to improve Tribal Colleges and Universities, and for other purposes.

S. 2568

At the request of Mr. BIDEN, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 2568, a bill to require the Secretary of the Treasury to mint coins in commemoration of the tercentenary of the birth of Benjamin Franklin, and for other purposes.

S. 2587

At the request of Ms. STABENOW, the names of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 2587, a bill to amend title XVIII of the Social Security Act to adjust the amount of payment under the physician fee schedule for drug administration services furnished to medicare beneficiaries.

S. 2613

At the request of Mr. HAGEL, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 2613, a bill to amend the Public Health Service Act to establish a scholarship and loan repayment program for public health preparedness workforce development to eliminate critical public health preparedness workforce shortages in Federal, State, and local public health agencies.

S. 2659

At the request of Ms. COLLINS, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 2659, a bill to extend the temporary increase in payments under the medicare program for home health services furnished in a rural area.

S. 2671

At the request of Mr. ROCKEFELLER, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 2671, a bill to extend temporary State fiscal relief, and for other purposes.

S. 2718

At the request of Mr. DEWINE, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Illinois (Mr. DURBIN) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 2718, a bill to provide for programs and activities with respect to the prevention of underage drinking.

S. 2734

At the request of Mr. CAMPBELL, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 2734, a bill to implement the recommendations of the Inspector General of the Department of the Interior regarding Indian Tribal detention facilities.

S. 2741

At the request of Mr. DASCHLE, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 2741, a bill to amend the Public Health Service Act to reauthorize and extend the Fetal Alcohol Syndrome prevention and services program, and for other purposes.

S. 2754

At the request of Mr. DASCHLE, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2754, a bill to amend the Social Security Act to protect social security cost-of-living adjustments (COLA).

S. 2759

At the request of Mr. ROCKEFELLER, the names of the Senator from New Jersey (Mr. LAUTENBERG) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 2759, a bill to amend title XXI of the Social Security Act to modify the rules relating to the availability and method of redistribution of unexpended SCHIP allotments, and for other purposes.

S. 2762

At the request of Mr. GRASSLEY, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2762, a bill to encourage the use of indigenous feedstock from the Caribbean Basin region with respect to ethyl alcohol for fuel use.

S. 2780

At the request of Ms. STABENOW, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2780, a bill to amend title XVIII of the Social Security Act to stabilize the amount of the medicare part B premium.

S. 2781

At the request of Mr. LUGAR, the names of the Senator from North Carolina (Mrs. DOLE) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 2781, a bill to express the sense of Congress regarding the conflict in Darfur, Sudan, to provide assistance for the crisis in Darfur and for comprehensive peace in Sudan, and for other purposes.

S. CON. RES. 111

At the request of Mr. LUGAR, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. Con. Res. 111, a concurrent resolution expressing the sense of the Congress that a commemorative stamp should be issued in honor of the centennial anniversary of Rotary International and its work to eradicate polio.

S. RES. 419

At the request of Mr. CORNYN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. Res. 419, a resolution expressing the sense of the Senate with respect to the continuity of Government and the smooth transition of executive power.

S. RES. 422

At the request of Mr. GRAHAM of South Carolina, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. Res. 422, a resolution expressing the sense of the Senate that the President should designate the week beginning September 12, 2004, as ''National Historically Black Colleges and Universities Week''.

AMENDMENT NO. 3615

At the request of Mr. KENNEDY, his name was added as a cosponsor of amendment No. 3615 proposed to H.R. 4567, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes.

AMENDMENT NO. 3617

At the request of Mr. LAUTENBERG, the names of the Senator from Hawaii (Mr. AKAKA) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of amendment No. 3617 proposed to H.R. 4567, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. COLLINS:

S. 2792. A bill to permit athletes to receive nonimmigrant status under certain conditions, and for other purposes; to the Committee on the Judiciary.

Ms. COLLINS. Mr. President, I rise today to introduce legislation to address the inability of promising, talented young athletes from other countries to play for sports teams in the United States, such as the MAINEiacs, a junior league hockey team in Lewiston, ME. This year's shortage of H–2B nonimmigrant visas for temporary or seasonal nonagricultural foreign workers is a matter of great concern to me and to many in my home State of Maine. In early March, the U.S. Citizenship and Immigration Services announced that the congressionally mandated cap of 66,000 H–2B visas would soon be met. It immediately stopped accepting applications for these visas. This meant that thousands of employers in Maine and across the United States who rely on the H–2B program have been in a very difficult position this summer.

For example, Maine's tourism and hospitality industry, as well as its forest products industry, have been particularly hard-pressed to find enough American workers to keep their businesses running at normal levels during what is their busiest time of year. What many people do not know, however, is that the H–2B visa shortage has also meant that hundreds of promising athletes have been unable to come to the United States to play for minor league and amateur sports teams across the Nation.

Those affected by the H–2B problem are not confined to just one industry or one State. That is why I cosponsored two pieces of legislation that would immediately address this problem: S. 2252, the Save the Summer Act, introduced by Senator KENNEDY, and S. 2258, the Summer Operations and Services (SOS) Relief and Reform Act, introduced by Senators HATCH and CHAMBLISS. The former would increase the H–2B visa cap by 40,000 this fiscal year, while the

latter would exclude from the cap returning foreign workers who were counted against the cap within the past 2 years. It has become clear, however, that until this legislation comes before the full Senate for a vote, we must continue to actively seek alternative solutions to this problem.

One issue we must address is the problem facing the many minor league professional teams, as well as junior league hockey teams, that rely on H–2B visas. Without these visas, sports teams in Maine and across the Nation have been unable to bring some of their most talented prospects to the United States. Major League sports have also lost a traditional source of talent for their teams.

In my home State of Maine, for example, the Lewiston MAINEiacs, a Canadian junior hockey league team, has been unable to obtain the H–2b visas necessary for the majority of its players to remain in the United States to play in the team's first home games this September. Although these players range in age from 16 to 20, the majority of them are between 16 and 18 years old and are required during the hockey season to balance the demands of athletics and academics. These scholar-athletes are among Canada's most talented junior players, but due to the shortage of H–2B visas, they are in danger of missing out on a tremendous opportunity to improve their skills and, possibly, graduate to a career in professional hockey. In addition, for each home game that the team must cancel or reschedule, the economic impact on the city of Lewiston, and nearby Auburn, in terms of lost hotel and restaurant revenue will be considerable.

The Portland Sea Dogs, a Double-A level baseball team affiliated with the Boston Red Sox, also relies on H–2B visas to bring several of its most skilled players to the United States. Thousands of fans come out each year to see this team, and others like it across the country, play what is arguably one of America's favorite sports. This year, however, approximately 300 talented young, foreign baseball players have been prevented from coming to the U.S. to play for minor league teams, a proving ground for athletes hoping to make it to the Major Leagues.

