

114TH CONGRESS
2D SESSION

S. 3291

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7, 2016

Mr. KIRK introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To establish 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”.

6 (b) TABLE OF CONTENTS.—The table of the contents
7 of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—LOWER TAX ENVIRONMENT

Subtitle A—Business Friendly Environment for Disadvantaged Areas

- Sec. 101. Short title.
 Sec. 102. Exclusion for income attributable to certain real property.

Subtitle B—Capital Gains

- Sec. 111. 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 increase in unemployment.
 Sec. 132. Exemption from taxes imposed after the date of enactment of this Act.

TITLE II—LIMITATION ON REGULATIONS

- Sec. 201. Limitation on regulations.
 Sec. 202. Regulatory sunsets.

TITLE III—DEATH TAX REPEAL

- Sec. 301. Short title.
 Sec. 302. Repeal of estate and generation-skipping transfer taxes.
 Sec. 303. Modifications of gift tax.

TITLE IV—HEALTHCARE: EXPANDING CHOICE AND LOWERING COSTS

- Sec. 401. Findings and purpose.
 Sec. 402. Encouraging speedy resolution of claims.
 Sec. 403. Compensating patient injury.
 Sec. 404. Maximizing patient recovery.
 Sec. 405. Additional health benefits.
 Sec. 406. Punitive damages.
 Sec. 407. Authorization of payment of future damages to claimants in health care lawsuits.
 Sec. 408. Definitions.
 Sec. 409. Effect on other laws.
 Sec. 410. State flexibility and protection of States' rights.
 Sec. 411. Applicability; effective date.
 Sec. 412. Sense of Congress.
 Sec. 413. SECA tax deduction for health insurance costs.

TITLE V—WORKFORCE INTEGRITY

- Sec. 501. Verification under E-Verify Program by telephone.
 Sec. 502. Grace period to correct paperwork.

TITLE VI—INCENTIVES FOR ENERGY EFFICIENCY

- Sec. 601. Extend the tax credit for residential energy-efficient property.
 Sec. 602. Make permanent the energy efficiency credit for existing homes.
 Sec. 603. Make permanent the energy efficiency commercial buildings deduction.

TITLE VII—GUIDANCE ABOUT NEW RULES

Sec. 701. Guidance and advice about new rules.

TITLE VIII—SMALL BUSINESS PROVISIONS

Subtitle A—Small Business General Provisions

- Sec. 801. Administration prohibited from capping executive compensation.
- Sec. 802. Reduction of regulatory burden.
- Sec. 803. Litigation burden on small business concerns to be limited to current levels.
- Sec. 804. Expansion of volunteer representation and benchmark reports.
- Sec. 805. Mentoring and networking.

Subtitle B—Small Business Goals

- Sec. 811. Small business goals.
- Sec. 812. Agency goal negotiation.
- Sec. 813. Procedures and methods for goal achievement.
- Sec. 814. Reporting requirements.

Subtitle C—Contract Bundling

- Sec. 821. Definitions of bundling of contract requirements.
- Sec. 822. Justification.
- Sec. 823. Appeals.
- Sec. 824. Third-party review.

Subtitle D—Small Business Subcontracting

Sec. 831. Criminal violations.

1 **SEC. 2. DEFINITIONS.**

2 In this Act—

3 (1) the terms “Administration” and “Adminis-

4 trator” mean the Small Business Administration

5 and the Administrator thereof; and

6 (2) the term “small business concern” has the

7 meaning given the term in section 3 of the Small

8 Business Act (15 U.S.C. 632).

1 **TITLE I—LOWER TAX**
 2 **ENVIRONMENT**
 3 **Subtitle A—Business Friendly En-**
 4 **vironment for Disadvantaged**
 5 **Areas**

6 **SEC. 101. SHORT TITLE.**

7 This subtitle may be cited as the “Bringing Business
 8 Back Act of 2016”.

9 **SEC. 102. EXCLUSION FOR INCOME ATTRIBUTABLE TO CER-**
 10 **TAIN REAL PROPERTY.**

11 (a) **IN GENERAL.**—Part III of subchapter B of chap-
 12 ter 1 of the Internal Revenue Code of 1986 is amended
 13 by inserting after section 139F the following new section:

14 **“SEC. 139G. INCOME ATTRIBUTABLE TO QUALIFIED REAL**
 15 **PROPERTY EXCLUDED FROM GROSS INCOME.**

16 “(a) **IN GENERAL.**—Gross income shall not include
 17 income or gain attributable to qualified real property for
 18 any taxable year beginning during the exclusion period.

19 “(b) **DEFINITIONS.**—For purposes of this section—

20 “(1) **QUALIFIED REAL PROPERTY.**—

21 “(A) **IN GENERAL.**—The term ‘qualified
 22 real property’ means any real property—

23 “(i) which is certified by the State or
 24 local zoning authority, and any economic
 25 development board, with respect to such

1 property as meeting the requirements of
2 subparagraph (B), and

3 “(ii) with respect to which an election
4 has been made (at such time and in such
5 form and manner as the Secretary shall by
6 regulation prescribe) to have this section
7 apply.

8 “(B) REQUIREMENTS.—Property meets
9 the requirements of this subparagraph if such
10 property—

11 “(i) is zoned for commercial use,

12 “(ii) has been undeveloped and vacant
13 during the 2-year period ending on the
14 date of certification, and

15 “(iii) is located within a qualified cen-
16 sus tract.

17 “(C) QUALIFIED CENSUS TRACT.—The
18 term ‘qualified census tract’ means any census
19 tract which—

20 “(i)(I) has an average poverty rate ex-
21 ceeding the national average poverty rate,
22 or

23 “(II) has an unemployment rate above
24 the national unemployment rate, and

1 “(ii) exhibits another condition of dis-
2 tress, such as deteriorating infrastructure
3 or population decline.

4 Poverty rates shall be determined by using
5 2010 census data, and unemployment rates
6 shall be determined by reference to the rate of
7 unemployment announced by the Bureau of
8 Labor Statistics of the Department of Labor
9 for the months in the 2 most recently ended
10 calendar quarters.

11 “(D) ECONOMIC DEVELOPMENT BOARD.—
12 The term ‘economic development board’ means,
13 with respect to any property, any entity estab-
14 lished by law to oversee the economic develop-
15 ment of an area within which such property is
16 located.

17 “(2) EXCLUSION PERIOD.—The term ‘exclusion
18 period’ means, with respect to a taxable year, the 1-
19 taxable-year period beginning with the first taxable
20 year beginning after the date of the enactment of
21 this section for which the income attributable to the
22 qualified real property exceeds the pre-depreciation
23 expenses attributable to such real property.

24 “(c) SPECIAL RULES.—For purposes of this sec-
25 tion—

1 “(1) SUBSEQUENT TAXPAYERS.—Subsection (a)
2 shall only apply to a taxpayer who has an ownership
3 interest in the qualified real property on the first
4 day of the exclusion period with respect to such
5 property.

6 “(2) LIMITATION ON APPLICATION OF SEC-
7 TION.—An election to have this section apply may
8 only be made once with respect to any property.

9 “(3) TAX-EXEMPT USE PROPERTY.—This sec-
10 tion shall not apply to any property which is tax-ex-
11 empt use property (as defined in section 168(h)).

12 “(d) REGULATIONS.—The Secretary may prescribe
13 such regulations as may be necessary or appropriate to
14 carry out the purposes of this section, including methods
15 for allocating income and expenses to property and rules
16 to prevent abuse of this section.”.

17 (b) CLERICAL AMENDMENT.—The table of parts for
18 part III of subchapter B of chapter 1 of such Code is
19 amended by inserting after the item relating to section
20 139F the following new item:

“Sec. 139G. Income attributable to qualified real property excluded from gross
income.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 the date of the enactment of this Act.

1 **Subtitle B—Capital Gains**

2 **SEC. 111. TEMPORARY REDUCTION OF CAPITAL GAINS TAX**
 3 **ON QUALIFIED SMALL BUSINESS STOCK.**

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

8 “(ii) in the case of any taxable year
 9 beginning after December 31, 2026, sec-
 10 tion 1202 gain, over”.

