the  
3           following:

4                   “(A) A procurement requirement solely for  
5           items that are not commercial items (as the  
6           term ‘commercial item’ is defined in section  
7           4(12) of the Office of Federal Procurement Pol-  
8           icy Act (41 U.S.C. 403(12)) but this subpara-  
9           graph shall not apply to any procurement re-  
10          quirement for a contract for goods or services  
11          provided by a business classified in sector 23 of  
12          the North American Industrial Classification  
13          System.

14                   “(B) A procurement requirement with re-  
15          spect to which a determination that it is unsuit-  
16          able for award to a small business concern has  
17          previously been made by the agency. However,  
18          the Administrator shall have authority to review  
19          and reverse such a determination for purposes  
20          of this paragraph and, if the Administrator  
21          does reverse that determination, the term ‘ex-  
22          empted requirement’ shall not apply to that  
23          procurement requirement.

24           “(6) PROCUREMENT REQUIREMENT.—The term  
25          ‘procurement requirement’ means a determination

1 by an agency that a specified good or service is  
2 needed to satisfy the mission of the agency.”.

3 **SEC. 1022. JUSTIFICATION.**

4 (a) STATEMENT OF BUNDLED CONTRACT REQUIRE-  
5 MENTS.—Section 15(a) of the Small Business Act (15  
6 U.S.C. 644(a)) is amended—

7 (1) by striking “is in a quantity or estimated  
8 dollar value the magnitude of which renders small  
9 business prime contract participation unlikely” and  
10 inserting “would now be combined with other re-  
11 quirements for goods and services”;

12 (2) by striking “(2) why delivery schedules”  
13 and inserting “(2) the names, addresses and size of  
14 the incumbent contract holders, if applicable; (3) a  
15 description of the industries that might be interested  
16 in bidding on the contract requirements; (4) the  
17 number of small businesses listed in the industry  
18 categories that could be excluded from future bid-  
19 ding if the contract is combined or packaged, includ-  
20 ing any small business bidders that had bid on pre-  
21 vious procurement requirements that are included in  
22 the bundling of contract requirements; (5) why deliv-  
23 ery schedules”;

1           (3) by striking “(3) why the proposed acquisi-  
2           tion” and inserting “(6) why the proposed acquisi-  
3           tion”;

4           (4) by striking “(4) why construction” and in-  
5           serting “(7) why construction”;

6           (5) by striking “(5) why the agency” and in-  
7           serting “(8) why the agency”;

8           (6) by striking “justified” and inserting “justi-  
9           fied. The statement also shall set forth the proposed  
10          procurement strategy required by subsection (e) and,  
11          if applicable, the specifications required by sub-  
12          section (e)(3). Concurrently, the statement shall be  
13          made available to the public, including through dis-  
14          semination in the Federal contracting opportunities  
15          database.”; and

16          (7) by inserting after “prime contracting oppor-  
17          tunities.” the following: “If no notification of the  
18          procurement and accompanying statement is re-  
19          ceived, but the Administrator determines that there  
20          is cause to believe the contract combines require-  
21          ments or a contract (single or multiple award) or  
22          task or delivery order for construction services or in-  
23          cludes unjustified bundling, then the Administrator  
24          can demand that such a statement of work goods or  
25          services be completed by the procurement activity

1 and sent to the Procurement Center Representative  
2 and the solicitation process postponed for at least 10  
3 days but no more than 30 days to allow the Admin-  
4 istrator to review the statement and make rec-  
5 ommendations as described in this section before  
6 procurement is continued.”.

7 (b) SUBSTANTIAL MEASURABLE BENEFITS.—Section  
8 15(e)(2)(C) of the Small Business Act (15 U.S.C. 644(e))  
9 is amended by adding at the end the following: “Cost sav-  
10 ings shall not include any reduction in the use of military  
11 interdepartmental purchase requests or any similar trans-  
12 fer funds among Federal agencies for the use of a contract  
13 issued by another Federal agency.”.

