

105TH CONGRESS
2^D SESSION

H. R. 4255

To assist States in providing individuals a credit against State income taxes or a comparable benefit for contributions to charitable organizations working to prevent or reduce poverty and to protect and encourage donations to charitable organizations.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 1998

Mr. KASICH (for himself, Mr. SOUDER, Mr. ENGLISH of Pennsylvania, Mr. KNOLLENBERG, Mr. KOLBE, Mr. MCINTOSH, Mr. PACKARD, Mr. PITTS, Mr. TALENT, Mr. WAMP, and Mr. WATTS of Oklahoma) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, 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

A BILL

To assist States in providing individuals a credit against State income taxes or a comparable benefit for contributions to charitable organizations working to prevent or reduce poverty and to protect and encourage donations to charitable organizations.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 “REAL Life Community Renewal Act of 1998”.

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

Sec. 1. Short title; table of contents.

TITLE I—ASSISTANCE TO STATES IN PROVIDING CHARITY TAX
CREDITS

Sec. 101. Authority to use certain Federal grant funds for State charity tax
credit.

Sec. 102. Definitions.

Sec. 103. Study and report.

Sec. 104. Effective date.

TITLE II—BUDGET OFFSET

Sec. 201. Reduction of earned income credit for individuals without children.

TITLE III—BANKRUPTCY PROTECTIONS FOR CHARITABLE
DONATIONS

Sec. 301. Definitions.

Sec. 302. Treatment of prepetition qualified charitable contributions.

Sec. 303. Treatment of post-petition charitable contributions.

Sec. 304. Applicability.

Sec. 305. Rule of construction.

TITLE IV—TORT REFORMS RELATING TO CHARITABLE
CONTRIBUTIONS

Sec. 401. Definitions.

Sec. 402. Liability.

Sec. 403. Exceptions.

Sec. 404. Superseding provision.

Sec. 405. Election of State regarding nonapplicability.

Sec. 406. Effective date.

1 **TITLE I—ASSISTANCE TO**
2 **STATES IN PROVIDING CHAR-**
3 **ITY TAX CREDITS**

4 **SEC. 101. AUTHORITY TO USE CERTAIN FEDERAL GRANT**
5 **FUNDS FOR STATE CHARITY TAX CREDIT.**

6 (a) IN GENERAL.—Notwithstanding any other provi-
7 sion of law, if there is in effect under State law a charity
8 tax credit, then the State may use for any purpose—

9 (1) not more than 50 percent of the total
10 amount paid to the State during the fiscal year
11 under the provisions of law specified in subsection
12 (d)(1);

13 (2) not more than 50 percent of the total
14 amount paid to the State during the fiscal year
15 under the provisions of law specified in subsection
16 (d)(2);

17 (3) not more than 50 percent of the total
18 amount paid to the State during the fiscal year
19 under the provisions of law specified in subsection
20 (d)(3);

21 (4) not more than 50 percent of the total
22 amount paid to the State during the fiscal year
23 under the law specified in subsection (d)(4);

1 (5) not more than 50 percent of the total
2 amount paid to the State during the fiscal year
3 under the law specified in subsection (d)(5);

4 (6) not more than 50 percent of the total
5 amount paid to the State during the fiscal year
6 under the law specified in subsection (d)(6); and

7 (7) not more than 50 percent of the total
8 amount paid to the State during the fiscal year
9 under the law specified in subsection (d)(7).

10 (b) LIMITATION.—The aggregate amount a State
11 may use under subsection (a) during a fiscal year shall
12 not exceed 100 percent of the revenue loss of the State
13 during the fiscal year that is attributable to the charity
14 tax credit, as determined by the Secretary of the Treasury
15 without regard to any such revenue loss occurring before
16 January 1, 1999.