11 (b) EFFECTIVE DATE.—The amendment made by
 12 subsection (a) shall apply to taxable years beginning after
 13 December 31, 2016.

14 **Subtitle C—Tax Benefits for Start-**
 15 **Ups**

16 **SEC. 121. INCREASE IN AMOUNT ALLOWED AS DEDUCTION**
 17 **FOR START-UP EXPENDITURES.**

18 (a) IN GENERAL.—Paragraph (3) of section 195(b)
 19 of the Internal Revenue Code of 1986 is amended to read
 20 as follows:

21 “(3) SPECIAL RULE FOR TAXABLE YEARS BE-
 22 GINNING IN 2016, 2017, OR 2018.—In the case of a
 23 taxable year beginning in 2016, 2017, or 2018,
 24 paragraph (1)(A)(ii) shall be applied—

1 “(A) by substituting ‘\$20,000’ for
2 ‘\$5,000’; and

3 “(B) by substituting ‘\$75,000’ for
4 ‘\$50,000’.”.

5 (b) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to amounts paid or incurred in tax-
7 able years beginning after December 31, 2015.

8 **Subtitle D—Miscellaneous**

9 **SEC. 131. GAO TO CERTIFY NO INCREASE IN UNEMPLOY-** 10 **MENT.**

11 (a) IN GENERAL.—Each report of a committee of the
12 Senate on a public bill or a public joint resolution shall
13 contain a statement by the Comptroller General certifying
14 that the bill or resolution will not cause an increase in
15 the number of unemployed individuals in the United
16 States.

17 (b) ENFORCEMENT.—In the Senate, if the report to
18 accompany a public bill or a public joint resolution does
19 not contain the statement required under subsection (a),
20 or there is not a report to accompany the bill or resolution,
21 the bill or resolution shall only be agreed to upon an af-
22 firmative vote of three-fifths of the Members voting, a
23 quorum being present.

24 (c) EXERCISE OF RULEMAKING POWERS.—This sec-
25 tion is enacted by Congress—

1 (1) as an exercise of the rulemaking power of
 2 the Senate, and as such is deemed a part of the
 3 rules of the Senate and shall supersede other rules
 4 only to the extent that it is inconsistent with such
 5 rules; and

6 (2) with full recognition of the constitutional
 7 right of the Senate to change the rules (so far as re-
 8 lating to the procedure of the Senate) at any time,
 9 in the same manner, and to the same extent as in
 10 the case of any other rule of the Senate.

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

13 Except as otherwise expressly provided, any amend-
 14 ment to the Internal Revenue Code of 1986 that would
 15 (but for the application of this section) result in an in-
 16 crease in taxes of a taxpayer which is a small business
 17 concern shall not apply to such taxpayer.

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 Administration, is authorized to provide such support
 24 as may be necessary with regard to any Federal regulation
 25 to ensure that a small business concern is not required

1 to expend more than a total of 200 man-hours annually
2 on applications, filings, petitions, or other paperwork sub-
3 mitted to Federal departments or agencies.

4 (b) COMMONLY REQUIRED INFORMATION FORM.—

5 (1) IN GENERAL.—Support provided under sub-
6 section (a) shall include the establishment of a form
7 on the website of the Administration, by means of
8 which a small business concern may provide to the
9 Administrator information that the Administrator
10 determines to be frequently required as part of any
11 applications, filings, petitions, or other paperwork
12 described in subsection (a).

13 (2) USE OF INFORMATION.—The Administrator
14 shall use information provided by a small business
15 concern under paragraph (1) to assist in the expe-
16 dited completion of any applications, filings, peti-
17 tions, or other paperwork described in subsection
18 (a).

19 **SEC. 202. REGULATORY SUNSETS.**

20 (a) DEFINITIONS.—In this section:

21 (1) AGENCY.—The term “agency” has the
22 meaning given the term in section 551 of title 5,
23 United States Code.

24 (2) COVERED RULE.—The term “covered rule”
25 means any rule or group of rules—

1 (A) for which an agency is required to pre-
2 pare a regulatory flexibility analysis under sec-
3 tion 603 or 604 of title 5, United States Code;
4 and

5 (B) that is a major rule.

6 (3) MAJOR RULE.—The term “major rule” has
7 the meaning given the term in section 804 of title
8 5, United States Code.

9 (4) RULE.—The term “rule” has the meaning
10 given the term in section 601 of title 5, United
11 States Code.

12 (5) SMALL ENTITY.—The term “small entity”
13 has the meaning given the term in section 601 of
14 title 5, United States Code.

15 (b) PERIODIC REVIEW OF RULES.—Section 610 of
16 title 5, United States Code, is amended to read as follows:

17 **“§ 610. Periodic review of rules**

18 “(a)(1) Not later than 180 days after the date of en-
19 actment of the Small Business Bill of Rights, each agency
20 shall establish a plan for the periodic review of—

21 “(A) each rule issued by the agency that the
22 head of the agency determines has a significant eco-
23 nomic impact on a substantial number of small enti-
24 ties, without regard to whether the agency per-

1 formed an analysis under section 604 with respect to
2 the rule; and

3 “(B) any small entity compliance guide required
4 to be published by the agency under section 212 of
5 the Small Business Regulatory Enforcement Fair-
6 ness Act of 1996 (5 U.S.C. 601 note).

7 “(2) In reviewing rules and small entity compliance
8 guides under paragraph (1), the agency shall determine
9 whether the rules and guides should—

10 “(A) be amended or rescinded, consistent with
11 the stated objectives of applicable statutes, to mini-
12 mize any significant adverse economic impacts on a
13 substantial number of small entities (including an
14 estimate of any adverse impacts on job creation and
15 employment by small entities); or

16 “(B) continue in effect without change.

17 “(3) Each agency shall publish the plan established
18 under paragraph (1) in the Federal Register and on the
19 Web site of the agency.

20 “(4) An agency may amend the plan established
21 under paragraph (1) at any time by publishing the amend-
22 ment in the Federal Register and on the Web site of the
23 agency.

24 “(b) Each plan established under subsection (a) shall
25 provide for—

1 “(1) the review of each rule and small entity
2 compliance guide described in subsection (a)(1) in
3 effect on the date of enactment of the Small Busi-
4 ness Bill of Rights—

5 “(A) not later than 9 years after the date
6 of publication of the plan in the Federal Reg-
7 ister; and

8 “(B) every 9 years thereafter; and

9 “(2) the review of each rule adopted and small
10 entity compliance guide described in subsection
11 (a)(1) that is published after the date of enactment
12 of the Small Business Bill of Rights—

13 “(A) not later than 9 years after the date
14 of publication of the final rule in the Federal
15 Register; and

16 “(B) every 9 years thereafter.

17 “(c) In reviewing rules under the plan required under
18 subsection (a), the agency shall consider—

19 “(1) the continued need for the rule;

20 “(2) the nature of complaints received by the
21 agency from small entities concerning the rule;

22 “(3) comments by the Regulatory Enforcement
23 Ombudsman and the Chief Counsel for Advocacy of
24 the Small Business Administration;

25 “(4) the complexity of the rule;

1 “(5) the extent to which the rule overlaps, du-
2 plicates, or conflicts with other Federal rules and,
3 unless the head of the agency determines it to be in-
4 feasible, State and local rules;

5 “(6) the contribution of the rule to the cumu-
6 lative economic impact of all Federal rules on the
7 class of small entities affected by the rule, unless the
8 head of the agency determines that such a calcula-
9 tion cannot be made;

10 “(7) the length of time since the rule has been
11 evaluated, or the degree to which technology, eco-
12 nomic conditions, or other factors have changed in
13 the area affected by the rule; and

14 “(8) the economic impact of the rule, includ-
15 ing—

16 “(A) the estimated number of small enti-
17 ties to which the rule will apply;

18 “(B) the estimated number of small entity
19 jobs that will be lost or created due to the rule;
20 and

21 “(C) the projected reporting, record-
22 keeping, and other compliance requirements of
23 the proposed rule, including—

1 “(i) an estimate of the classes of small
2 entities that will be subject to the require-
3 ment; and

4 “(ii) the type of professional skills
5 necessary for preparation of the report or
6 record.