14 **SEC. 1023. APPEALS.**

15 Section 15(a) of the Small Business Act (15 U.S.C.  
16 644(a)), as amended by this Act, is further amended—

17 (1) by striking “If a proposed procurement in-  
18 cludes in its statement” and inserting “If a proposed  
19 procurement would adversely affect one or more  
20 small business concerns, including, but not limited  
21 to, the potential loss of an existing contract, or if a  
22 proposed procurement includes in its statement”;  
23 and

24 (2) by inserting before “Whenever the Adminis-  
25 trator and the contracting procurement agency fail

1 to agree,” the following: “If a small business con-  
2 cern would be adversely affected, directly or indi-  
3 rectly, by the procurement as proposed, and that  
4 small business concern or a trade association of  
5 which that small business concern is a member so  
6 requests, the Administrator may take action to fur-  
7 ther the interests of the small business.”.

8 **SEC. 1024. THIRD-PARTY REVIEW.**

9 Section 8(d) of the Contract Disputes Act of 1978  
10 (41 U.S.C. 607(d)) is amended—

11 (1) by striking “(d) The Armed Services  
12 Board” and inserting “(d)(1) The Armed Services  
13 Board”; and

14 (2) by inserting at the end the following:

15 “(2) CONTRACT BUNDLING.—

16 “(A) IN GENERAL.—Whenever the head of a  
17 contracting agency makes a decision in accordance  
18 with section 15(a) of the Small Business Act con-  
19 cerning the Administrator of the Small Business Ad-  
20 ministration’s challenge to a bundling of contract re-  
21 quirements, the Administrator, within ten days after  
22 such decision may file a challenge with the appro-  
23 priate agency board of contract appeals.

24 “(B) PROCEDURE.—The board shall provide  
25 the Administrator and the head of the contracting



1 agency the opportunity to provide their views on the  
2 disputed contract. No oral testimony or oral argu-  
3 ment shall be permitted. The board shall render its  
4 decision within thirty days after the appeal has been  
5 filed. The decision of the board shall be final.”.

## 6 **Subtitle D—Small Business**

### 7 **Subcontracting**

#### 8 **SEC. 1031. GOOD FAITH COMPLIANCE WITH SUBCON-** 9 **TRACTING PLANS.**

10 Section 8(d)(10) of the Small Business Act (15  
11 U.S.C. 637(d)(10)) is amended by—

12 (1) by striking “and” at the end of subpara-  
13 graph (B);

14 (2) by striking the period at the end of sub-  
15 paragraph (C) and inserting “; and”; and

16 (3) by adding at the end the following:

17 “(D) not later than 180 days after enact-  
18 ment of the Small Business Bill of Rights, the  
19 Administrator shall, after the opportunity for  
20 notice and comment, promulgate regulations  
21 governing the Administrator’s review of subcon-  
22 tracting plans including the standards for de-  
23 termining good faith compliance with the sub-  
24 contracting plans.”.

1 **SEC. 1032. LIMITATIONS ON SUBCONTRACTING.**

2 (a) REGULATIONS FOR CONTRACT ADMINISTRA-  
3 TION.—Section 15(o) of the Small Business Act (15  
4 U.S.C. 644(o)) is amended by adding at the end the fol-  
5 lowing:

6 “(4) Not later than 180 days after enactment of the  
7 Small Business Bill of Rights, the Administrator shall,  
8 after the opportunity for notice and comment, promulgate  
9 regulations that specify the responsibilities that each agen-  
10 cy and the Administration personnel will have in enforcing  
11 the restrictions set forth in paragraph (1). Such regula-  
12 tions also shall specify reporting and recordkeeping re-  
13 quirements for contracts covered by paragraph (1).”.

14 (b) CONTRACTOR PENALTIES.—Section 16 of the  
15 Small Business Act (15 U.S.C. 645) is amended by adding  
16 at the end the following:

17 “(g) A small business that violates the requirements  
18 of section 15(o)(1) of the Small Business Act shall be sub-  
19 ject to the penalties set forth in subsection (d).”.

