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2D SESSION

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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 SENATE OF THE UNITED STATES

APRIL 28, 1998

Mr. COATS (for himself, Mr. ABRAHAM, Mr. BROWNBACK, Mr. COVERDELL, and Mr. SANTORUM) introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

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

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

6 (b) TABLE OF CONTENTS.—The table of contents for
7 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

1 under the provisions of law specified in subsection
2 (d)(1);

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

7 (3) not more than 50 percent of the total
8 amount paid to the State during the fiscal year
9 under the provisions of law specified in subsection
10 (d)(3);

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

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

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

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

23 (b) LIMITATION.—The aggregate amount a State
24 may use under subsection (a) during a fiscal year shall
25 not exceed 100 percent of the revenue loss of the State

1 during the fiscal year that is attributable to the charity
 2 tax credit, as determined by the Secretary of the Treasury
 3 without regard to any such revenue loss occurring before
 4 January 1, 1999.

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

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

13 (2) the aggregate amount used by the State
 14 under subsection (a) during the fiscal year,
 15 shall be treated as an amount used during the fiscal year
 16 by the State to carry out a State program funded under
 17 part A of such title.

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

20 (1) Paragraphs (1) through (4) of section
 21 403(a) of the Social Security Act (42 U.S.C.
 22 603(a)).

23 (2) The Child Care and Development Block
 24 Grant Act of 1990 (42 U.S.C. 9858–9858q), and

1 section 418 of the Social Security Act (42 U.S.C.
2 618).

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

5 (4) The Community Services Block Grant Act
6 (42 U.S.C. 9901–9912).

7 (5) The Low-Income Home Energy Assistance
8 Act of 1981.

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

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

13 **SEC. 102. DEFINITIONS.**

14 (a) CHARITY TAX CREDIT.—For purposes of this
15 title, the term “charity tax credit” means a nonrefundable
16 credit against State income tax (or, in the case of a State
17 which does not impose an income tax, a comparable bene-
18 fit)—

19 (1) which is allowable only to individuals for
20 cash contributions to qualified charities,

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

1 (3) under which the annual amount of the cred-
2 it allowed per taxpayer is not more than \$50 (\$100
3 in the case of a joint or combined return of individ-
4 uals who are married to each other) in the first year
5 and increased by not more than \$50 (\$100 in the
6 case of a joint or combined return of individuals who
7 are married to each other) for each subsequent year.

8 (b) QUALIFIED CHARITY.—For purposes of this
9 title—

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

12 (A) which is described in section 501(c)(3)
13 of the Internal Revenue Code of 1986 and ex-
14 empt from tax under section 501(a) of such
15 Code,

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

19 (C) if such organization is otherwise re-
20 quired to file a return under section 6033 of
21 such Code, which elects to treat the information
22 required to be furnished by paragraph (5) as
23 being specified in section 6033(b) of such Code.

1 (2) CERTAIN CONTRIBUTIONS TO COLLECTION
 2 ORGANIZATIONS TREATED AS CONTRIBUTIONS TO
 3 QUALIFIED CHARITY.—

4 (A) IN GENERAL.—A contribution to a col-
 5 lection organization shall be treated as a con-
 6 tribution to a qualified charity if the donor des-
 7 ignates in writing that the contribution is for
 8 the qualified charity.

9 (B) COLLECTION ORGANIZATION.—The
 10 term “collection organization” means an organi-
 11 zation described in section 501(c)(3) of such
 12 Code and exempt from tax under section 501(a)
 13 of such Code—

14 (i) which solicits and collects gifts and
 15 grants which, by agreement, are distrib-
 16 uted to qualified charities described in
 17 paragraph (1),

18 (ii) which distributes to qualified
 19 charities described in paragraph (1) at
 20 least 90 percent of the gifts and grants it
 21 receives that are designated for such quali-
 22 fied charities, and

23 (iii) which meets the requirements of
 24 paragraph (6).

1 (3) CHARITY MUST PRIMARILY ASSIST POOR IN-
2 DIVIDUALS.—

3 (A) IN GENERAL.—An organization meets
4 the requirements of this paragraph only if the
5 appropriate State authority reasonably expects
6 that the predominant activity of such organiza-
7 tion will be the provision of direct services with-
8 in the United States to individuals and families
9 whose annual incomes generally do not exceed
10 185 percent of the official poverty line (as de-
11 fined by the Office of Management and Budget)
12 in order to prevent or alleviate poverty among
13 such individuals and families.