7 “(d)(1) Each agency shall submit an annual report
8 regarding the results of the review required under sub-
9 section (a) to—

10 “(A) Congress; and

11 “(B) in the case of an agency that is not an
12 independent regulatory agency (as defined in section
13 3502(5) of title 44), the Administrator of the Office
14 of Information and Regulatory Affairs of the Office
15 of Management and Budget.

16 “(2) Each report required under paragraph (1) shall
17 include a description of any rule or small entity compli-
18 ance guide with respect to which the agency made a deter-
19 mination of infeasibility under paragraph (5) or (6) of
20 subsection (c), together with a detailed explanation of the
21 reasons for the determination.

22 “(e) Each agency shall publish in the Federal Reg-
23 ister and on the Web site of the agency a list of the rules
24 and small entity compliance guides to be reviewed under
25 the plan required under subsection (a) that includes—

1 “(1) a brief description of each rule or guide;

2 “(2) for each rule, the reason why the head of
3 the agency determined that the rule has a significant
4 economic impact on a substantial number of small
5 entities (without regard to whether the agency had
6 prepared a final regulatory flexibility analysis for the
7 rule); and

8 “(3) a request for comments from the public,
9 the Chief Counsel for Advocacy of the Small Busi-
10 ness Administration, and the Regulatory Enforce-
11 ment Ombudsman concerning the enforcement of the
12 rules or publication of the guides.

13 “(f)(1) Not later than 6 months after each date de-
14 scribed in paragraphs (1) and (2) of subsection (b), the
15 Inspector General for each agency shall—

16 “(A) determine whether the agency has con-
17 ducted the review required under subsection (b) ap-
18 propriately; and

19 “(B) notify the head of the agency of—

20 “(i) the results of the determination under
21 subparagraph (A); and

22 “(ii) any issues preventing the Inspector
23 General from determining that the agency has
24 conducted the review required under subsection
25 (b) appropriately.

1 “(2)(A) Not later than 6 months after the date on
2 which the head of an agency receives a notice under para-
3 graph (1)(B) that the agency has not conducted the review
4 required under subsection (b) appropriately, the agency
5 shall address the issues identified in the notice.

6 “(B) Not later than 30 days after the last day of the
7 6-month period described in subparagraph (A), the In-
8 spector General for an agency that receives a notice de-
9 scribed in subparagraph (A) shall—

10 “(i) determine whether the agency has ad-
11 dressed the issues identified in the notice; and

12 “(ii) notify Congress if the Inspector General
13 determines that the agency has not addressed the
14 issues identified in the notice.

15 “(C) Not later than 30 days after the date on which
16 the Inspector General for an agency transmits a notice
17 under subparagraph (B)(ii), an amount equal to 1 percent
18 of the amount appropriated for the fiscal year to the ap-
19 propriations account of the agency that is used to pay sal-
20 aries shall be rescinded.

21 “(D) Nothing in this paragraph may be construed to
22 prevent Congress from acting to prevent a rescission
23 under subparagraph (C).”.

24 (c) SUNSET OF NEW SMALL BUSINESS REGULA-
25 TIONS.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2) and beginning on the date of enactment
3 of this Act, each covered rule promulgated by an
4 agency shall cease to have effect on the date that is
5 7 years after the date on which the final version of
6 the covered rule is published.

7 (2) EXTENSION OF RULE.—

8 (A) IN GENERAL.—Before the end of the
9 7-year period described in paragraph (1), an
10 agency may take action to renew a covered rule
11 in accordance with the process described in sub-
12 paragraph (B) and if such action is taken, the
13 covered rule shall remain in effect until modi-
14 fied or repealed by the agency action or statute.

15 (B) RENEWAL PROCESS.—

16 (i) IN GENERAL.—An agency may
17 renew a covered rule by using the notice
18 and comment rulemaking process.

19 (ii) REQUIREMENTS.—In conducting a
20 rulemaking to renew a covered rule under
21 clause (i), an agency shall—

22 (I) solicit and respond to public
23 comment from entities affected by the
24 covered rule;

1 (II) compare the projected costs
 2 of the covered rule to the actual costs
 3 realized by implementation of the cov-
 4 ered rule and determine whether
 5 modifications can be made to the cov-
 6 ered rule to lower the cost of the cov-
 7 ered rule;

8 (III) consider whether any regu-
 9 latory alternatives exist that would ac-
 10 complish the same regulatory objective
 11 as the covered rule with less of an im-
 12 pact on affected small entities; and

13 (IV) make modifications to the
 14 covered rule, if necessary, to reflect—

15 (aa) comments solicited
 16 under subclause (I);

17 (bb) modifications described
 18 in subclause (II); and

19 (cc) any regulatory alter-
 20 natives described in subclause

21 (III).

22 **TITLE III—DEATH TAX REPEAL**

23 **SEC. 301. SHORT TITLE.**

24 This title may be cited as the “Death Tax Repeal
 25 Act of 2016”.

1 **SEC. 302. REPEAL OF ESTATE AND GENERATION-SKIPPING**
2 **TRANSFER TAXES.**

3 (a) ESTATE TAX REPEAL.—Subchapter C of chapter
4 11 of subtitle B of the Internal Revenue Code of 1986
5 is amended by adding at the end the following new section:

6 **“SEC. 2210. TERMINATION.**

7 “(a) IN GENERAL.—Except as provided in subsection
8 (b), this chapter shall not apply to the estates of decedents
9 dying on or after the date of the enactment of the Death
10 Tax Repeal Act of 2016.

11 “(b) CERTAIN DISTRIBUTIONS FROM QUALIFIED
12 DOMESTIC TRUSTS.—In applying section 2056A with re-
13 spect to the surviving spouse of a decedent dying before
14 the date of the enactment of the Death Tax Repeal Act
15 of 2016—

16 “(1) section 2056A(b)(1)(A) shall not apply to
17 distributions made after the 10-year period begin-
18 ning on such date, and

19 “(2) section 2056A(b)(1)(B) shall not apply on
20 or after such date.”.

21 (b) GENERATION-SKIPPING TRANSFER TAX RE-
22 PEAL.—Subchapter G of chapter 13 of subtitle B of such
23 Code is amended by adding at the end the following new
24 section:

1 **“SEC. 2664. TERMINATION.**

2 “This chapter shall not apply to generation-skipping
3 transfers on or after the date of the enactment of the
4 Death Tax Repeal Act of 2016.”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) The table of sections for subchapter C of
7 chapter 11 of the Internal Revenue Code of 1986 is
8 amended by adding at the end the following new
9 item:

“Sec. 2210. Termination.”.

10 (2) The table of sections for subchapter G of
11 chapter 13 of such Code is amended by adding at
12 the end the following new item:

“Sec. 2664. Termination.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to the estates of decedents dying,
15 and generation-skipping transfers, after the date of the
16 enactment of this Act.

17 **SEC. 303. MODIFICATIONS OF GIFT TAX.**

18 (a) COMPUTATION OF GIFT TAX.—Subsection (a) of
19 section 2502 of the Internal Revenue Code of 1986 is
20 amended to read as follows:

21 “(a) COMPUTATION OF TAX.—

22 “(1) IN GENERAL.—The tax imposed by section
23 2501 for each calendar year shall be an amount
24 equal to the excess of—

1 “(A) a tentative tax, computed under para-
 2 graph (2), on the aggregate sum of the taxable
 3 gifts for such calendar year and for each of the
 4 preceding calendar periods, over

5 “(B) a tentative tax, computed under para-
 6 graph (2), on the aggregate sum of the taxable
 7 gifts for each of the preceding calendar periods.

8 “(2) RATE SCHEDULE.—

“If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over \$10,000	18% of such amount.
Over \$10,000 but not over \$20,000	\$1,800, plus 20% of the excess over \$10,000.
Over \$20,000 but not over \$40,000	\$3,800, plus 22% of the excess over \$20,000.
Over \$40,000 but not over \$60,000	\$8,200, plus 24% of the excess over \$40,000.
Over \$60,000 but not over \$80,000	\$13,000, plus 26% of the excess over \$60,000.
Over \$80,000 but not over \$100,000	\$18,200, plus 28% of the excess over \$80,000.
Over \$100,000 but not over \$150,000	\$23,800, plus 30% of the excess over \$100,000.
Over \$150,000 but not over \$250,000	\$38,800, plus 32% of the excess over \$150,000.
Over \$250,000 but not over \$500,000	\$70,800, plus 34% of the excess over \$250,000.
Over \$500,000	\$155,800, plus 35% of the excess over \$500,000.”.