The P–1 nonimmigrant visa is used by athletes who are deemed by the U.S. Citizenship and Immigration Services as performing at an ''internationally recognized level of performance.'' Unfortunately, USCIS has interpreted this visa category to exclude these talented minor and amateur league athletes. This visa is typically reserved for only those athletes who have already been promoted to Major League sports. However, none of these promising athletes is likely to earn a Major League contract if the players are not first permitted to hone their skills, and to prove themselves, in the minor leagues. This problem can easily be solved by expanding the P–1 visa category to include minor league athletes, as well as those amateur-level athletes, like the Lewiston MAINEiacs, who have demonstrated a significant likelihood of graduating to the major leagues.

I have received a letter from officials from Major League Baseball, which strongly supports the expansion of the P–1 visa category to include professional minor league baseball players. I ask unanimous consent to print this letter in the RECORD. As the League points out, by making P–1 visas available to this group of athletes, teams would be able to make player development decisions based on the talent of its players, without being constrained by visa quotas. The P–1 category, the League argues, is appropriate for minor league players because these are the players that the Major League Clubs have selected as some of the best baseball prospects in the world.

There is no question that Americans are passionate about sports. We have high expectations for our teams, and demand only the best from our athletes. By expanding the P–1 visa category, we will make it possible for athletes to be selected based on talent and skill, rather than nationality. I ask that we act quickly to amend the law to make this possible.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MAJOR LEAGUE BASEBALL,
OFFICE OF THE COMMISSIONER,
July 22, 2004.

Re Legislation for Nonimmigrant Alien Status for Certain Athletes.

Hon. SUSAN M. COLLINS,
U.S. Senator from Maine, Russell Senate Office Building, Washington, DC.

DEAR SENATOR COLLINS: I write to express Major League Baseball's support for your efforts on behalf of Minor League professional baseball players. We understand that you are considering sponsoring legislation that will enable Minor League players to obtain P–1 work visas to perform in the United States.

Currently, foreign players under Minor League contracts are required to obtain H–2B (temporary worker) work visas to perform in the United States. The United States Citizenship and Immigration Services stopped accepting H–2B visa applications in March this year, citing the nationwide cap in the number of such visas that can be issued. That action has prevented approximately 300 young baseball players from performing in the Minor Leagues in the United States this season and developing their skills in the hopes of becoming Major League players.

Minor League experience is crucial in developing the best possible Major League players. Unlike other professional athletes, baseball players almost invariably cannot go directly from high school or college to the Major Leagues. Almost all need substantial experience in the Minor Leagues to develop their talents and skills to Major League quality. To get that necessary experience, young players are signed by Major League Clubs and assigned to play for Minor League affiliates throughout the United States, such as the Eastern League's Portland Sea Dogs in your state.

The Major League Clubs are currently able to use only 81% of the H–2B visas the Department of Labor allowed them for this season, because current laws prevented them from making decisions in the late spring and throughout the summer to promote foreign prospects to United States affiliates. Major League Clubs sign players from the Dominican Republic and Venezuela and assign them at first to affiliates in those countries, then seek to promote them to affiliates in the United States as players' skills progress. Typically, a Club would seek to promote 3–5 players per season to Minor League affiliates in the United States, but the visa restrictions this year have made those promotions impossible. We have learned that at least several Clubs shied away from drafting foreign (mostly Canadian) players whom they otherwise might have selected in the annual First-Year Player Draft in June, because those Clubs knew there would be no opportunity for those players to begin their professional careers in the United States this season. For the Canadian players who were drafted this past June, signings have declined 80% from 2003. These results of the current visa laws have deprived Minor League fans across America from seeing the best young players possible perform for affiliates of the Major League Baseball Clubs and have affected the quality and attractiveness of those affiliates.

Under your leadership, congressional legislation could, by sensibly making available P–1 visas to professional Minor League athletes, ensure that the best baseball prospects from around the world will get the opportunity to develop here in the United States, without the constraint that the H–2B visa cap imposes. The National Association of Professional Baseball Leagues, Inc., also known as Minor League Baseball, shares our support of your legislation. The Major League Baseball Players Association also supports allowing the best young players to develop here in the United States.

Major League Baseball hopes that your Senate colleagues will follow your leadership and pursue a legislative remedy to a problem that is threatening to weaken Baseball's Minor League system.

Sincerely,

RICHARD L. ALDERSON,
Executive Vice President,
Baseball Operations.

By Mr. SANTORUM:

S. 2793. A bill to remove civil liability barriers that discourage the donation of fire equipment to volunteer fire companies; to the Committee on the Judiciary.

Mr. SANTORUM. Mr. President, I rise today to introduce the ''Good Samaritan Volunteer Firefighter Assistance Act of 2004.'' On September 11, 2001, the Nation witnessed the tragic loss of hundreds of heroic firefighters. Amazingly, every year quality firefighting equipment worth millions of dollars is wasted. In order to avoid civil liability lawsuits, heavy industry and wealthier fire departments destroy surplus equipment, including hoses, fire trucks, protective gear and breathing apparatus, instead of donating it to volunteer fire departments.

The basic purpose of this legislation is to induce donations of surplus firefighting equipment by reducing the threat of civil liability for organizations, most commonly heavy industry, and individuals who wish to make these donations. The bill eliminates civil liability barriers to donations of surplus firefighting equipment by raising the liability standard for donors from ''negligence'' to ''gross negligence.''

The ''Good Samaritan Volunteer Firefighter Assistance Act of 2004'' is modeled after a bill passed by the Texas State legislature in 1997 and signed into law by then-Governor George W. Bush which has resulted in more than $6 million in additional equipment donations from companies and other fire departments for volunteer departments which may not be as well equipped. Now companies in Texas can donate surplus equipment to the Texas Forest Service, which then certifies the equipment and passes it on to volunteer fire departments that are in need. The donated equipment must meet all original specifications before it can be sent to volunteer departments. Arizona, Missouri, Indiana, and South Carolina have passed similar legislation at the state level.

The legislation saves taxpayer dollars by encouraging donations, thereby reducing the taxpayers' burden of purchasing expensive equipment for volunteer fire departments. in the 107th Congress, Representative CASTLE introduced the Good Samaritan Volunteer Firefighter Assistance Act which had 104 bipartisan cosponsors in the House of Representatives. It is also supported by the National Volunteer Fire Council, the Firemen's Association of the State of New York, and a former director of the Federal Emergency Management Agency (FEMA), James Lee Witt. The bill has been reintroduced as H.R. 1787 in the 108th Congress.

This bill does not cost taxpayer dollars nor does it create additional bureaucracies to inspect equipment. The bill eliminates unnecessary inspection bureaucracies. This is for three reasons. First, bureaucracies are not necessary for inspections because the fire chiefs make the inspections themselves. Second, some of the State bureaucracies control who gets the equipment. These donations are private property transactions, not a good that is donated to the State, allowing the State to pick who will get the equipment. Third, there is no desire to create the temptation for waste, fraud, and abuse in a State bureaucracy in charge of picking winners and losers.