17 (c) CERTAIN CREDIT AMOUNTS TREATED AS STATE
18 PAYMENT FOR TEMPORARY ASSISTANCE FOR NEEDY
19 FAMILIES.—For purposes of title IV of the Social Security
20 Act, an amount equal to the excess (if any) of—

21 (1) the amount of the revenue loss of a State
22 (not to exceed 100 percent) during a fiscal year that
23 is attributable to the charity tax credit, as deter-
24 mined under subsection (b), over

1 (2) the aggregate amount used by the State
2 under subsection (a) during the fiscal year,
3 shall be treated as an amount used during the fiscal year
4 by the State to carry out a State program funded under
5 part A of such title.

6 (d) PROVISIONS OF LAW.—The provisions of law re-
7 ferred to in this subsection are the following:

8 (1) Paragraphs (1) through (4) of section
9 403(a) of the Social Security Act (42 U.S.C.
10 603(a)).

11 (2) The Child Care and Development Block
12 Grant Act of 1990 (42 U.S.C. 9858–9858q), and
13 section 418 of the Social Security Act (42 U.S.C.
14 618).

15 (3) Sections 2002 and 2007 of the Social Secu-
16 rity Act (42 U.S.C. 1397a and 1397f).

17 (4) The Community Services Block Grant Act
18 (42 U.S.C. 9901–9912).

19 (5) The Low-Income Home Energy Assistance
20 Act of 1981.

21 (6) The Job Training Partnership Act (29
22 U.S.C. 1501 et seq.).

23 (7) Title I of the Housing and Community De-
24 velopment Act of 1974 (42 U.S.C. 5301 et seq.).

1 **SEC. 102. DEFINITIONS.**

2 (a) CHARITY TAX CREDIT.—For purposes of this
3 title, the term “charity tax credit” means a nonrefundable
4 credit against State income tax (or, in the case of a State
5 which does not impose an income tax, a comparable bene-
6 fit)—

7 (1) which is allowable only to individuals for
8 cash contributions to qualified charities,

9 (2) the maximum amount of which for each
10 taxable year does not exceed \$250 (\$500 in the case
11 of a joint or combined return of individuals who are
12 married to each other), and

13 (3) under which the annual amount of the cred-
14 it allowed per taxpayer is not more than \$50 (\$100
15 in the case of a joint or combined return of individ-
16 uals who are married to each other) in the first year
17 and increased by not more than \$50 (\$100 in the
18 case of a joint or combined return of individuals who
19 are married to each other) for each subsequent year.

20 (b) QUALIFIED CHARITY.—For purposes of this
21 title—

22 (1) IN GENERAL.—The term “qualified charity”
23 means any organization—

24 (A) which is described in section 501(c)(3)
25 of the Internal Revenue Code of 1986 and ex-

1 empt from tax under section 501(a) of such
2 Code,

3 (B) which is certified by the appropriate
4 State authority as meeting the requirements of
5 paragraphs (3) and (4), and

6 (C) if such organization is otherwise re-
7 quired to file a return under section 6033 of
8 such Code, which elects to treat the information
9 required to be furnished by paragraph (5) as
10 being specified in section 6033(b) of such Code.

11 (2) CERTAIN CONTRIBUTIONS TO COLLECTION
12 ORGANIZATIONS TREATED AS CONTRIBUTIONS TO
13 QUALIFIED CHARITY.—

14 (A) IN GENERAL.—A contribution to a col-
15 lection organization shall be treated as a con-
16 tribution to a qualified charity if the donor des-
17 ignates in writing that the contribution is for
18 the qualified charity.

19 (B) COLLECTION ORGANIZATION.—The
20 term “collection organization” means an organi-
21 zation described in section 501(c)(3) of such
22 Code and exempt from tax under section 501(a)
23 of such Code—

24 (i) which solicits and collects gifts and
25 grants which, by agreement, are distrib-

1 uted to qualified charities described in
2 paragraph (1),

3 (ii) which distributes to qualified
4 charities described in paragraph (1) at
5 least 90 percent of the gifts and grants it
6 receives that are designated for such quali-
7 fied charities, and

8 (iii) which meets the requirements of
9 paragraph (6).