9 (b) TREATMENT OF CERTAIN TRANSFERS IN
 10 TRUST.—Section 2511 of the Internal Revenue Code of

1 1986 is amended by adding at the end the following new
2 subsection:

3 “(c) TREATMENT OF CERTAIN TRANSFERS IN
4 TRUST.—Notwithstanding any other provision of this sec-
5 tion and except as provided in regulations, a transfer in
6 trust shall be treated as a taxable gift under section 2503,
7 unless the trust is treated as wholly owned by the donor
8 or the donor’s spouse under subpart E of part I of sub-
9 chapter J of chapter 1.”.

10 (c) LIFETIME GIFT EXEMPTION.—

11 (1) IN GENERAL.—Paragraph (1) of section
12 2505(a) of the Internal Revenue Code of 1986 is
13 amended to read as follows:

14 “(1) the amount of the tentative tax which
15 would be determined under the rate schedule set
16 forth in section 2502(a)(2) if the amount with re-
17 spect to which such tentative tax is to be computed
18 were \$5,000,000, reduced by”.

19 (2) INFLATION ADJUSTMENT.—Section 2505 of
20 such Code is amended by adding at the end the fol-
21 lowing new subsection:

22 “(d) INFLATION ADJUSTMENT.—

23 “(1) IN GENERAL.—In the case of any calendar
24 year after 2011, the dollar amount in subsection
25 (a)(1) shall be increased by an amount equal to—

1 “(A) such dollar amount, multiplied by

2 “(B) the cost-of-living adjustment deter-
3 mined under section 1(f)(3) for such calendar
4 year by substituting ‘calendar year 2010’ for
5 ‘calendar year 1992’ in subparagraph (B)
6 thereof.

7 “(2) ROUNDING.—If any amount as adjusted
8 under paragraph (1) is not a multiple of \$10,000,
9 such amount shall be rounded to the nearest mul-
10 tiple of \$10,000.”.

11 (d) CONFORMING AMENDMENTS.—

12 (1) Section 2505(a) of such Code is amended
13 by striking the last sentence.

14 (2) The heading for section 2505 of such Code
15 is amended by striking “**UNIFIED**”.

16 (3) The item in the table of sections for sub-
17 chapter A of chapter 12 of such Code relating to
18 section 2505 is amended to read as follows:

“Sec. 2505. Credit against gift tax.”.

19 (e) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to gifts made on or after the date
21 of the enactment of this Act.

22 (f) TRANSITION RULE.—

23 (1) IN GENERAL.—For purposes of applying
24 sections 1015(d), 2502, and 2505 of the Internal
25 Revenue Code of 1986, the calendar year in which

1 this Act is enacted shall be treated as 2 separate cal-
 2 endar years one of which ends on the day before the
 3 date of the enactment of this Act and the other of
 4 which begins on such date of enactment.

5 (2) APPLICATION OF SECTION 2504(b).—For
 6 purposes of applying section 2504(b) of the Internal
 7 Revenue Code of 1986, the calendar year in which
 8 this Act is enacted shall be treated as 1 preceding
 9 calendar period.

10 **TITLE IV—HEALTHCARE: EX-**
 11 **PANDING CHOICE AND LOW-**
 12 **ERING COSTS**

13 **SEC. 401. FINDINGS AND PURPOSE.**

14 (a) FINDINGS.—

15 (1) EFFECT ON HEALTH CARE ACCESS AND
 16 COSTS.—Congress finds that the current civil justice
 17 system in the United States is adversely affecting
 18 patient access to health care services, better patient
 19 care, and cost-efficient health care, in that the
 20 health care liability system is—

21 (A) a costly and ineffective mechanism for
 22 resolving claims of health care liability and
 23 compensating injured patients, and

24 (B) a deterrent to the sharing of informa-
 25 tion among health care professionals, which im-

1 pedes efforts to improve patient safety and
2 quality of care.

3 (2) EFFECT ON INTERSTATE COMMERCE.—

4 Congress finds that the health care and insurance
5 industries are industries affecting interstate com-
6 merce and the health care liability litigation systems
7 existing throughout the United States are activities
8 that affect interstate commerce by contributing to
9 the high costs of health care and premiums for
10 health care liability insurance purchased by health
11 care system providers.

12 (3) EFFECT ON FEDERAL SPENDING.—Con-

13 gress finds that the health care liability litigation
14 systems existing throughout the United States have
15 a significant effect on the amount, distribution, and
16 use of Federal funds because of—

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

20 (B) the large number of individuals who
21 benefit because of the exclusion from Federal
22 taxes of the amounts spent to provide them
23 with health insurance benefits; and

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

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

7 (1) improve the availability of health care serv-
8 ices in cases in which health care liability actions
9 have been shown to be a factor in the decreased
10 availability of services;

11 (2) reduce the incidence of defensive medicine
12 and lower the cost of health care liability insurance,
13 all of which contribute to the escalation of health
14 care costs;

15 (3) ensure that persons with meritorious health
16 care injury claims receive fair and adequate com-
17 pensation, including reasonable noneconomic dam-
18 ages;

19 (4) improve the fairness and cost-effectiveness
20 of the current health care liability system in the
21 United States to resolve disputes over, and provide
22 compensation for, health care liability by reducing
23 uncertainty in the amount of compensation provided
24 to injured individuals; and

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

4 **SEC. 402. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

5 (a) ACTIONS BY ADULTS.—

6 (1) IN GENERAL.—Except as provided in para-
 7 graph (2), no health care lawsuit may be commenced
 8 after the earlier of—

9 (A) the expiration of the 3-year period be-
 10 ginning on the date of the manifestation of in-
 11 jury; or

12 (B) the expiration of the 1-year period be-
 13 ginning on the date on which the claimant dis-
 14 covers, or through the use of reasonable dili-
 15 gence should have discovered, the injury.

16 (2) EXCEPTION.—A health care lawsuit may be
 17 commenced after the expiration of the 3-year period
 18 described in paragraph (1) if the claimant dem-
 19 onstrates—

20 (A) fraud;

21 (B) intentional concealment; or

22 (C) the presence of a foreign body, which
 23 has no therapeutic or diagnostic purpose or ef-
 24 fect, in the person of the injured person.

25 (b) ACTIONS BY A MINOR.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), a health care lawsuit by a minor shall be
3 commenced not later than 3 years after the date of
4 the alleged manifestation of injury except that ac-
5 tions by a minor under the full age of 6 years shall
6 be commenced within 3 years of manifestation of in-
7 jury or prior to the minor’s 8th birthday, whichever
8 provides a longer period.

9 (2) EXCEPTION.—The limitation in paragraph
10 (1) shall be tolled for minors for any period during
11 which a parent or guardian and a health care pro-
12 vider or health care organization have committed
13 fraud or collusion in the failure to bring an action
14 on behalf of the injured minor.

15 **SEC. 403. COMPENSATING PATIENT INJURY.**

16 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
17 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—Not-
18 withstanding the limitation in subsection (b), in any health
19 care lawsuit, nothing in this title shall limit the recovery
20 by a claimant of the full amount of the available economic
21 damages.

22 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
23 health care lawsuit, the amount of noneconomic damages,
24 if available, may be not more than \$250,000, regardless
25 of the number of parties against whom the action is

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

3 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
4 DAMAGES.—

5 (1) IN GENERAL.—For purposes of applying the
6 limitation in subsection (b), future noneconomic
7 damages shall not be discounted to present value.

8 (2) JURY NOT INFORMED.—The jury shall not
9 be informed about the maximum award for non-
10 economic damages.

11 (3) REDUCTION IN AWARD.—An award for non-
12 economic damages more than \$250,000 shall be re-
13 duced either before the entry of judgment, or by
14 amendment of the judgment after entry of judg-
15 ment, and such reduction shall be made before ac-
16 counting for any other reduction in damages re-
17 quired by law.

18 (4) SEPARATE AWARDS.—If separate awards
19 are rendered for past and future noneconomic dam-
20 ages and the combined awards are more than
21 \$250,000, the future noneconomic damages shall be
22 reduced first.