The bill reflects the purpose of the Texas State law. Federally, precedent for similar measures includes the Bill Emerson Good Samaritan Food Act (Public Law 104–210), named for the late Representative Bill Emerson, which encourages restaurants, hotels and businesses to donate millions of dollars worth of food. The Volunteer Protection Act of 1997 (Public Law 105–101) also immunizes individuals who do volunteer work for non-profit organizations or governmental entities from liability for ordinary negligence in the course of their volunteer work. I have also previously introduced three Good Samaritan measures in the 106th Congress, S. 843, S. 844 and S. 845. These provisions were also included in a broader charitable package in S. 997, the Charity Empowerment Act, to provide additional incentives for corporate in-kind charitable contributions for motor vehicle, aircraft, and facility use. The same provision passed the House of Representatives in the 107th Congress as part of H.R. 7, the Community Solutions Act, in July of 2001, but was not signed into law.

Volunteers comprise approximately 73 percent of firefighters in the United States. Of the total estimated 1,078,300 firefighters across the country, 784,700 are volunteer. Of the more than 30,000 fire departments in the country, approximately 22,600 are all volunteer; 4,800 are mostly volunteer; 1,600 are mostly career; and 2,000 are all career. In 2000, 58 of the 103 firefighters who died in the line of duty were volunteers.

This legislation provides a commonsense incentive for additional contributions to volunteer fire departments around the country and would make it more attractive for corporations to give equipment to fire departments in other states. All of America has witnessed the heroic acts of selflessness and sacrifice of firefighters in New York City and in the Washington, D.C. area. I urge my colleagues to join me in supporting this incentive for the provision of additional safety equipment for volunteer firefighters who put their lives on the line every day throughout this great nation.

By Mr. KENNEDY (for himself, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. BINGAMAN, Mrs. MURRAY, Mr. REED, AND Mrs. CLINTON):

S. 2794. A bill to improve elementary and secondary education; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, I'm pleased to join my colleagues to introduce the No Child Left Behind Improvement Act. Our goal is to chart a better course for bringing the reforms under the law to all students across the country.

I was proud to stand with President Bush in January 2002 as he signed the No Child Left Behind Act into law. At that time, Republicans and Democrats came together to recognize the need to create a strong education system where every child attends a good school with a good teacher. Together, we recognized the importance of achieving that goal for the future of our democracy, economy, and national defense.

In drafting the No Child Left Behind Act in a bipartisan manner, we made great progress from the days when Democrats and Republicans were light years apart on school reform, with some trying to abolish the U.S. Department of Education and privatize our public schools.

No Child Left Behind made improving our public schools a national priority. It laid the cornerstone for a solid accountability system in every State. It called for high academic standards in reading, math, and science, and high-quality tests to measure progress toward those standards. For the first time, it placed our low-income children, children with disabilities, minority children, and English language learners at the top of the school reform agenda. No longer would their needs be hidden, overlooked, or ignored.

It also provided the building blocks for quality in all schools. A fully-qualified teacher in every classroom and better teacher training to make it happen. More after-school tutoring and supplemental services to help students with the greatest needs. Special programs for English language learners. Expanded support for reading in early grades. School report cards to provide information to parents and motivate them to be part of their children's education.

No Child Left Behind promised a great deal to our students and to their families. It's still the right promise. But it hasn't been kept.

Since the law passed, the country has seen the promise of funding No Child Left Behind flagrantly broken by the Bush administration, time and time again. President Bush proposed to cut funding for the law by $90 million just 1 month after signing the bill. His next education budget cut funding by far more—$1.2 billion.

Today, he's leaving 4.6 million children behind, and he's underfunding the law by $9.4 billion. At the same time, President Bush proposes to give tax breaks for the top 1 percent of Americans that total five times the funds promised but never delivered under the No Child Left Behind Act.

Despite these broken promises, our schools are trying to do their part. They've been asked to help all students reach proficiency, and they are responding. Teachers and other school professionals are beginning the hard work of tackling disparities in student achievement, and putting into place the curriculum needed to turn-around thousands of schools that have been identified as needing improvement.

School leaders are struggling to respond to the challenges of providing more highly qualified teachers, supplemental services, and after-school programs in school districts. They're laboring hard in their work to implement the No Child Left Behind Act and bring the promise of true reform to more children and their parents.

The work of school reform is not easy, and schools are struggling to succeed under No Child Left Behind. But on top of the broken promise to provide schools the resources they need to get the job done right, the administration has undermined the efforts of schools to comply with the law, and crippled reforms through its ineffective implementation effort.

Since No Child Left Behind passed, the Department of Education's track record in issuing basic guidance under the law been mired in delay. Final accountability guidelines for children with special needs and limited English

proficient children were announced 2 years after the law was enacted, and long after the law's accountability requirements were already in place for schools.

The administration has abandoned requirements to measure adequately the progress of English language learners in a valid and reliable way. They've suggested to States that they don't have to bother to develop native language assessments, and they've done nothing to help improve assessments for children with disabilities.

They've ignored standards for supplemental service providers, and failed to enforce the civil rights protections that are so essential to providing all children fair access to such services. Families are relying on tutoring and extra support to help their children. But the administration's guidance actually prohibits States from requiring high standards for that supplemental support. A highly qualified teacher in every classroom is good policy. Why shouldn't the same apply for supplemental services?

The administration's ham-handed implementation of public school choice has ignored questions of capacity in school districts with overcrowded classrooms.

And their weakened regulations undermine protections against high dropout rates—especially for low-income and minority students. Without information and reporting of those rates for each subgroup of children, the public won't have a complete picture of how children are succeeding.

It's time for the administration to correct these problems and do their part to improve implementation of the No Child Left Behind Act.

The bill that I'm introducing today gets these reforms on track. It will help keep the promise of public school choice, promote quality and access in supplemental services, provide for better assessments for children, and ensure better reporting by schools and states of graduation and dropout rates so that children don't fall through the cracks.

It's important to acknowledge what this bill does not do. It does not make fundamental changes to the requirements under No Child Left Behind. Those reforms are essential to improving our public schools. Every child deserves a chance to learn in a good school, and that chance depends on whether we succeed in implementing the law.

The No Child Left Behind Improvement Act will ensure that school districts consider health and safety codes as they draw up their plans for providing public school choice to students, consistent with the law. In order to ensure that public school choice actually helps children succeed educationally, we must provide an environment that is safe and conducive to their learning—not overcrowded.

It will provide better access to quality supplemental services for eligible students, and ensure full enforcement of civil rights protections under those provisions. The administration's policy of relaxed enforcement in this area allows some private providers off-the-hook from serving children that need the most help. That's wrong.

All students should have a fair chance to choose a supplemental service provider that meets their needs. Limited English proficient children and children with disabilities are often those students that need the most extra help and assistance in our public schools, and this bill would ensure that each State select some providers with the skills to serve those populations.

This bill will also better enable teachers and para-professionals to meet the required standards for teacher quality under the law. A highly qualified teacher is the single most important factor in improving student achievement, and the No Child Left Behind Act requires that every classroom have a qualified teacher by 2006.

We must provide for a system that ensures all teachers have the opportunity to meet that goal. The No Child Left Behind Act includes an alternate standard for veteran teachers to demonstrate their competence and be counted as highly qualified in the subject matter that they teach. This bill ensures that every State develop and implement that standard under the law, and that every state provide para-professionals with the opportunities provided under No Child Left Behind to demonstrate their competence.