14 (B) NO RECORDKEEPING IN CERTAIN
15 CASES.—An organization shall not be required
16 to establish or maintain records with respect to
17 the incomes of individuals and families for pur-
18 poses of subparagraph (A) if such individuals or
19 families are members of groups which are gen-
20 erally recognized as including substantially only
21 individuals and families described in subpara-
22 graph (A).

23 (C) FOOD AID AND HOMELESS SHEL-
24 TERS.—Except as otherwise provided by the ap-
25 propriate State authority, for purposes of sub-

paragraph (A), services to individuals in the form of—

(i) donations of food or meals, or

(ii) temporary shelter to homeless individuals,

shall be treated as provided to individuals described in subparagraph (A) if the location and operation of such services are such that the service provider may reasonably conclude that the beneficiaries of such services are predominantly individuals described in subparagraph (A).

(4) MINIMUM EXPENSE REQUIREMENT.—

(A) IN GENERAL.—An organization meets the requirements of this paragraph only if the appropriate State authority reasonably expects that the annual poverty program expenses of such organization will not be less than 75 percent of the annual aggregate expenses of such organization.

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

(i) IN GENERAL.—The term “poverty program expense” means any expense in

1 providing program services referred to in
2 paragraph (3).

3 (ii) EXCEPTIONS.—Such term shall
4 not include—

5 (I) any management or general
6 expense,

7 (II) any expense for the purpose
8 of influencing legislation (as defined
9 in section 4911(d) of the Internal
10 Revenue Code of 1986),

11 (III) any expense for the purpose
12 of fundraising,

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

16 (V) any expense which consists of
17 a payment to an affiliate of the orga-
18 nization.

19 (5) REPORTING REQUIREMENT.—The informa-
20 tion required to be furnished under this paragraph
21 is—

22 (A) the percentages determined by dividing
23 the following categories of the organization's ex-
24 penses for the year by its total expenses for the
25 year: program services, management expenses,

1 general expenses, fundraising expenses, and
2 payments to affiliates, and

3 (B) the category or categories (including
4 food, shelter, education, substance abuse, job
5 training, or otherwise) of services which con-
6 stitute its predominant activities.

7 (6) ADDITIONAL REQUIREMENTS FOR SOLICITA-
8 TION ORGANIZATIONS.—The requirements of this
9 paragraph are met if the organization—

10 (A) maintains separate accounting for rev-
11 enues and expenses, and

12 (B) makes available to the public its ad-
13 ministrative and fundraising costs and informa-
14 tion as to the organizations receiving funds
15 from it and the amount of such funds.

16 (7) RECOMMENDATIONS.—It is recommended,
17 but not required, that—

18 (A) the definition of “qualified charity” be
19 further limited under State law to organiza-
20 tions—

21 (i) which have been operating for at
22 least 1 year or are controlled by, or oper-
23 ated under the auspices of, organizations
24 which have been operating for at least one
25 year, and

(ii) with expenses of less than 5 percent of total expenses for the purpose of influencing legislation, litigation on behalf of any individual referred to in paragraph (3), voter registration, political organizing, public policy advocacy, or public policy research,

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

(C) contributions made not later than the time prescribed by law for filing the return of the State income tax for a taxable year (not including extensions thereof) be treated as made (at the taxpayer's election) on the last day of such year.

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

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

(B) which, as of December 31, 1997, imposed a tax on personal income with—

(i) a single flat rate applicable to all earned and unearned income (except inso-

1 far as any amount is not taxed pursuant to
 2 tax forgiveness provisions), and
 3 (ii) no generally available exemptions
 4 or deductions to individuals,
 5 the requirement of subsection (a)(2) shall be treated
 6 as met if the amount of the credit is limited to a
 7 uniform percentage (but not greater than 25 per-
 8 cent) of State personal income tax liability (deter-
 9 mined without regard to credits).