10 (3) CHARITY MUST PRIMARILY ASSIST POOR IN-
11 DIVIDUALS.—

12 (A) IN GENERAL.—An organization meets
13 the requirements of this paragraph only if the
14 appropriate State authority reasonably expects
15 that the predominant activity of such organiza-
16 tion will be the provision of direct services with-
17 in the United States to individuals and families
18 whose annual incomes generally do not exceed
19 185 percent of the official poverty line (as de-
20 fined by the Office of Management and Budget)
21 in order to prevent or alleviate poverty among
22 such individuals and families.

23 (B) NO RECORDKEEPING IN CERTAIN
24 CASES.—An organization shall not be required
25 to establish or maintain records with respect to

1 the incomes of individuals and families for pur-
2 poses of subparagraph (A) if such individuals or
3 families are members of groups which are gen-
4 erally recognized as including substantially only
5 individuals and families described in subpara-
6 graph (A).

7 (C) FOOD AID AND HOMELESS SHEL-
8 TERS.—Except as otherwise provided by the ap-
9 propriate State authority, for purposes of sub-
10 subparagraph (A), services to individuals in the
11 form of—

12 (i) donations of food or meals, or

13 (ii) temporary shelter to homeless in-
14 dividuals,

15 shall be treated as provided to individuals de-
16 scribed in subparagraph (A) if the location and
17 operation of such services are such that the
18 service provider may reasonably conclude that
19 the beneficiaries of such services are predomi-
20 nantly individuals described in subparagraph
21 (A).

22 (4) MINIMUM EXPENSE REQUIREMENT.—

23 (A) IN GENERAL.—An organization meets
24 the requirements of this paragraph only if the
25 appropriate State authority reasonably expects

1 that the annual poverty program expenses of
2 such organization will not be less than 75 per-
3 cent of the annual aggregate expenses of such
4 organization.

5 (B) POVERTY PROGRAM EXPENSE.—For
6 purposes of subparagraph (A)—

7 (i) IN GENERAL.—The term “poverty
8 program expense” means any expense in
9 providing program services referred to in
10 paragraph (3).

11 (ii) EXCEPTIONS.—Such term shall
12 not include—

13 (I) any management or general
14 expense,

15 (II) any expense for the purpose
16 of influencing legislation (as defined
17 in section 4911(d) of the Internal
18 Revenue Code of 1986),

19 (III) any expense for the purpose
20 of fundraising,

21 (IV) any expense for a legal serv-
22 ice provided on behalf of any individ-
23 ual referred to in paragraph (3), and

1 (V) any expense which consists of
2 a payment to an affiliate of the orga-
3 nization.

4 (5) REPORTING REQUIREMENT.—The informa-
5 tion required to be furnished under this paragraph
6 is—

7 (A) the percentages determined by dividing
8 the following categories of the organization's ex-
9 penses for the year by its total expenses for the
10 year: program services, management expenses,
11 general expenses, fundraising expenses, and
12 payments to affiliates, and

13 (B) the category or categories (including
14 food, shelter, education, substance abuse, job
15 training, or otherwise) of services which con-
16 stitute its predominant activities.

17 (6) ADDITIONAL REQUIREMENTS FOR SOLICITA-
18 TION ORGANIZATIONS.—The requirements of this
19 paragraph are met if the organization—

20 (A) maintains separate accounting for rev-
21 enues and expenses, and

22 (B) makes available to the public its ad-
23 ministrative and fundraising costs and informa-
24 tion as to the organizations receiving funds
25 from it and the amount of such funds.

1 (7) RECOMMENDATIONS.—It is recommended,
2 but not required, that—

3 (A) the definition of “qualified charity” be
4 further limited under State law to organiza-
5 tions—

6 (i) which have been operating for at
7 least 1 year or are controlled by, or oper-
8 ated under the auspices of, organizations
9 which have been operating for at least one
10 year, and

11 (ii) with expenses of less than 5 per-
12 cent of total expenses for the purpose of
13 influencing legislation, litigation on behalf
14 of any individual referred to in paragraph
15 (3), voter registration, political organizing,
16 public policy advocacy, or public policy re-
17 search,

18 (B) subject to subsection (a)(2), the
19 amount of the credit be at least 50 percent and
20 not more than 90 percent of the amount of the
21 cash contributions to qualified charities, and

22 (C) contributions made not later than the
23 time prescribed by law for filing the return of
24 the State income tax for a taxable year (not in-
25 cluding extensions thereof) be treated as made

1 (at the taxpayer's election) on the last day of
2 such year.