Fifteen States have not yet developed or applied standards for veteran teachers. We must do better especially for the 67 percent of all public school teachers that have been teaching for more than 5 years.

And finally, for No Child Left Behind's accountability provisions to be useful, they must be accurate. We need accurate determinations of whether schools are making progress.

The Department's delay in issuing adequate accountability rules for counting children with disabilities and limited English proficient children has created unnecessary confusion, caused a potential mislabeling of schools, and misdirected resources from the schools and students who actually need them. The Department should apply those regulations retroactively, so that schools may be judged on the same standards for the past year as they will be in the future, not by different criteria for different years. In June, I introduced a bill—The No Child Left Behind Fairness Act—to accomplish that goal. The bill that I'm introducing today also includes those requirements.

We're at an important crossroads in reforming our public schools. Schools are hurting, crippled by shrinking budgets and a broken promise of funding under the law. The ineffective track record of this administration in implementing No Child Left Behind largely has contributed to their problems and frustrations.

We must do better. Turning our back on the reforms in the No Child Left Behind Act is no solution. Neither is turning our back on public education. I urge my colleagues to act to ensure that the promise of the essential reforms under No Child Left Behind are realized. Our students and families deserve no less.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2794

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''No Child Left Behind Improvement Act of 2004''.

TITLE I—PUBLIC SCHOOL CHOICE, SUPPLEMENTAL EDUCATIONAL SERVICES, AND TEACHER QUALITY

SEC. 101. PUBLIC SCHOOL CHOICE CAPACITY.

(a) SCHOOL CAPACITY.—Section 1116(b)(1)(E) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)) is amended—

(1) in clause (i), by striking ''In the case'' and inserting ''Subject to clauses (ii) and (iii), in the case'';

(2) by redesignating clause (ii) as clause (iii);

(3) by inserting after clause (i) the following:

''(ii) SCHOOL CAPACITY.—The obligation of a local educational agency to provide the option to transfer to students under clause (i) is subject to all applicable State and local health and safety code requirements regarding facility capacity.''; and

(4) in clause (iii) (as redesignated by paragraph (2)), by inserting ''and subject to clause (ii),'' after ''public school,''.

(b) GRANTS FOR SCHOOL CONSTRUCTION AND RENOVATION.—Subpart 1 of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) is amended by adding at the end the following:

''SEC. 1120C. GRANTS FOR SCHOOL CONSTRUCTION AND RENOVATION.

''(a) PROGRAM AUTHORIZED.—From funds appropriated under subsection (g), the Secretary is authorized to award grants to local educational agencies experiencing overcrowding in the schools served by the local educational agencies, for the construction and renovation of safe, healthy, high-performance school buildings.

''(b) APPLICATION.—Each local educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such additional information as the Secretary may require.

''(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to local educational agencies—

''(1) who have documented difficulties in meeting the public school choice requirements of paragraph (1)(E), (5)(A), (7)(C)(i), or (8)(A)(i) of section 1116(b), or section 1116(c)(10)(C)(vii); and

''(2) with the highest number of schools at or above capacity.

''(d) AWARD BASIS.—From funds remaining after awarding grants under subsection (c), the Secretary shall award grants to local educational agencies that are experiencing overcrowding in the schools served by the local educational agencies.

''(e) PREVAILING WAGES.—Any laborer or mechanic employed by any contractor or

subcontractor in the performance of work on any construction funded by a grant awarded under this section will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor under subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the Davis-Bacon Act).

''(f) DEFINITIONS.—In this section:

''(1) AT OR ABOVE CAPACITY.—The term 'at or above capacity', in reference to a school, means a school in which 1 additional student would increase the average class size of the school above the average class size of all schools in the State in which the school is located.

''(2) HEALTHY, HIGH-PERFORMANCE SCHOOL BUILDING.—The term 'healthy, high-performance school building' has the meaning given such term in section 5586.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $250,000,000 for fiscal year 2005, and such sums as may be necessary for each of the 2 succeeding fiscal years.''.

SEC. 102. SUPPLEMENTAL EDUCATIONAL SERVICES.

Section 1116(e) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(e)) is amended—

(1) in paragraph (4)—

(A) in subparagraph (B), by striking the semicolon and inserting '', including criteria that—

''(i) ensure that personnel delivering supplemental educational services to students have adequate qualifications; and

''(ii) may, at the State's discretion, ensure that personnel delivering supplemental educational services to students are teachers that are highly qualified, as such term is defined in section 9101;'';

(B) in subparagraph (D), by striking ''and'' after the semicolon;

(C) in subparagraph (E), by striking the period and inserting ''; and''; and

(D) by adding at the end the following:

''(F) ensure that the list of approved providers of supplemental educational services described in subparagraph (C) includes a choice of providers that have sufficient capacity to provide effective services for children who are limited English proficient and children with disabilities.'';

(2) in paragraph (5)(C)—

(A) by striking ''applicable''; and

(B) by inserting before the period '', and acknowledge in writing that, as an approved provider in the relevant State educational agency program of providing supplemental educational services, the provider is deemed to be a recipient of Federal financial assistance'';

(3) by redesignating paragraphs (6), (7), (8), (9), (10), (11), and (12) as paragraphs (7), (8), (9), (10), (11), (12), and (13), respectively;

(4) by inserting after paragraph (5) the following:

''(6) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a local educational agency from being considered by a State educational agency as a potential provider of supplemental educational services under this subsection, if such local educational agency meets the criteria adopted by the State educational agency in accordance with paragraph (5).'';

(5) in paragraph (13) (as redesignated by paragraph (3))—

(A) in subparagraph (B)—

(i) in clause (ii), by striking ''and'' after the semicolon;

(ii) in clause (iii), by striking ''and'' after the semicolon; and

(iii) by adding at the end the following:

''(iv) may employ teachers who are highly qualified as such term is defined in section 9101; and

''(v) pursuant to its inclusion on the relevant State educational agency's list described in paragraph (4)(C), is deemed to be a recipient of Federal financial assistance; and''; and

(B) in subparagraph (C)—

(i) in the matter preceding subclause (i), by striking ''are'';

(ii) in subclause (i)—

(I) by inserting ''are'' before ''in addition''; and

(II) by striking ''and'' after the semicolon;

(iii) in subclause (ii), by striking the period and inserting ''; and''; and

(iv) by adding at the end the following:

''(iii) if provided by providers that are included on the relevant State educational agency's list described in paragraph (4)(C), shall be deemed to be programs or activities of the relevant State educational agency.''; and

(6) by adding at the end the following:

''(14) CIVIL RIGHTS.—In providing supplemental educational services under this subsection, no State educational agency or local educational agency may, directly or through contractual, licensing, or other arrangements with a provider of supplemental educational services, engage in any form of discrimination prohibited by—

''(A) title VI of the Civil Rights Act of 1964;

''(B) title IX of the Education Amendments of 1972;

''(C) section 504 of the Rehabilitation Act of 1973;

''(D) titles II and III of the Americans with Disabilities Act;

''(E) the Age Discrimination Act of 1975;

''(F) regulations promulgated under the authority of the laws listed in subparagraphs (A) through (E); or

''(G) other Federal civil rights laws.''.