23 (d) FAIR SHARE RULE.—

24 (1) IN GENERAL.—In any health care lawsuit,
25 each party shall be liable for that party's several

1 share of any damages only and not for the share of
2 any other person.

3 (2) PROPORTION TO PERCENTAGE OF RESPON-
4 SIBILITY.—Each party shall be liable only for the
5 amount of damages allocated to such party in direct
6 proportion to such party’s percentage of responsi-
7 bility.

8 (3) SEPARATE JUDGMENTS.—Whenever a judg-
9 ment of liability is rendered as to any party, a sepa-
10 rate judgment shall be rendered against each such
11 party for the amount allocated to such party.

12 (4) DETERMINATION.—For purposes of this
13 section, the trier of fact shall determine the propor-
14 tion of responsibility of each party for the harm to
15 the claimant.

16 **SEC. 404. MAXIMIZING PATIENT RECOVERY.**

17 (a) COURT SUPERVISION OF SHARE OF DAMAGES
18 ACTUALLY PAID TO CLAIMANTS.—

19 (1) IN GENERAL.—In any health care lawsuit,
20 the court shall supervise the arrangements for pay-
21 ment of damages to protect against conflicts of in-
22 terest that may have the effect of reducing the
23 amount of damages awarded that are actually paid
24 to claimants.

25 (2) CONTINGENT FEES.—

1 (A) IN GENERAL.—In particular, in any
2 health care lawsuit in which the attorney for a
3 party claims a financial stake in the outcome by
4 virtue of a contingent fee, the court shall have
5 the power to restrict the payment of a claim-
6 ant’s damage recovery to such attorney, and to
7 redirect such damages to the claimant based
8 upon the interests of justice and principles of
9 equity.

10 (B) MAXIMUM.—In no event shall the total
11 of all contingent fees for representing all claim-
12 ants in a health care lawsuit exceed the fol-
13 lowing limits:

14 (i) 40 percent of the first \$50,000 re-
15 covered by all such claimants.

16 (ii) 33 $\frac{1}{3}$ percent of the next \$50,000
17 recovered by all such claimants.

18 (iii) 25 percent of the next \$500,000
19 recovered by all such claimants.

20 (iv) 15 percent of any amount by
21 which the recovery by all such claimants is
22 in excess of \$600,000.

23 (b) APPLICABILITY.—

24 (1) IN GENERAL.—The limitations in this sec-
25 tion shall apply whether the recovery is by judgment,

1 settlement, mediation, arbitration, or any other form
2 of alternative dispute resolution.

3 (2) MINOR OR INCOMPETENT PERSONS.—In a
4 health care lawsuit involving a minor or incompetent
5 person, a court retains the authority to authorize or
6 approve a fee that is less than the maximum per-
7 mitted under this section.

8 (3) COURT SUPERVISION.—The requirement for
9 court supervision in paragraphs (1) and (2) of sub-
10 section (a) shall apply only in civil actions.

11 **SEC. 405. ADDITIONAL HEALTH BENEFITS.**

12 (a) IN GENERAL.—In any health care lawsuit involv-
13 ing injury or wrongful death, any party may introduce evi-
14 dence of collateral source benefits.

15 (b) ELECTION.—If a party elects to introduce such
16 evidence, any opposing party may introduce evidence of
17 any amount paid or contributed or reasonably likely to be
18 paid or contributed in the future by or on behalf of the
19 opposing party to secure the right to such collateral source
20 benefits.

21 (c) PROVIDERS OF COLLATERAL BENEFITS.—No
22 provider of collateral source benefits shall recover any
23 amount against the claimant or receive any lien or credit
24 against the claimant's recovery or be equitably or legally

1 subrogated to the right of the claimant in a health care
2 lawsuit involving injury or wrongful death.

3 (d) APPLICATION.—This section—

4 (1) shall apply to any health care lawsuit that
5 is settled as well as a health care lawsuit that is re-
6 solved by a fact finder; and

7 (2) shall not apply to section 1862(b) of the So-
8 cial Security Act (42 U.S.C. 1395y(b)) or section
9 1902(a)(25) of such Act (42 U.S.C. 1396a(a)(25)).

10 **SEC. 406. PUNITIVE DAMAGES.**

11 (a) IN GENERAL.—

12 (1) MALICIOUS INTENT OR DELIBERATE FAIL-
13 URE.—Punitive damages may, if otherwise permitted
14 by applicable State or Federal law, be awarded
15 against any person in a health care lawsuit only if
16 it is proven by clear and convincing evidence that
17 such person acted with malicious intent to injure the
18 claimant, or that such person deliberately failed to
19 avoid unnecessary injury that such person knew the
20 claimant was substantially certain to suffer.

21 (2) NO JUDGMENT FOR COMPENSATORY DAM-
22 AGES.—In any health care lawsuit for which no
23 judgment for compensatory damages is rendered
24 against such person, no punitive damages may be
25 awarded with respect to the claim in such lawsuit.

1 (3) DEMAND FOR PUNITIVE DAMAGES.—No de-
2 mand for punitive damages shall be included in a
3 health care lawsuit as initially filed.

4 (4) AMENDED PLEADING.—A court may allow a
5 claimant to file an amended pleading for punitive
6 damages only upon a motion by the claimant and
7 after a finding by the court, upon review of sup-
8 porting and opposing affidavits or after a hearing,
9 after weighing the evidence, that the claimant has
10 established by a substantial probability that the
11 claimant will prevail on the claim for punitive dam-
12 ages.

13 (5) SEPARATE PROCEEDINGS.—

14 (A) IN GENERAL.—At the request of any
15 party in a health care lawsuit, the trier of fact
16 shall consider in a separate proceeding—

17 (i) whether punitive damages are to
18 be awarded and the amount of such award;
19 and

20 (ii) the amount of punitive damages
21 following a determination of punitive liabil-
22 ity.

23 (B) RELEVANT EVIDENCE.—If a separate
24 proceeding is requested, evidence relevant only
25 to the claim for punitive damages, as deter-

1 mined by applicable State law, shall be inadmis-
2 sible in any proceeding to determine whether
3 compensatory damages are to be awarded.

4 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
5 AGES.—

6 (1) FACTORS CONSIDERED.—In determining
7 the amount of punitive damages, if awarded, in a
8 health care lawsuit, the trier of fact shall consider
9 only the following:

10 (A) The severity of the harm caused by the
11 conduct of such party.

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

14 (C) The profitability of the conduct to such
15 party.

16 (D) The number of products sold or med-
17 ical procedures rendered for compensation, as
18 the case may be, by such party, of the kind
19 causing the harm complained of by the claim-
20 ant.

21 (E) Any criminal penalties imposed on
22 such party, as a result of the conduct com-
23 plained of by the claimant.

1 (F) The amount of any civil fines assessed
2 against such party as a result of the conduct
3 complained of by the claimant.

4 (2) MAXIMUM AWARD.—The amount of punitive
5 damages, if awarded, in a health care lawsuit may
6 be as much as \$250,000 or as much as two times
7 the amount of economic damages awarded, which-
8 ever is greater. The jury shall not be informed of
9 this limitation.

10 (c) NO PUNITIVE DAMAGES FOR PRODUCTS THAT
11 COMPLY WITH FDA STANDARDS.—

12 (1) LIABILITY OF CERTAIN MANUFACTURERS,
13 DISTRIBUTORS, AND SUPPLIERS.—

14 (A) IN GENERAL.—No punitive damages
15 may be awarded against the manufacturer or
16 distributor of a medical product, or a supplier
17 of any component or raw material of such med-
18 ical product, based on a claim that such prod-
19 uct caused the claimant's harm where—

20 (i)(I) such medical product was sub-
21 ject to premarket approval, clearance, or li-
22 censure by the Food and Drug Administra-
23 tion with respect to the safety of the for-
24 mulation or performance of the aspect of
25 such medical product which caused the

1 claimant's harm or the adequacy of the
2 packaging or labeling of such medical
3 product; and

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

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

19 (B) RULE OF CONSTRUCTION.—Subpara-
20 graph (A) may not be construed as establishing
21 the obligation of the Food and Drug Adminis-
22 tration to demonstrate affirmatively that a
23 manufacturer, distributor, or supplier referred
24 to in such subparagraph meets any of the con-
25 ditions described in such subparagraph.