3 (8) SPECIAL RULE FOR STATES REQUIRING TAX
4 UNIFORMITY.—In the case of a State—

5 (A) which has a constitutional requirement
6 of tax uniformity, and

7 (B) which, as of December 31, 1997, im-
8 posed a tax on personal income with—

9 (i) a single flat rate applicable to all
10 earned and unearned income (except inso-
11 far as any amount is not taxed pursuant to
12 tax forgiveness provisions), and

13 (ii) no generally available exemptions
14 or deductions to individuals,

15 the requirement of subsection (a)(2) shall be treated
16 as met if the amount of the credit is limited to a
17 uniform percentage (but not greater than 25 per-
18 cent) of State personal income tax liability (deter-
19 mined without regard to credits).

20 (9) COORDINATION WITH FEDERAL CHARI-
21 TABLE CONTRIBUTION DEDUCTION.—The amount of
22 the deduction allowed under the Internal Revenue
23 Code of 1986 for contributions which are taken into
24 account in determining any charity tax credit shall

1 be reduced by the amount of such credit which is al-
2 lowed.

3 (c) STATE.—For purposes of this title, the term
4 “State” means each of the several States, the District of
5 Columbia, the Commonwealth of Puerto Rico, the Virgin
6 Islands, Guam, American Samoa, the Northern Mariana
7 Islands, any other territory or possession of the United
8 States.

9 **SEC. 103. STUDY AND REPORT.**

10 (a) STUDY.—The Comptroller General of the United
11 States shall conduct a study of the effects of the charity
12 tax credit under this title, including—

13 (1) the types of organizations which receive
14 contributions during the first year to which the cred-
15 it applies, and

16 (2) the types of services provided to the poor by
17 such organizations.

18 (b) REPORT.—The Comptroller General shall report
19 to the Congress the results of such study, including—

20 (1) the geographical distribution of funding
21 from charity tax credit contributions, and an analy-
22 sis of Internal Revenue Service Form 990’s of quali-
23 fied charities to determine if the broad categories of
24 services provided to the poor (including food, shelter,
25 education, substance abuse, job training, or other-

1 wise) match the services that would otherwise be
 2 provided by Federal welfare program funds without
 3 the enactment of the reductions in the programs
 4 permitted by this legislation, and

5 (2) any recommendations for legislative
 6 changes.

7 **SEC. 104. EFFECTIVE DATE.**

8 This title shall take effect on January 1, 1999.

9 **TITLE II—BUDGET OFFSET**

10 **SEC. 201. REDUCTION OF EARNED INCOME CREDIT FOR IN-**
 11 **DIVIDUALS WITHOUT CHILDREN.**

12 (a) IN GENERAL.—The table in subparagraph (A) of
 13 section 32(b)(1) of the Internal Revenue Code of 1986 is
 14 amended by striking the item relating to no qualifying
 15 children and inserting the following:

“No qualifying children 3.825 7.651.”.

16 (b) EFFECTIVE DATE.—The amendment made by
 17 subsection (a) shall apply to taxable years beginning after
 18 December 31, 2000.

19 **TITLE III—BANKRUPTCY PRO-**
 20 **TECTIONS FOR CHARITABLE**
 21 **DONATIONS**

22 **SEC. 301. DEFINITIONS.**

23 Section 548(d) of title 11, United States Code, is
 24 amended by adding at the end the following:

1 “(3) In this section, the term ‘charitable contribution’
 2 means a charitable contribution, as that term is defined
 3 in section 170(c) of the Internal Revenue Code of 1986,
 4 if that contribution—

5 “(A) is made by a natural person; and

6 “(B) consists of—

7 “(i) a financial instrument (as that term is
 8 defined in section 731(e)(2)(C) of the Internal
 9 Revenue Code of 1986); or

10 “(ii) cash.