SEC. 103. QUALIFICATIONS FOR TEACHERS AND PARAPROFESSIONALS.

(a) HIGH OBJECTIVE UNIFORM STATE STANDARD OF EVALUATION.—Section 1119 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6319) is amended—

(1) in subsection (a)(2)—

(A) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and indenting as appropriate;

(B) by striking ''(2) STATE PLAN.—As part'' and inserting the following:

''(2) STATE PLAN.—

''(A) IN GENERAL.—As part''; and

(C) by adding at the end the following:

''(B) AVAILABILITY OF STATE STANDARDS.—Each State educational agency shall make available to teachers in the State the high objective uniform State standard of evaluation, as described in section 9101(23)(C)(ii), for the purpose of meeting the teacher qualification requirements established under this section.'';

(2) by redesignating subsections (e), (f), (g), (h), (i), (j), (k), and (l) as subsections (f), (g), (h), (i), (j), (k), (l), and (m), respectively;

(3) by inserting after subsection (d) the following:

''(e) STATE RESPONSIBILITIES.—Each State educational agency shall ensure that local educational agencies in the State make available all options described in subparagraphs (A) through (C) of subsection (c)(1) to each new or existing paraprofessional for the purpose of demonstrating the qualifications of the paraprofessional, consistent with the requirements of this section.''; and

(4) in subsection (l) (as redesignated in paragraph (2)), by striking ''subsection (l)'' and inserting ''subsection (m)''.

(b) DEFINITION OF HIGHLY QUALIFIED TEACHERS.—Section 9101(23)(B)(ii) is amended—

(1) in subclause (I), by striking ''or'' after the semicolon;

(2) in subclause (II), by striking ''and'' after the semicolon; and

(3) by adding at the end the following:

''(III) in the case of a middle school teacher, passing a State-approved middle school generalist exam when the teacher receives a license to teach middle school in the State;

''(IV) obtaining a State middle school or secondary school social studies certificate that qualifies the teacher to teach history, geography, economics, civics, and government in middle schools or in secondary schools, respectively, in the State; or

''(V) obtaining a State middle school or secondary school science certificate that qualifies the teacher to teach earth science, biology, chemistry, and physics in middle schools or secondary schools, respectively, in the State; and''.

TITLE II—ADEQUATE YEARLY PROGRESS DETERMINATIONS

SEC. 201. REVIEW OF ADEQUATE YEARLY PROGRESS DETERMINATIONS FOR SCHOOLS FOR THE 2002–2003 SCHOOL YEAR.

(a) IN GENERAL.—The Secretary shall require each local educational agency to provide each school served by the agency with an opportunity to request a review of a determination by the agency that the school did not make adequate yearly progress for the 2002–2003 school year.

(b) FINAL DETERMINATION.—Not later than 30 days after receipt of a request by a school for a review under this section, a local educational agency shall issue and make publicly available a final determination on whether the school made adequate yearly progress for the 2002–2003 school year.

(c) EVIDENCE.—In conducting a review under this section, a local educational agency shall—

(1) allow the principal of the school involved to submit evidence on whether the school made adequate yearly progress for the 2002–2003 school year; and

(2) consider that evidence before making a final determination under subsection (b).

(d) STANDARD OF REVIEW.—In conducting a review under this section, a local educational agency shall revise, consistent with the applicable State plan under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311), the local educational agency's original determination that a school did not make adequate yearly progress for the 2002–2003 school year if the agency finds that the school made such progress, taking into consideration—

(1) the amendments made to part 200 of title 34, Code of Federal Regulations (68 Fed. Reg. 68698) (relating to accountability for the academic achievement of students with the most significant cognitive disabilities); or

(2) any regulation or guidance that, subsequent to the date of such original determination, was issued by the Secretary relating to—

(A) the assessment of limited English proficient children;

(B) the inclusion of limited English proficient children as part of the subgroup described in section 1111(b)(2)(C)(v)(II)(dd) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(v)(II)(dd)) after such children have obtained English proficiency; or

(C) any requirement under section 1111(b)(2)(I)(ii) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(I)(ii)).

(e) EFFECT OF REVISED DETERMINATION.—

(1) IN GENERAL.—If pursuant to a review under this section a local educational agency determines that a school made adequate

yearly progress for the 2002–2003 school year, upon such determination—

(A) any action by the Secretary, the State educational agency, or the local educational agency that was taken because of a prior determination that the school did not make such progress shall be terminated; and

(B) any obligations or actions required of the local educational agency or the school because of the prior determination shall cease to be required.

(2) EXCEPTIONS.—Notwithstanding paragraph (1), a determination under this section shall not affect any obligation or action required of a local educational agency or school under the following:

(A) Section 1116(b)(13) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)(13)) (requiring a local educational agency to continue to permit a child who transferred to another school under such section to remain in that school until completion of the highest grade in the school).

(B) Section 1116(e)(9) of the Elementary and Secondary Education Act of 1965 (as redesignated by section 102(3)) (20 U.S.C. 6316(e)(9)) (requiring a local educational agency to continue to provide supplemental educational services under such section until the end of the school year).

(3) SUBSEQUENT DETERMINATIONS.—In determining whether a school is subject to school improvement, corrective action, or restructuring as a result of not making adequate yearly progress, the Secretary, a State educational agency, or a local educational agency may not take into account a determination that the school did not make adequate yearly progress for the 2002–2003 school year if such determination was revised under this section and the school received a final determination of having made adequate yearly progress for the 2002–2003 school year.

(f) NOTIFICATION.—The Secretary—

(1) shall require each State educational agency to notify each school served by the agency of the school's ability to request a review under this section; and

(2) not later than 30 days after the date of the enactment of this section, shall notify the public by means of the Department of Education's website of the review process established under this section.

SEC. 202. REVIEW OF ADEQUATE YEARLY PROGRESS DETERMINATIONS FOR LOCAL EDUCATIONAL AGENCIES FOR THE 2002–2003 SCHOOL YEAR.

(a) IN GENERAL.—The Secretary shall require each State educational agency to provide each local educational agency in the State with an opportunity to request a review of a determination by the State educational agency that the local educational agency did not make adequate yearly progress for the 2002–2003 school year.

(b) APPLICATION OF CERTAIN PROVISIONS.—Except as inconsistent with, or inapplicable to, this section, the provisions of section 201 shall apply to review by a State educational agency of a determination described in subsection (a) in the same manner and to the same extent as such provisions apply to review by a local educational agency of a determination described in section 201(a).

SEC. 203. DEFINITIONS.

In this title:

(1) The term ''adequate yearly progress'' has the meaning given to that term in section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)).

(2) The term ''local educational agency'' means a local educational agency (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) receiving funds under part A of title I of such Act (20 U.S.C. 6311 et seq.).

(3) The term ''Secretary'' means the Secretary of Education.