1 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

2 (A) IN GENERAL.—A health care provider
3 who prescribes, or who dispenses pursuant to a
4 prescription, a medical product approved, li-
5 censed, or cleared by the Food and Drug Ad-
6 ministration shall not be named as a party to
7 a product liability lawsuit involving such prod-
8 uct and shall not be liable to a claimant in a
9 class action lawsuit against the manufacturer,
10 distributor, or seller of such product.

11 (B) CONSOLIDATION.—Nothing in this
12 paragraph prevents a court from consolidating
13 cases involving health care providers and cases
14 involving products liability claims against the
15 manufacturer, distributor, or product seller of
16 such medical product.

17 (3) PACKAGING.—In a health care lawsuit for
18 harm which is alleged to relate to the adequacy of
19 the packaging or labeling of a drug which is required
20 to have tamper-resistant packaging under regula-
21 tions of the Secretary of Health and Human Serv-
22 ices (including labeling regulations related to such
23 packaging), the manufacturer or product seller of
24 the drug shall not be held liable for punitive dam-
25 ages unless such packaging or labeling is found by

1 the trier of fact by clear and convincing evidence to
2 be substantially out of compliance with such regula-
3 tions.

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

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

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

1 **SEC. 407. 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. 408. 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. 409. EFFECT ON OTHER LAWS.**

4 (a) VACCINE INJURY.—

5 (1) To the extent that title XXI of the Public
6 Health Service Act (42 U.S.C. 300aa–1 et seq.) es-
7 tablishes a Federal rule of law applicable to a civil
8 action brought for a vaccine-related injury or
9 death—

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

13 (B) any rule of law prescribed by this title
14 in conflict with a rule of law of title XXI of the
15 Public Health Service Act (42 U.S.C. 300aa–1
16 et seq.) shall not apply to such action.

17 (2) If there is an aspect of a civil action
18 brought for a vaccine-related injury or death to
19 which a Federal rule of law under title XXI of the
20 Public Health Service Act (42 U.S.C. 300aa–1 et
21 seq.) does not apply, then this title or otherwise ap-
22 plicable law (as determined under this title) will
23 apply to such aspect of such action.

24 (b) OTHER FEDERAL LAW.—Except as provided in
25 this section, nothing in this title shall be deemed to affect

1 any defense available to a defendant in a health care law-
2 suit or action under any other provision of Federal law.

3 **SEC. 410. STATE FLEXIBILITY AND PROTECTION OF**
4 **STATES' RIGHTS.**

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

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

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

22 (b) **PROTECTION OF STATES' RIGHTS AND OTHER**
23 **LAWS.**—

24 (1) **IN GENERAL.**—Any issue that is not gov-
25 erned by any provision of law established by or

1 under this title (including State standards of neg-
2 ligence) shall be governed by otherwise applicable
3 State or Federal law.

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

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

13 (1) any State law (whether effective before, on,
14 or after the date of the enactment of this title) that
15 specifies a particular monetary amount of compen-
16 satory or punitive damages (or the total amount of
17 damages) that may be awarded in a health care law-
18 suit, regardless of whether such monetary amount is
19 greater or lesser than is provided for under this title,
20 notwithstanding section 403(a); or

21 (2) any defense available to a party in a health
22 care lawsuit under any other provision of State or
23 Federal law.

1 **SEC. 411. APPLICABILITY; EFFECTIVE DATE.**

2 This title shall apply to any health care lawsuit
3 brought in a Federal or State court, or subject to an alter-
4 native dispute resolution system, that is initiated on or
5 after the date of the enactment of this title, except that
6 any health care lawsuit arising from an injury occurring
7 prior to the date of the enactment of this title shall be
8 governed by the applicable statute of limitations provisions
9 in effect at the time the injury occurred.

10 **SEC. 412. SENSE OF CONGRESS.**

11 It is the sense of Congress that a health insurer
12 should be liable for damages for harm caused when it
13 makes a decision as to what care is medically necessary
14 and appropriate.

15 **SEC. 413. SECA TAX DEDUCTION FOR HEALTH INSURANCE**
16 **COSTS.**

17 (a) IN GENERAL.—Subsection (l) of section 162 of
18 the Internal Revenue Code of 1986 is amended by striking
19 paragraph (4) and by redesignating paragraph (5) as
20 paragraph (4).

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

1 **TITLE V—WORKFORCE**
2 **INTEGRITY**

3 **SEC. 501. VERIFICATION UNDER E-VERIFY PROGRAM BY**
4 **TELEPHONE.**

5 Section 404(d) of the Illegal Immigration Reform and
6 Immigrant Responsibility Act of 1996 (division C of Pub-
7 lic Law 104–208; 8 U.S.C. 1324a note) is amended—

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

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

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

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

15 **SEC. 502. GRACE PERIOD TO CORRECT PAPERWORK.**

16 Any small business concern that violates any provi-
17 sion of the Immigration and Nationality Act (8 U.S.C.
18 1101 et seq.) relating to the filing of an application, peti-
19 tion, or other paperwork, resulting in the assessment of
20 a fine or penalty shall not be subject to that fine or other
21 penalty if that small business concern remedies that viola-
22 tion during the 30-day period beginning on the date on
23 which notice of the violation is received by the small busi-
24 ness concern.

1 **TITLE VI—INCENTIVES FOR**
 2 **ENERGY EFFICIENCY**

3 **SEC. 601. EXTEND THE TAX CREDIT FOR RESIDENTIAL EN-**
 4 **ERGY-EFFICIENT PROPERTY.**

5 (a) EXTENSION OF CREDIT.—Subsection (h) of sec-
 6 tion 25D of the Internal Revenue Code of 1986 is amend-
 7 ed by striking “December 31, 2016 (December 31, 2021,
 8 in the case of any qualified solar electric property expendi-
 9 tures and qualified solar water heating property expendi-
 10 tures)” and inserting “December 31, 2021”.

11 (b) EFFECTIVE DATE.—The amendment made by
 12 this section shall take effect on January 1, 2017.

13 **SEC. 602. MAKE PERMANENT THE ENERGY EFFICIENCY**
 14 **CREDIT FOR EXISTING HOMES.**

15 Section 25C of the Internal Revenue Code of 1986
 16 is amended by striking subsection (g).

17 **SEC. 603. MAKE PERMANENT THE ENERGY EFFICIENCY**
 18 **COMMERCIAL BUILDINGS DEDUCTION.**

19 Section 179D of the Internal Revenue Code of 1986
 20 is amended by striking subsection (h).

21 **TITLE VII—GUIDANCE ABOUT**
 22 **NEW RULES**

23 **SEC. 701. GUIDANCE AND ADVICE ABOUT NEW RULES.**

24 (a) DETERMINATION REGARDING IMPACT OF NEW
 25 RULES.—

1 (1) IN GENERAL.—The head of each depart-
2 ment or agency of the Federal Government may not
3 issue a rule until that head has conducted a study
4 to determine whether the rule will have an unduly
5 burdensome effect on small business concerns.

6 (2) GUIDANCE.—If the head of a department or
7 agency of the Federal Government determines that
8 the effect described in paragraph (1) would occur,
9 the head shall, not later than the date that is 3
10 months after the date on which the determination is
11 made, submit to the Administrator guidance on how
12 that effect may be mitigated.

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

17 (c) PUBLICATION.—The Administrator shall publish
18 and maintain all guidance received under subsection (a)
19 and all advice provided under subsection (b) on the website
20 of the Administration, in a manner that ensures the con-
21 tinuing availability of that guidance to small business con-
22 cerns.

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

5 **SEC. 801. ADMINISTRATION PROHIBITED FROM CAPPING**
6 **EXECUTIVE COMPENSATION.**

7 In carrying out any program under the Small Busi-
8 ness Act (15 U.S.C. 631 et seq.) or the Small Business
9 Investment Act of 1958 (15 U.S.C. 661 et seq.), the Ad-
10 ministrator may not impose any limit on executive com-
11 pensation by any small business concern.