11 “(4) In this section, the term ‘qualified religious or
 12 charitable entity or organization’ means—

13 “(A) an entity described in section 170(c)(1) of
 14 the Internal Revenue Code of 1986; or

15 “(B) an entity or organization described in sec-
 16 tion 170(c)(2) of the Internal Revenue Code of
 17 1986.”.

18 **SEC. 302. TREATMENT OF PREPETITION QUALIFIED CHARI-**

19 **TABLE CONTRIBUTIONS.**

20 (a) IN GENERAL.—Section 548(a) of title 11, United
 21 States Code, is amended—

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

23 (2) by striking “(1) made” and inserting “(A)
 24 made”;

25 (3) by striking “(2)(A)” and inserting “(B)(i);

1 (4) by striking “(B)(i)” and inserting “(ii)(I)”;

2 (5) by striking “(ii) was” and inserting “(II)
3 was”;

4 (6) by striking “(iii)” and inserting “(III)”;
5 and

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

7 “(2) A transfer of a charitable contribution to a
8 qualified religious or charitable entity or organization shall
9 not be considered to be a transfer covered under para-
10 graph (1)(B) in any case in which—

11 “(A) the amount of that contribution does not
12 exceed 15 percent of the gross annual income of the
13 debtor for the year in which the transfer of the con-
14 tribution is made; or

15 “(B) the contribution made by a debtor exceed-
16 ed the percentage amount of gross annual income
17 specified in subparagraph (A), if the transfer was
18 consistent with the practices of the debtor in making
19 charitable contributions.”.

20 (b) TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR
21 TO CERTAIN CREDITORS AND PURCHASERS.—Section
22 544(b) of title 11, United States Code, is amended—

23 (1) by striking “(b) The trustee” and inserting
24 “(b)(1) Except as provided in paragraph (2), the
25 trustee”; and

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

2 “(2) Paragraph (1) shall not apply to a transfer of
3 a charitable contribution (as that term is defined in sec-
4 tion 548(d)(3)) that is not covered under section
5 548(a)(1)(B), by reason of section 548(a)(2).”.

6 (c) CONFORMING AMENDMENTS.—Section 546 of
7 title 11, United States Code, is amended—

8 (1) in subsection (e)—

9 (A) by striking “548(a)(2)” and inserting
10 “548(a)(1)(B)”; and

11 (B) by striking “548(a)(1)” and inserting
12 “548(a)(1)(A)”; and

13 (2) in subsection (f)—

14 (A) by striking “548(a)(2)” and inserting
15 “548(a)(1)(B)”; and

16 (B) by striking “548(a)(1)” and inserting
17 “548(a)(1)(A)”; and

18 (3) in subsection (g)—

19 (A) by striking “section 548(a)(1)” each
20 place it appears and inserting “section
21 548(a)(1)(A)”; and

22 (B) by striking “548(a)(2)” and inserting
23 “548(a)(1)(B)”.

1 **SEC. 303. TREATMENT OF POST-PETITION CHARITABLE**
2 **CONTRIBUTIONS.**

3 (a) CONFIRMATION OF PLAN.—Section
4 1325(b)(2)(A) of title 11, United States Code, is amended
5 by inserting before the semicolon the following: “, includ-
6 ing charitable contributions (that meet the definition of
7 ‘charitable contribution’ under section 548(d)(3)) to a
8 qualified religious or charitable entity or organization (as
9 that term is defined in section 548(d)(4)) in an amount
10 not to exceed 15 percent of the gross income of the debtor
11 for the year in which the contributions are made”.

12 (b) DISMISSAL.—Section 707(b) of title 11, United
13 States Code, is amended by adding at the end the follow-
14 ing: “In making a determination whether to dismiss a case
15 under this section, the court may not take into consider-
16 ation whether a debtor has made, or continues to make,
17 charitable contributions (that meet the definition of ‘chari-
18 table contribution’ under section 548(d)(3)) to any quali-
19 fied religious or charitable entity or organization (as that
20 term is defined in section 548(d)(4)).”.