(4) The term ''school'' means an elementary school or a secondary school (as those terms are defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) served under part A of title I of such Act (20 U.S.C. 6311 et seq.).

(5) The term ''State educational agency'' means a State educational agency (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) receiving funds under part A of title I of such Act (20 U.S.C. 6311 et seq.).

TITLE III—IMPROVING ASSESSMENT AND ACCOUNTABILITY

SEC. 301. GRANTS FOR INCREASING DATA CAPACITY FOR PURPOSES OF ASSESSMENT AND ACCOUNTABILITY.

(a) PROGRAM AUTHORIZED.—From funds appropriated under subsection (g) for a fiscal year, the Secretary may award grants, on a competitive basis, to State educational agencies—

(1) to enable the State educational agencies to develop or increase the capacity of data systems for assessment and accountability purposes, including the collection of graduation rates; and

(2) to award subgrants to increase the capacity of local educational agencies to upgrade, create, or manage longitudinal data systems for the purpose of measuring student academic progress and achievement.

(b) STATE APPLICATION.—Each State educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) STATE USE OF FUNDS.—Each State educational agency that receives a grant under this section shall use—

(1) not more than 20 percent of the grant funds for the purpose of—

(A) increasing the capacity of, or creating, State databases to collect, disaggregate, and report information related to student achievement, enrollment, and graduation rates for assessment and accountability purposes; and

(B) reporting, on an annual basis, for the elementary schools and secondary schools within the State, on—

(i) the enrollment data from the beginning of the academic year;

(ii) the enrollment data from the end of the academic year; and

(iii) the twelfth grade graduation rates; and

(2) not less than 80 percent of the grant funds to award subgrants to local educational agencies within the State to enable the local educational agencies to carry out the authorized activities described in subsection (e).

(d) LOCAL APPLICATION.—Each local educational agency desiring a subgrant under this section shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. Each such application shall include, at a minimum, a demonstration of the local educational agency's ability to put a longitudinal data system in place.

(e) LOCAL AUTHORIZED ACTIVITIES.—Each local educational agency that receives a subgrant under this section shall use the subgrant funds to increase the capacity of the local educational agency to upgrade or manage longitudinal data systems consistent with the uses in subsection (c)(1), by—

(1) purchasing database software or hardware;

(2) hiring additional staff for the purpose of managing such data;

(3) providing professional development or additional training for such staff; and

(4) providing professional development or training for principals and teachers on how to effectively use such data to implement instructional strategies to improve student achievement and graduation rates.

(f) DEFINITIONS.—In this section:

(1) The term ''graduation rate'' means the percentage that—

(A) the total number of students who—

(i) graduate from a secondary school with a regular diploma (which shall not include the recognized equivalent of a secondary school diploma or an alternative degree) in an academic year; and

(ii) graduated on time by progressing 1 grade per academic year; represents of

(B) the total number of students who entered the secondary school in the entry level academic year applicable to the graduating students.

(2) The terms ''State educational agency'' and ''local educational agency'' have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) The term ''Secretary'' means the Secretary of Education.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $100,000,000 for fiscal year 2005, and such sums as may be necessary for each of the 2 succeeding fiscal years.

SEC. 302. GRANTS FOR ASSESSMENT OF CHILDREN WITH DISABILITIES AND CHILDREN WHO ARE LIMITED ENGLISH PROFICIENT.

Part E of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6491 et seq.) is amended by adding at the end the following:

''SEC. 1505. GRANTS FOR ASSESSMENT OF CHILDREN WITH DISABILITIES AND CHILDREN WHO ARE LIMITED ENGLISH PROFICIENT.

''(a) GRANTS AUTHORIZED.—From amounts authorized under subsection (e) for a fiscal year, the Secretary shall award grants, on a competitive basis, to State educational agencies, or to consortia of State educational agencies, to enable the State educational agencies or consortia to collaborate with institutions of higher education, research institutions, or other organizations—

''(1) to design and improve State academic assessments for students who are limited English proficient and students with disabilities; and

''(2) to ensure the most accurate, valid, and reliable means to assess academic content standards and student academic achievement standards for students who are limited English proficient and students with disabilities.

''(b) AUTHORIZED ACTIVITIES.—A State educational agency or consortium that receives a grant under this section shall use the grant funds to carry out 1 or more of the following activities:

''(1) Developing alternate assessments for students with disabilities, consistent with section 1111 and the amendments made on December 9, 2003, to part 200 of title 34, Code of Federal Regulations (68 Fed. Reg. 68698) (relating to accountability for the academic achievement of students with the most significant cognitive disabilities), including—

''(A) the alignment of such assessments, as appropriate and consistent with such amendments, with—

''(i) State academic achievement standards and State academic content standards for all students; or

''(ii) alternate State academic achievement standards that reflect the intended instructional construct for students with disabilities;

''(B) activities to ensure that such assessments do not reflect the disabilities, or associated characteristics, of the students that are extraneous to the intent of the measurement;

''(C) the development of an implementation plan for pilot tests for such assessments, in order to determine the level of appropriateness and feasibility of full-scale administration; and

''(D) activities that provide for the retention of all feasible standardized features in the alternate assessments.

''(2) Developing alternate assessments that meet the requirements of section 1111 for students who are limited English proficient, including—

''(A) the alignment of such assessments with State academic achievement standards and State academic content standards for all students;

''(B) the development of parallel native language assessments or linguistically modified assessments for limited English proficient students that meet the requirements of section 1111(b)(3)(C)(ix)(III);

''(C) the development of an implementation plan for pilot tests for such assessments, in order to determine the level of appropriateness and feasibility of full-scale administration; and

''(D) activities that provide for the retention of all feasible standardized features in the alternate assessments.

''(3) Developing, modifying, or revising State policies and criteria for appropriate accommodations to ensure the full participation of students who are limited English proficient and students with disabilities in State academic assessments, including—

''(A) developing a plan to ensure that assessments provided with accommodations are fully included and integrated into the accountability system, for the purpose of making the determinations of adequate yearly progress required under section 1116;

''(B) ensuring the validity, reliability, and appropriateness of such accommodations, such as—

''(i) a modification to the presentation or format of the assessment;

''(ii) the use of assistive devices;

''(iii) an extension of the time allowed for testing;

''(iv) an alteration of the test setting or procedures;

''(v) the administration of portions of the test in a method appropriate for the level of language proficiency of the test taker;

''(vi) the use of a glossary or dictionary; and

''(vii) the use of a linguistically modified assessment;

''(C) ensuring that State policies and criteria for appropriate accommodations take into account the form or program of instruction provided to students, including the level of difficulty, reliability, cultural difference, and content equivalence of such form or program;

''(D) ensuring that such policies are consistent with the standards prepared by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and

''(E) developing a plan for providing training on the use of accommodations to school instructional staff, families, students, and other appropriate parties.