12 **SEC. 802. REDUCTION OF REGULATORY BURDEN.**

13 (a) GAO REPORT.—Not later than 9 months after
14 the date of enactment of this Act, the Comptroller General
15 of the United States shall submit to the Administrator the
16 results of a study of each regulation of each Federal agen-
17 cy or department that determines the burden that each
18 such regulation imposes on small business concerns.

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

25 (c) REDUCTION OF PAPERWORK.—

1 (1) IN GENERAL.—In carrying out any program
2 under the Small Business Act (15 U.S.C. 631 et
3 seq.) or the Small Business Investment Act of 1958
4 (15 U.S.C. 661 et seq.), the Administrator, acting
5 through the Chief Counsel of the Office of Advocacy
6 of the Administration, shall take any actions that
7 the Administrator determines appropriate to reduce
8 the amount of paperwork, including any application,
9 filing, or petition, that any Federal department or
10 agency may require a small business concern to com-
11 plete.

12 (2) ELECTRONIC AND TELEPHONIC FILING.—
13 The actions taken by the Administrator under para-
14 graph (1) shall include providing for the replacement
15 of the paperwork described in that paragraph with
16 electronic or telephone filing or reporting.

17 **SEC. 803. LITIGATION BURDEN ON SMALL BUSINESS CON-**
18 **CERNS TO BE LIMITED TO CURRENT LEVELS.**

19 It is the sense of Congress that Congress should not
20 pass legislation amending substantive or procedural law
21 if the amendment would cause more small business con-
22 cerns to be involved in litigation.

1 **SEC. 804. EXPANSION OF VOLUNTEER REPRESENTATION**
2 **AND BENCHMARK REPORTS.**

3 Section 8(b)(1)(B) of the Small Business Act (15
4 U.S.C. 637(b)(1)(B)) is amended—

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

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

7 “(ii) The Administrator shall ensure that
8 the Service Corps of Retired Executives—

9 “(I) carries out a plan to increase the
10 number of mentors in the Service Corps of
11 Retired Executives; and

12 “(II) annually reports to the Adminis-
13 trator on the implementation of this sub-
14 paragraph.

15 “(iii) The Administrator shall ensure that
16 the Service Corps of Retired Executives, when
17 evaluating the performance of the activities and
18 the volunteers of the Service Corps of Retired
19 Executives, establishes benchmarks, which shall
20 include benchmarks relating to—

21 “(I) the number of hours spent men-
22 toring by volunteers; and

23 “(II) the performance of the persons
24 assisted by the Service Corps of Retired
25 Executives.

1 “(iv) The Service Corps of Retired Execu-
2 tives shall annually report to the Administrator
3 on whether the benchmarks established under
4 clause (iii) are being met.”.

5 **SEC. 805. MENTORING AND NETWORKING.**

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

9 “(v) The Administrator shall ensure that
10 the Service Corps of Retired Executives estab-
11 lishes a mentoring program for small business
12 concerns that provides individualized advice to
13 each small business concern from a qualified
14 counselor. For purposes of this clause, a quali-
15 fied counselor is a counselor with not fewer
16 than 10 years of experience in the industry sec-
17 tor or area of responsibility of the small busi-
18 ness concern seeking advice.

19 “(vi) The Administrator shall carry out a
20 networking program through the Service Corps
21 of Retired Executives that provides a small
22 business concern with the opportunity to make
23 business contacts in the industry or geographic
24 region of the small business concern.”.

1 **Subtitle B—Small Business Goals**

2 **SEC. 811. SMALL BUSINESS GOALS.**

3 Section 15(g) of the Small Business Act (15 U.S.C.
4 644(g)) is amended—

5 (1) in paragraph (1)(A)(i), by striking “shall be
6 established at not less than 23 percent” and insert-
7 ing “except as provided in paragraph (4), shall be
8 established at not less than 30 percent”; and

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

10 “(4)(A) The President may authorize the National
11 Aeronautics and Space Administration and the Depart-
12 ment of Energy to treat the Governmentwide goal for par-
13 ticipation by small business concerns as though such goal
14 were 23 percent.

15 “(B) Not later than 60 days after providing an au-
16 thorization under subparagraph (A), the President shall
17 provide notice to the Office of Advocacy.”.

18 **SEC. 812. AGENCY GOAL NEGOTIATION.**

19 (a) NEGOTIATION.—Section 15(g)(1)(A) of the Small
20 Business Act (15 U.S.C. 644(g)(1)(A)) is amended, in the
21 matter preceding clause (i), by striking “The President
22 shall annually establish Governmentwide goals for pro-
23 curement contracts” and inserting “The President shall,
24 before the end of each fiscal year, establish new Govern-

1 mentwide procurement goals for the following fiscal year
2 for procurement contracts”.

3 (b) **MINIMUM LEVEL.**—Section 15(g)(1)(B) of the
4 Small Business Act (15 U.S.C. 644(g)(1)(B)) is amended,
5 in the first sentence, by inserting “, which shall not be
6 lower than the Governmentwide goal,” after “Each agency
7 shall have an annual goal”.

8 **SEC. 813. PROCEDURES AND METHODS FOR GOAL**
9 **ACHIEVEMENT.**

10 (a) **GOAL RESPONSIBILITY.**—Section 15(g)(2)(A) of
11 the Small Business Act (15 U.S.C. 644(g)(2)(A)) is
12 amended by inserting “The goals established by the head
13 of each Federal agency shall be apportioned within the
14 Federal agency to 1 or more contracting offices (as that
15 term is defined in section 2.101 of title 48, Code of Fed-
16 eral Regulations, on the date of enactment of the Small
17 Business Bill of Rights) that reports to a career appointee
18 in the Senior Executive Service.” after the first sentence.

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 under section
4 15(g) of the Small Business Act (15 U.S.C.
5 644(g)).”.

6 (2) TRAINING.—Section 3396(a) of title 5,
7 United States Code, is amended by adding at the
8 end the following: “The training provided to senior
9 executives shall include Federal procurement policy,
10 including the procurement provisions under the
11 Small Business Act (15 U.S.C. 631 et seq.).”.

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

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

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

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

21 “(D) who oversees a contracting office that did
22 not meet its small business procurement goals estab-
23 lished annually in accordance with the procedures
24 under section 15(g)(2) of the Small Business Act
25 (15 U.S.C. 644(g)(2)).”.

1 (4) LIMITATION ON INCENTIVE AWARDS.—

2 (A) IN GENERAL.—An employee in the
3 Senior Executive Service shall not be eligible for
4 any incentive award specified in subchapter I of
5 chapter 45 of title 5, United States Code, dur-
6 ing a fiscal year if the contracting office which
7 reports to that employee fails to meet the pro-
8 curement goals established for the previous fis-
9 cal year in accordance with the procedures
10 under section 15(g)(2) of the Small Business
11 Act (15 U.S.C. 644(g)(2)).

12 (B) SUPERVISORS.—Any career or non-
13 career member of the Senior Executive Service
14 to whom an employee who is not eligible for an
15 incentive award for a fiscal year under subpara-
16 graph (A) reports shall not be eligible for any
17 incentive award specified in subchapter I of
18 chapter 45 of title 5, United States Code, dur-
19 ing that fiscal year.

20 **SEC. 814. REPORTING REQUIREMENTS.**

21 Section 15(h) of the Small Business Act (15 U.S.C.
22 644(h)) is amended by adding at the end the following:

23 “(4) AGENCY REPORTS TO CONGRESS.—

24 “(A) IN GENERAL.—Not later than No-
25 vember 1 of each fiscal year, the head of each

1 Federal agency shall submit to Congress a re-
 2 port providing the percentage of contracts
 3 awarded by that Federal agency for the pre-
 4 vious fiscal year that were awarded to small
 5 business concerns.

6 “(B) FAILURE TO MEET GOALS.—If the
 7 percentage reported under subparagraph (A)
 8 for a fiscal year is less than the goal established
 9 by the head of the Federal agency under sub-
 10 section (g), the head of the Federal agency
 11 shall include in the report—

12 “(i) an explanation of why the Fed-
 13 eral agency did not reach the goal; and

14 “(ii) a discussion of the actions the
 15 Federal agency will take to ensure that the
 16 goal for the following fiscal year will be
 17 achieved.”.