20 **SEC. 1033. CRIMINAL VIOLATIONS.**

21 Section 1001(a) of title 18, United States Code, is  
22 amended—

23 (1) in paragraph (2) by striking the “or” at the  
24 end;

25 (2) in paragraph (3) by adding “or” at the end;

26 (3) inserting after paragraph (3) the following:

1           “(4) makes in writing or electronically a false  
2           statement concerning status as a small business con-  
3           cern or compliance with the requirements of the  
4           Small Business Act in an effort to obtain, retain, or  
5           complete a Federal Government contract;” and

6           (4) by adding at the end the following: “For  
7           violation of paragraph (4) of this subsection, not-  
8           withstanding section 3571(e), the fine under this  
9           title shall be the total value of the contract or  
10          \$1,000,000, whichever is greater.”.

## 11                           **TITLE XI—OFFSETS**

### 12   **SEC. 1101. TRANSFER OF UNOBLIGATED STIMULUS FUNDS.**

13          (a) RESCISSION.—Effective on the date of the enact-  
14          ment of this Act, any unobligated balances available on  
15          such date of funds made available by division A of the  
16          American Recovery and Reinvestment Act of 2009 (Public  
17          Law 111–5), other than under the heading “Federal  
18          Highway Administration-Highway Infrastructure Invest-  
19          ment” in title XII of such division, are rescinded and such  
20          provisions are repealed.

21          (b) REPEAL.—The provisions of division B of the  
22          American Recovery and Reinvestment Act of 2009 (Public  
23          Law 111–5), other than titles I and II of such division  
24          are repealed.

1 (c) TRANSFER OF FUNDS.—The total amount re-  
2 scinded by this section shall be deposited in the Federal  
3 Treasury.

## 4 **TITLE XII—DEBT REDUCTION**

### 5 **SEC. 1201. REPEAL OF THE TROUBLED ASSET RELIEF PRO-** 6 **GRAM.**

7 (a) IN GENERAL.—Notwithstanding any other provi-  
8 sion of law, the authorities provided under section 101(a)  
9 of the Emergency Economic Stabilization Act of 2008 (ex-  
10 cluding section 101(a)(3)) and under section 102 of such  
11 Act shall terminate on the date of enactment of this Act.

12 (b) RETURNED TARP MONEY TO BE USED FOR  
13 DEFICIT REDUCTION.—Notwithstanding any other provi-  
14 sion of law, all assistance received under title I of the  
15 Emergency Economic Stabilization Act of 2008 that is re-  
16 paid on or after the date of enactment of this Act, along  
17 with any dividends, profits, or other funds paid to the Gov-  
18 ernment based on such assistance on or after the date of  
19 enactment of this Act, shall be deposited in the Treasury  
20 to reduce the deficit.

21 (c) LOWERING OF NATIONAL DEBT LIMIT TO COR-  
22 RESPOND TO TARP REPAYMENTS.—Section 3101 of title  
23 31, United States Code, is amended—

24 (1) in subsection (b), by inserting after the dol-  
25 lar limitation contained in such subsection the fol-

1       lowing: “, as such amount is reduced by the amount  
2       described under subsection (d)”;

3               (2) by adding at the end the following new sub-  
4       section:

5       “(d) The amount described under this subsection is  
6       the amount that equals the amount of all assistance re-  
7       ceived under title I of the Emergency Economic Stabiliza-  
8       tion Act of 2008 that is repaid on or after the date of  
9       enactment of the Small Business Bill of Rights, along with  
10      any dividends, profits, or other funds paid to the Govern-  
11      ment based on such assistance on or after the date of en-  
12      actment of the Small Business Bill of Rights.”.

## 13               **TITLE XIII—DEFINITIONS**

### 14      **SEC. 1301. DEFINITIONS.**

15      In this Act:

16               (1) The term “Administrator” means the Ad-  
17      ministrator of Small Business Administration.

18               (2) The term “small business concern” has the  
19      meaning given such term under section 3 of the  
20      Small Business Act.

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