''(4) Developing universally designed assessments that can be accessible to all students, including—

''(A) examining test item or test performance for students with disabilities and students who are limited English proficient, to determine the extent to which the test item or test is universally designed;

''(B) using think aloud and cognitive laboratory procedures, as well as item statistics, to identify test items that may pose particular problems for students with disabilities or students who are limited English proficient;

''(C) developing and implementing a plan to ensure that developers and reviewers of test items are trained in the principles of universal design; and

''(D) developing computer-based applications of universal design principles.

''(c) APPLICATION.—Each State educational agency, or consortium of State educational agencies, desiring to apply for a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

''(1) information regarding the institutions of higher education, research institutions, or other organizations that are collaborating with the State educational agency or consortium, in accordance with subsection (a);

''(2) in the case of a consortium of State educational agencies, the designation of 1 State educational agency as the fiscal agent for the receipt of grant funds;

''(3) a description of the process and criteria by which the State educational agency will identify students that are unable to participate in general State content assessments and are eligible to take alternate assessments, consistent with the amendments made to part 200 of title 34, Code of Federal Regulations (68 Fed. Reg. 68698);

''(4) in the case of a State educational agency or consortium carrying out the activity described in subsection (b)(1)(A), a description of how the State educational agency plans to fulfill the requirement of subsection (b)(1)(A);

''(5) in the case of a State educational agency or consortium carrying out the activities described in paragraphs (1), (2), and (4) of subsection (b), information regarding the proposed techniques for the development of alternate assessments, including a description of the technical adequacy of, technical aspects of, and scoring for, such assessments;

''(6) a plan for providing training for school instructional staff, families, students, and other appropriate parties on the use of alternate assessments; and

''(7) information on how the scores of students participating in alternate assessments will be reported to the public and to parents.

''(d) EVALUATION AND REPORTING REQUIREMENTS.—Each State educational agency receiving a grant under this section shall submit an annual report to the Secretary describing the activities carried out under the grant and the result of such activities, including—

''(1) details on the effectiveness of the activities supported under this section in helping students with disabilities, or students who are limited English proficient, better participate in State assessment programs; and

''(2) information on the change in achievement, if any, of students with disabilities and students who are limited English proficient, as a result of a more accurate assessment of such students.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 2005, and such sums as may be necessary for each of the 2 succeeding fiscal years.''.

SEC. 303. REPORTS ON STUDENT ENROLLMENT AND GRADUATION RATES.

Part E of title I of the Elementary and Secondary Education Act of 1965 (as amended by section 302) (20 U.S.C. 6491 et seq.) is amended by adding at the end the following:

''SEC. 1506. REPORTS ON STUDENT ENROLLMENT AND GRADUATION RATES.

''(a) IN GENERAL.—The Secretary of Education shall collect from each State educational agency, local educational agency, and school, on an annual basis, the following data:

''(1) The number of students enrolled in each of grades 7 through 12 at the beginning of the most recent school year.

''(2) The number of students enrolled in each of grades 7 through 12 at the end of the most recent school year.

''(3) The graduation rate for the most recent school year.

''(4) The data described in paragraphs (1) through (3), disaggregated by the groups of students described in section 1111(b)(2)(C)(v)(II).

''(b) ANNUAL REPORT.—The Secretary shall report the information collected under subsection (a) on an annual basis.''.

TITLE IV—CIVIL RIGHTS

SEC. 401. CIVIL RIGHTS.

Section 9534 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7914) is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by inserting before subsection (b) (as redesignated by paragraph (1)) the following:

''(a) PROHIBITION OF DISCRIMINATION.—Discrimination on the basis of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, or disability in any program funded under this Act is prohibited.''.

TITLE V—TECHNICAL ASSISTANCE

SEC. 501. TECHNICAL ASSISTANCE.

Part F of title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7941) is amended—

(1) in the part heading, by inserting ''**AND TECHNICAL ASSISTANCE**'' after ''**EVALUATIONS**''; and

(2) by adding at the end the following:

''SEC. 9602. TECHNICAL ASSISTANCE.

''The Secretary shall ensure that the technical assistance provided by, and the research developed and disseminated through, the Institute of Education Sciences and other offices or agencies of the Department provide educators and parents with the needed information and support for identifying and using educational strategies, programs, and practices, including strategies, programs, and practices available through the clearinghouses supported under the Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) and other Federally-supported clearinghouses, that have been successful in improving educational opportunities and achievement for all students.''.

By Mr. ENZI (for himself, Mr. BAUCUS, Mr. ALEXANDER, Mrs. DOLE, and Mr. LIEBERMAN):

S. 2795. A bill to provide for higher education affordability, access, and opportunity; to the Committee on Health, Education, Labor, and Pensions.

Mr. ENZI. Mr. President, I rise today to introduce the Higher Education Affordability, Access and Opportunity Act of 2004 with my colleagues Senators BAUCUS, ALEXANDER, DOLE and LIEBERMAN.

We are introducing this bipartisan legislation because we are aware that the American workforce is in the midst

of its most significant changes since the 1940s. In the past year, this economy has created nearly 1.7 million new jobs, yet the complaint from employers continues to be that they cannot find skilled workers to fill the jobs that are being created. Our educational systems must recognize this changing reality and be ready to provide the support for a new group of students that represents a workforce revolution.

This skills gap promises to get worse unless Congress acts now to provide the assistance necessary to train a generation of workers that will fill the jobs of tomorrow. The Department of Labor has estimated that as many as 80 percent of the jobs being created over the next 10 years will require some postsecondary education. This will include many adult learners who will return to college for additional training. This also includes new students attending college for the first time later in life to obtain new skills or to improve their current skills.

Congress needs to ensure that we have a comprehensive system of workforce education and training established, one that includes the Workforce Investment Act, the Higher Education Act, and career and technical education, as well as elementary and secondary education. The needs of the new workforce will require a lifelong commitment to learning, where workers are able to return to school and reenter the workforce seamlessly.

Many workers in my home State are leaving to find better jobs elsewhere. To create the kind of good jobs with good futures that will keep people in Wyoming, we need workers with the skills that the new, global economy demands. Whether a company decides to open a plant in Casper or China, they depend on a qualified local workforce.

This legislation would help meet the needs of businesses today and into the future. It would help postsecondary institutions develop and implement curriculum related to high skilled or high-wage occupations. It would also provide support for institutions to increase their capacity to serve adult learners and students pursuing high-growth occupations.

This legislation would provide additional assistance for first-time college students who are attending school to receive advanced skill training or are looking to improve their skill set to enter high-wage or high-skilled occupations.

This legislation also provides support for small business owners, operators, and their employees to receive skill training at institutions of higher education so our small businesses can continue to lead the economic growth of our Nation.

This legislation also provides support for rural communities to recruit and retrain elementary and secondary education, so these areas can prepare their students for college and entry into the workforce with the skills they need to succeed, not only in postsecondary education, but in life.

This legislation also helps students better understand the cost of attending college by making the information collected by the Department of Education more accessible. Helping prospective students understand how to obtain aid and help pay for college is just as important as making sure students have access to the financial aid to support them through college.

I look forward to working with Chairman GREGG to advance these ideas to ensure that the American workforce is prepared with the skills necessary to successfully compete in the global economy.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2795

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Higher Education Affordability, Access, and Opportunity Act of 2004''.