21 **SEC. 304. APPLICABILITY.**

22 This title and the amendments made by this title
23 shall apply to any case brought under an applicable provi-
24 sion of title 11, United States Code, that is pending or
25 commenced on or after the date of enactment of this Act.

1 **SEC. 305. RULE OF CONSTRUCTION.**

2 Nothing in the amendments made by this title is in-
3 tended to limit the applicability of the Religious Freedom
4 Restoration Act of 1993 (42 U.S.C. 2002bb et seq.).

5 **TITLE IV—TORT REFORMS RE-**
6 **LATING TO CHARITABLE CON-**
7 **TRIBUTIONS**

8 **SEC. 401. DEFINITIONS.**

9 In this title:

10 (1) **AIRCRAFT.**—The term “aircraft” has the
11 meaning provided that term in section 40102(6) of
12 title 49, United States Code.

13 (2) **BUSINESS ENTITY.**—The term “business
14 entity” means a firm, corporation, association, part-
15 nership, consortium, joint venture, or other form of
16 enterprise.

17 (3) **EQUIPMENT.**—The term “equipment” in-
18 cludes mechanical equipment, electronic equipment,
19 and office equipment.

20 (4) **FACILITY.**—The term “facility” means any
21 real property, including any building, improvement,
22 or appurtenance.

23 (5) **GROSS NEGLIGENCE.**—The term “gross
24 negligence” means voluntary and conscious conduct
25 by a person with knowledge (at the time of the con-

1 duct) that the conduct is likely to be harmful to the
2 health or well-being of another person.

3 (6) INTENTIONAL MISCONDUCT.—The term
4 “intentional misconduct” means conduct by a person
5 with knowledge (at the time of the conduct) that the
6 conduct is harmful to the health or well-being of an-
7 other person.

8 (7) MOTOR VEHICLE.—The term “motor vehi-
9 cle” has the meaning provided that term in section
10 30102(6) of title 49, United States Code.

11 (8) NONPROFIT ORGANIZATION.—The term
12 “nonprofit organization” means—

13 (A) any organization described in section
14 501(c)(3) of the Internal Revenue Code of 1986
15 and exempt from tax under section 501(a) of
16 such Code; or

17 (B) any not-for-profit organization orga-
18 nized and conducted for public benefit and op-
19 erated primarily for charitable, civic, edu-
20 cational, religious, welfare, or health purposes.

21 (9) STATE.—The term “State” means each of
22 the several States, the District of Columbia, the
23 Commonwealth of Puerto Rico, the Virgin Islands,
24 Guam, American Samoa, the Northern Mariana Is-
25 lands, any other territory or possession of the

1 United States, or any political subdivision of any
2 such State, territory, or possession.

3 **SEC. 402. LIABILITY.**

4 (a) LIABILITY OF BUSINESS ENTITIES THAT DO-
5 NATE EQUIPMENT TO NONPROFIT ORGANIZATIONS.—

6 (1) IN GENERAL.—Subject to section 403, a
7 business entity shall not be subject to civil liability
8 relating to any injury or death that results from the
9 use of equipment donated by a business entity to a
10 nonprofit organization.

11 (2) APPLICATION.—This subsection shall apply
12 with respect to civil liability under Federal and State
13 law.

14 (b) LIABILITY OF BUSINESS ENTITIES PROVIDING
15 USE OF FACILITIES TO NONPROFIT ORGANIZATIONS.—

16 (1) IN GENERAL.—Subject to section 403, a
17 business entity shall not be subject to civil liability
18 relating to any injury or death occurring at a facility
19 of the business entity in connection with a use of
20 such facility by a nonprofit organization if—

21 (A) the use occurs outside of the scope of
22 business of the business entity;

23 (B) such injury or death occurs during a
24 period that such facility is used by the non-
25 profit organization; and

1 (C) the business entity authorized the use
2 of such facility by the nonprofit organization.