18 **Subtitle C—Contract Bundling**

19 **SEC. 821. DEFINITIONS OF BUNDLING OF CONTRACT RE-** 20 **QUIREMENTS.**

21 Section 3(o) of the Small Business Act (15 U.S.C.
 22 632(o)) is amended to read as follows:

23 “(o) DEFINITIONS OF BUNDLING OF CONTRACT RE-
 24 QUIREMENTS AND RELATED TERMS.—In this Act:

25 “(1) BUNDLED CONTRACT.—

1 “(A) IN GENERAL.—The term ‘bundled
2 contract’ means a contract or order that is en-
3 tered into to meet procurement requirements
4 that are consolidated in a bundling of contract
5 requirements, without regard to its designation
6 by the procuring agency or whether a study of
7 the effects of the solicitation on civilian or mili-
8 tary personnel has been made.

9 “(B) EXCEPTIONS.—The term ‘bundled
10 contract’ does not include—

11 “(i) a contract or order with an aggre-
12 gate dollar value below the dollar threshold
13 specified in paragraph (4); or

14 “(ii) a contract or order that is en-
15 tered into to meet procurement require-
16 ments, all of which are exempted require-
17 ments under paragraph (5).

18 “(2) BUNDLING OF CONTRACT REQUIRE-
19 MENTS.—

20 “(A) IN GENERAL.—The term ‘bundling of
21 contract requirements’ means the use of any
22 bundling methodology to satisfy 2 or more pro-
23 curement requirements for new or existing
24 goods or services, including any construction

1 services, that is likely to be unsuitable for
2 award to a small business concern due to—

3 “(i) the diversity, size, or specialized
4 nature of the elements of the performance
5 specified;

6 “(ii) the aggregate dollar value of the
7 anticipated award;

8 “(iii) the geographical dispersion of
9 the contract or order performance; or

10 “(iv) any combination of the factors
11 described in clauses (i), (ii), and (iii).

12 “(B) EXCEPTIONS.—The term does not in-
13 clude—

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

18 “(ii) the use of a bundling method-
19 ology to meet procurement requirements,
20 all of which are exempted under paragraph
21 (5).

22 “(3) BUNDLING METHODOLOGY.—The term
23 ‘bundling methodology’ means—

1 “(A) a solicitation to obtain offers for a
2 single contract or order, or a multiple award
3 contract or order;

4 “(B) a solicitation of offers for the
5 issuance of a task or a delivery order under an
6 existing single or multiple award contract or
7 order; or

8 “(C) the creation of any new procurement
9 requirements that permit a consolidation of
10 contract or order requirements.

11 “(4) DOLLAR THRESHOLD.—The term ‘dollar
12 threshold’ means—

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

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

16 “(5) EXEMPTED REQUIREMENTS.—The term
17 ‘exempted requirement’ means 1 or more of the fol-
18 lowing:

19 “(A) A procurement requirement solely for
20 items that are not commercial items (as the
21 term ‘commercial item’ is defined in section
22 4(12) of the Office of Federal Procurement Pol-
23 icy Act (41 U.S.C. 403(12)), except this sub-
24 paragraph shall not apply to any procurement
25 requirement for a contract for goods or services

1 provided by a business classified in sector 23 of
2 the North American Industrial Classification
3 System.

4 “(B) A procurement requirement with re-
5 spect to which a determination that it is unsuit-
6 able for award to a small business concern has
7 previously been made by the agency. The Ad-
8 ministrator shall have authority to review and
9 reverse such a determination for purposes of
10 this paragraph and, if the Administrator does
11 reverse that determination, the term ‘exempted
12 requirement’ shall not apply to that procure-
13 ment requirement.

14 “(6) PROCUREMENT REQUIREMENT.—The term
15 ‘procurement requirement’ means a determination
16 by an agency that a specified good or service is
17 needed to satisfy the mission of the agency.”.

18 **SEC. 822. JUSTIFICATION.**

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

22 (1) by striking “is in a quantity or estimated
23 dollar value the magnitude of which renders small
24 business prime contract participation unlikely” and

1 inserting “would now be combined with other re-
2 quirements for goods and services”;

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

15 (3) by striking “(3) why the proposed acquisi-
16 tion” and inserting “(6) why the proposed acquisi-
17 tion”;

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

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

22 (6) by inserting after “justified.” the following:
23 “The statement also shall set forth the proposed
24 procurement strategy required by subsection (e) and,
25 if applicable, the specifications required by sub-

1 section (e)(3). Concurrently, the statement shall be
2 made available to the public, including through dis-
3 semination in the Federal contracting opportunities
4 database.”; and

5 (7) by inserting after “prime contracting oppor-
6 tunities.” the following: “If no notification of the
7 procurement and accompanying statement is re-
8 ceived, but the Administrator determines that there
9 is cause to believe the contract combines require-
10 ments or a contract (single or multiple award) or
11 task or delivery order for construction services or in-
12 cludes unjustified bundling, the Administrator may
13 demand that such a statement of work goods or
14 services be completed by the procurement activity
15 and sent to the Procurement Center Representative
16 and the solicitation process postponed for not less
17 than 10 days but not more than 30 days to allow
18 the Administrator to review the statement and make
19 recommendations as described in this section before
20 procurement is continued.”.

21 (b) SUBSTANTIAL MEASURABLE BENEFITS.—Section
22 15(e)(2)(C) of the Small Business Act (15 U.S.C.
23 644(e)(C)) is amended by adding at the end the following:
24 “Cost savings shall not include any reduction in the use
25 of military interdepartmental purchase requests or any

1 similar transfer funds among Federal agencies for the use
2 of a contract issued by another Federal agency.”.

3 **SEC. 823. APPEALS.**

4 Section 15(a) of the Small Business Act (15 U.S.C.
5 644(a)), as amended by this Act, is further amended—

6 (1) by striking “If a proposed procurement in-
7 cludes in its statement” and inserting “If a proposed
8 procurement would adversely affect 1 or more small
9 business concerns, including the potential loss of an
10 existing contract, or if a proposed procurement in-
11 cludes in its statement”; and

12 (2) by inserting before “Whenever the Adminis-
13 tration and the contracting procurement agency fail
14 to agree,” the following: “If a small business con-
15 cern would be adversely affected, directly or indi-
16 rectly, by the procurement as proposed, and that
17 small business concern or a trade association of
18 which that small business concern is a member so
19 requests, the Administrator may take action to fur-
20 ther the interests of the small business concern.”.

21 **SEC. 824. THIRD-PARTY REVIEW.**

22 Section 7105(e) of title 41, United States Code, is
23 amended by adding at the end the following:

24 “(3) CONTRACT BUNDLING.—

1 “(A) IN GENERAL.—Whenever the head of
2 a contracting agency makes a decision in ac-
3 cordance with section 15(a) of the Small Busi-
4 ness Act concerning the Administrator of the
5 Small Business Administration’s challenge to a
6 bundling of contract requirements, the Adminis-
7 trator, within 10 days after such decision, may
8 file a challenge with the appropriate agency
9 board of contract appeals.

10 “(B) PROCEDURE.—The board shall pro-
11 vide the Administrator and the head of the con-
12 tracting agency the opportunity to provide their
13 views on the disputed contract. No oral testi-
14 mony or oral argument shall be permitted. The
15 board shall render its decision not later than 30
16 days after the appeal has been filed. The deci-
17 sion of the board shall be final.”.

18 **Subtitle D—Small Business** 19 **Subcontracting**

20 **SEC. 831. CRIMINAL VIOLATIONS.**

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

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

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

3 (3) by inserting after paragraph (3) the fol-
4 lowing:

5 “(4) makes in writing or electronically a false
6 statement concerning status as a small business con-
7 cern (as defined in section 3 of the Small Business
8 Act (15 U.S.C. 632)) or compliance with the re-
9 quirements of the Small Business Act (15 U.S.C.
10 631 et seq.) in an effort to obtain, retain, or com-
11 plete a Federal Government contract;”; and

12 (4) by adding at the end the following: “Not-
13 withstanding section 3571(e), for a violation of para-
14 graph (4) of this subsection, the fine under this title
15 shall be the total value of the contract or
16 \$1,000,000, whichever is greater.”.

○