10 (9) COORDINATION WITH FEDERAL CHARI-
 11 TABLE CONTRIBUTION DEDUCTION.—The amount of
 12 the deduction allowed under the Internal Revenue
 13 Code of 1986 for contributions which are taken into
 14 account in determining any charity tax credit shall
 15 be reduced by the amount of such credit which is al-
 16 lowed.

17 (c) STATE.—For purposes of this title, the term
 18 “State” means each of the several States, the District of
 19 Columbia, the Commonwealth of Puerto Rico, the Virgin
 20 Islands, Guam, American Samoa, the Northern Mariana
 21 Islands, any other territory or possession of the United
 22 States.

1 **SEC. 103. STUDY AND REPORT.**

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

5 (1) the types of organizations which receive
6 contributions during the first year to which the cred-
7 it applies, and

8 (2) the types of services provided to the poor by
9 such organizations.

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

12 (1) the geographical distribution of funding
13 from charity tax credit contributions, and an analy-
14 sis of Internal Revenue Service Form 990's of quali-
15 fied charities to determine if the broad categories of
16 services provided to the poor (including food, shelter,
17 education, substance abuse, job training, or other-
18 wise) match the services that would otherwise be
19 provided by Federal welfare program funds without
20 the enactment of the reductions in the programs
21 permitted by this legislation, and

22 (2) any recommendations for legislative
23 changes.

24 **SEC. 104. EFFECTIVE DATE.**

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

1 **TITLE II—BUDGET OFFSET**

2 **SEC. 201. REDUCTION OF EARNED INCOME CREDIT FOR IN-** 3 **DIVIDUALS WITHOUT CHILDREN.**

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

“No qualifying children	3.825	7.651.”.
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8 (b) EFFECTIVE DATE.—The amendment made by
 9 subsection (a) shall apply to taxable years beginning after
 10 December 31, 2000.

11 **TITLE III—BANKRUPTCY PRO-** 12 **TECTIONS FOR CHARITABLE** 13 **DONATIONS**

14 **SEC. 301. DEFINITIONS.**

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

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

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

22 “(B) consists of—

1 “(i) a financial instrument (as that term is
 2 defined in section 731(c)(2)(C) of the Internal
 3 Revenue Code of 1986); or

4 “(ii) cash.

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

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

9 “(B) an entity or organization described in sec-
 10 tion 170(c)(2) of the Internal Revenue Code of
 11 1986.”.

12 **SEC. 302. TREATMENT OF PREPETITION QUALIFIED CHARI-**
 13 **TABLE CONTRIBUTIONS.**

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

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

17 (2) by striking “(1) made” and inserting “(A)
 18 made”;

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

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

21 (5) by striking “(ii) was” and inserting “(II)
 22 was”;

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

24 and

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

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

5 “(A) the amount of that contribution does not
 6 exceed 15 percent of the gross annual income of the
 7 debtor for the year in which the transfer of the con-
 8 tribution is made; or

9 “(B) the contribution made by a debtor exceed-
 10 ed the percentage amount of gross annual income
 11 specified in subparagraph (A), if the transfer was
 12 consistent with the practices of the debtor in making
 13 charitable contributions.”.

14 (b) TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR
 15 TO CERTAIN CREDITORS AND PURCHASERS.—Section
 16 544(b) of title 11, United States Code, is amended—

17 (1) by striking “(b) The trustee” and inserting
 18 “(b)(1) Except as provided in paragraph (2), the
 19 trustee”; and

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

21 “(2) Paragraph (1) shall not apply to a transfer of
 22 a charitable contribution (as that term is defined in sec-
 23 tion 548(d)(3)) that is not covered under section
 24 548(a)(1)(B), by reason of section 548(a)(2).”.

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

3 (1) in subsection (e)—

4 (A) by striking “548(a)(2)” and inserting
 5 “548(a)(1)(B)”; and

6 (B) by striking “548(a)(1)” and inserting
 7 “548(a)(1)(A)”;

8 (2) in subsection (f)—

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)”;

13 (3) in subsection (g)—

14 (A) by striking “section 548(a)(1)” each
 15 place it appears and inserting “section
 16 548(a)(1)(A)”;

17 (B) by striking “548(a)(2)” and inserting
 18 “548(a)(1)(B)”.