3 (2) APPLICATION.—This subsection shall
4 apply—

5 (A) with respect to civil liability under
6 Federal and State law; and

7 (B) regardless of whether a nonprofit orga-
8 nization pays for the use of a facility.

9 (c) LIABILITY OF BUSINESS ENTITIES PROVIDING
10 USE OF A MOTOR VEHICLE OR AIRCRAFT.—

11 (1) IN GENERAL.—Subject to section 403, a
12 business entity shall not be subject to civil liability
13 relating to any injury or death occurring as a result
14 of the operation of aircraft or a motor vehicle of a
15 business entity loaned to a nonprofit organization
16 for use outside of the scope of business of the busi-
17 ness entity if—

18 (A) such injury or death occurs during a
19 period that such motor vehicle or aircraft is
20 used by a nonprofit organization; and

21 (B) the business entity authorized the use
22 by the nonprofit organization of motor vehicle
23 or aircraft that resulted in the injury or death.

24 (2) APPLICATION.—This subsection shall
25 apply—

1 (A) with respect to civil liability under
2 Federal and State law; and

3 (B) regardless of whether a nonprofit orga-
4 nization pays for the use of the aircraft or
5 motor vehicle.

6 (d) LIABILITY OF BUSINESS ENTITIES PROVIDING
7 TOURS OF FACILITIES.—

8 (1) IN GENERAL.—Subject to section 403, a
9 business entity shall not be subject to civil liability
10 relating to any injury to, or death of an individual
11 occurring at a facility of the business entity if—

12 (A) such injury or death occurs during a
13 tour of the facility in an area of the facility that
14 is not otherwise accessible to the general public;
15 and

16 (B) the business entity authorized the
17 tour.

18 (2) APPLICATION.—This subsection shall
19 apply—

20 (A) with respect to civil liability under
21 Federal and State law; and

22 (B) regardless of whether an individual
23 pays for the tour.

1 **SEC. 403. EXCEPTIONS.**

2 Section 402 shall not apply to an injury or death that
3 results from an act or omission of a business entity that
4 constitutes gross negligence or intentional misconduct, in-
5 cluding any misconduct that—

6 (1) constitutes a crime of violence (as that term
7 is defined in section 16 of title 18, United States
8 Code) or act of international terrorism (as that term
9 is defined in section 2331 of title 18) for which the
10 defendant has been convicted in any court;

11 (2) constitutes a hate crime (as that term is
12 used in the Hate Crime Statistics Act (28 U.S.C.
13 534 note));

14 (3) involves a sexual offense, as defined by ap-
15 plicable State law, for which the defendant has been
16 convicted in any court; or

17 (4) involves misconduct for which the defendant
18 has been found to have violated a Federal or State
19 civil rights law.

20 **SEC. 404. SUPERSEDING PROVISION.**

21 (a) IN GENERAL.—Subject to subsection (b) and sec-
22 tion 405, this title preempts the laws of any State to the
23 extent that such laws are inconsistent with this title, ex-
24 cept that this title shall not preempt any State law that
25 provides additional protection for a business entity for an
26 injury or death described in a subsection of section 402

1 with respect to which the conditions specified in such sub-
2 section apply.

3 (b) LIMITATION.—Nothing in this title shall be con-
4 strued to supersede any Federal or State health or safety
5 law.

6 **SEC. 405. ELECTION OF STATE REGARDING NON-**
7 **APPLICABILITY.**

8 (a) ELECTION OF STATE REGARDING NON-
9 APPLICABILITY.—A provision of this title shall not apply
10 to any civil action in a State court against a business en-
11 tity in which all parties are citizens of the State if such
12 State enacts a statute—

13 (1) citing the authority of this section;

14 (2) declaring the election of such State that
15 such provision shall not apply to such civil action in
16 the State; and

17 (3) containing no other provisions.

18 **SEC. 406. EFFECTIVE DATE.**

19 This title shall apply to injuries (and deaths resulting
20 therefrom) occurring after the date of the enactment of
21 this Act.

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