19 **SEC. 303. TREATMENT OF POST-PETITION CHARITABLE**
 20 **CONTRIBUTIONS.**

21 (a) CONFIRMATION OF PLAN.—Section
 22 1325(b)(2)(A) of title 11, United States Code, is amended
 23 by inserting before the semicolon the following: “, includ-
 24 ing charitable contributions (that meet the definition of
 25 ‘charitable contribution’ under section 548(d)(3)) to a

1 qualified religious or charitable entity or organization (as
 2 that term is defined in section 548(d)(4)) in an amount
 3 not to exceed 15 percent of the gross income of the debtor
 4 for the year in which the contributions are made”.

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

14 **SEC. 304. APPLICABILITY.**

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

19 **SEC. 305. RULE OF CONSTRUCTION.**

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

1 **TITLE IV—TORT REFORMS RE-**
2 **LATING TO CHARITABLE CON-**
3 **TRIBUTIONS**

4 **SEC. 401. DEFINITIONS.**

5 In this title:

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

9 (2) BUSINESS ENTITY.—The term “business
10 entity” means a firm, corporation, association, part-
11 nership, consortium, joint venture, or other form of
12 enterprise.

13 (3) EQUIPMENT.—The term “equipment” in-
14 cludes mechanical equipment, electronic equipment,
15 and office equipment.

16 (4) FACILITY.—The term “facility” means any
17 real property, including any building, improvement,
18 or appurtenance.

19 (5) GROSS NEGLIGENCE.—the term “gross neg-
20 ligence” means voluntary and conscious conduct by
21 a person with knowledge (at the time of the conduct)
22 that the conduct is likely to be harmful to the health
23 or well-being of another person.

24 (6) INTENTIONAL MISCONDUCT.—The term
25 “intentional misconduct” means conduct by a person

1 with knowledge (at the time of the conduct) that the
2 conduct is harmful to the health or well-being of an-
3 other person.

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

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

9 (A) any organization described in section
10 501(c)(3) of the Internal Revenue Code of 1986
11 and exempt from tax under section 501(a) of
12 such Code; or

13 (B) any not-for-profit organization orga-
14 nized and conducted for public benefit and op-
15 erated primarily for charitable, civic, edu-
16 cational, religious, welfare, or health purposes.

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

1 **SEC. 402. LIABILITY.**

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

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

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

12 (b) LIABILITY OF BUSINESS ENTITIES PROVIDING
13 USE OF FACILITIES TO NONPROFIT ORGANIZATIONS.—

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

19 (A) the use occurs outside of the scope of
20 business of the business entity;

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

24 (C) the business entity authorized the use
25 of such facility by the nonprofit organization.

1 (2) APPLICATION.—This subsection shall
2 apply—

3 (A) with respect to civil liability under
4 Federal and State law; and

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

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

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

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

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

22 (2) APPLICATION.—This subsection shall
23 apply—

24 (A) with respect to civil liability under
25 Federal and State law; and

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

4 (d) LIABILITY OF BUSINESS ENTITIES PROVIDING
 5 TOURS OF FACILITIES.—

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

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

14 (B) the business entity authorized the
 15 tour.

16 (2) APPLICATION.—This subsection shall
 17 apply—

18 (A) with respect to civil liability under
 19 Federal and State law; and

20 (B) regardless of whether an individual
 21 pays for the tour.

22 **SEC. 403. EXCEPTIONS.**

23 Section 402 shall not apply to an injury or death that
 24 results from an act or omission of a business entity that

1 constitutes gross negligence or intentional misconduct, in-
2 cluding any misconduct that—

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

8 (2) constitutes a hate crime (as that term is
9 used in the Hate Crime Statistics Act (28 U.S.C.
10 534 note));

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

14 (4) involves misconduct for which the defendant
15 has been found to have violated a Federal or State
16 civil rights law.

17 **SEC. 404. SUPERSEDING PROVISION.**

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

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

4 **SEC. 405. ELECTION OF STATE REGARDING NON-**
 5 **APPLICABILITY.**

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

11 (1) citing the authority of this section;

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

15 (3) containing no other provisions.

16 **SEC. 406. EFFECTIVE DATE.**

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

○