SEC. 2. IMPROVEMENTS IN MARKET INFORMATION AND PUBLIC ACCOUNTABILITY.

(a) DATA DISSEMINATION.—Section 131(b) of the Higher Education Act of 1965 (20 U.S.C. 1015(b)) is amended to read as follows:

''(b) COMPARATIVE DATA.—

''(1) IN GENERAL.—Each year the Secretary shall make available to the public the information described in paragraph (2), disaggregated by institution of higher education, in a form that enables the public to compare the information among institutions.

''(2) INFORMATION.—The information referred to in paragraph (1) is the following:

''(A) Tuition and fees for a full-time undergraduate student.

''(B) Cost of attendance for a full-time undergraduate student.

''(C) The average annual cost of attendance for a full-time undergraduate student for the 10 preceding academic years, or if data are not available for the 10 preceding academic years, data for as many of the 10 preceding academic years as is available.

''(D) The percentage of full-time undergraduate students receiving financial assistance, including—

''(i) Federal grants;

''(ii) State and local grants;

''(iii) institutional grants; and

''(iv) loans to students.

''(E) The average percentage of credit hours accepted from students transferring to an institution of higher education from another institution of higher education, and the policy of the accepting institution of higher education for the transfer of credit.

''(F) The percentage of students who have completed an undergraduate program who are placed in unsubsidized employment not later than 12 months after the date of completion of the program.

''(G) A ranking of the dollar and percentage increases in tuition for all institutions of higher education for which data are available, disaggregated by quartile.

''(3) STANDARD DEFINITIONS.—In carrying out this section, the Secretary shall use the standard definitions developed under subsection (a)(3).''.

(b) STUDY AND ANNUAL REPORT.—Section 131(c) of the Higher Education Act of 1965 (20 U.S.C. 1015(c)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by inserting ''and costs'' after ''expenditures'';

(B) in subparagraph (F), by striking ''and'' after the semicolon;

(C) in subparagraph (G), by striking the period and inserting ''; and''; and

(D) by adding at the end the following:

''(H) the information and costs described in subparagraphs (D) through (G) of paragraph (2).'';

(2) in paragraph (2)—

(A) in subparagraph (B), by striking ''and'' after the semicolon;

(B) in subparagraph (C), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(D) national trends in the cost of attending an institution of higher education;

''(E) the mean cost of attending an institution of higher education, disaggregated by type of institution of higher education;

''(F) the mean annual cost of attending an institution of higher education for the 10 preceding academic years (if available), disaggregated by type of institution of higher education; and

''(G) the assistance provided to institutions of higher education by each State, which information the Secretary shall make available to the public.''; and

(3) in paragraph (3)—

(A) in the subsection heading, by striking ''FINAL'' and inserting ''ANNUAL'';

(B) by striking ''a report'' and inserting ''an annual report'';

(C) by inserting ''and the evaluation required by paragraph (2)'' after ''paragraph (1)''; and

(D) by striking ''not later than September 30, 2002''.

SEC. 3. TEACHER QUALITY ENHANCEMENT GRANTS.

(a) DEFINITION OF HIGH NEED LOCAL EDUCATIONAL AGENCY.—Section 201(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1021(b)(2)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''that serves an elementary school or secondary school located in an area in which there is'';

(2) in each of subparagraphs (A), (B), and (C), by inserting ''that serves an elementary school or secondary school located in an area in which there is'' before ''a high'';

(3) in subparagraph (B) (as so amended), by striking ''or'' after the semicolon;

(4) in subparagraph (C) (as so amended), by striking the period and inserting ''; or''; and

(5) by adding at the end the following:

''(D) with a total of less than 600 students in average daily attendance at the schools that are served by the local educational agency and all of those schools are designated with a school locale code of 7 or 8, as determined by the Secretary.''.

(b) DEFINITION OF ELIGIBLE PARTNERSHIPS.—Section 203(b)(1)(B) of the Higher Education Act of 1965 (20 U.S.C. 1023(b)(1)(B)) is amended by inserting ''educational service agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965),'' after ''State educational agency,''.

SEC. 4. GRANTS FOR JOB SKILL TRAINING.

Title III of the Higher Education Act of 1965 (20 U.S.C. 1051 et seq.) is amended—

(1) by redesignating part F as part G; and

(2) by inserting after part E the following:

''PART F—JOB SKILL TRAINING

''Subpart 1—Job Skill Training in High-Growth Occupations or Industries

''SEC. 371. JOB SKILL TRAINING IN HIGH-GROWTH OCCUPATIONS OR INDUSTRIES.

''(a) GRANTS AUTHORIZED.—The Secretary is authorized to award grants, on a competitive basis, to eligible partnerships to enable the eligible partnerships to provide relevant

job skill training in high-growth industries or occupations.

''(b) DEFINITIONS.—In this section:

''(1) ELIGIBLE PARTNERSHIP.—The term 'eligible partnership' means a partnership—

''(A) between an institution of higher education and a local board (as such term is defined in section 101 of the Workforce Investment Act of 1998); or

''(B) if an institution of higher education is located within a State that does not operate local boards, between the institution of higher education and a State board (as such term is defined in section 101 of the Workforce Investment Act of 1998).

''(2) NONTRADITIONAL STUDENT.—The term 'nontraditional student' means a student who—

''(A) is independent, as defined in section 480(d);

''(B) attends an institution of higher education—

''(i) on less than a full-time basis;

''(ii) via evening, weekend, modular, or compressed courses; or

''(iii) via distance learning methods; or

''(C) has delayed enrollment at an institution of higher education.

''(3) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an institution of higher education, as defined in section 101(b), that offers a 1- or 2-year program of study leading to a degree or certificate.

''(c) APPLICATION.—

''(1) IN GENERAL.—Each eligible partnership that desires a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such additional information as the Secretary may require.

''(2) CONTENTS.—Each application submitted under paragraph (1) shall include a description of—

''(A) how the eligible partnership, through the institution of higher education, will provide relevant job skill training for students to enter high-growth occupations or industries;

''(B) local high-growth occupations or industries; and

''(C) the need for qualified workers to meet the local demand of high-growth occupations or industries.

''(d) AWARD BASIS.—In awarding grants under this section, the Secretary shall—

''(1) ensure an equitable distribution of grant funds under this section among urban and rural areas of the United States; and

''(2) take into consideration the capability of the institution of higher education—

''(A) to offer relevant, high quality instruction and job skill training for students entering a high-growth occupation or industry;

''(B) to involve the local business community and to place graduates in the community in employment in high-growth occupations or industries;

''(C) to assist students in obtaining loans under section 428L, if appropriate, or other forms of student financial assistance;

''(D) to serve nontraditional or low-income students, or adult or displaced workers; and

''(E) to serve students from rural or remote communities.

''(e) USE OF FUNDS.—Grant funds provided under this section may be used—

''(1) to expand or create academic programs or programs of training that provide relevant job skill training for high-growth occupations or industries;

''(2) to purchase equipment which will facilitate the development of academic programs or programs of training that provide training for high-growth occupations or industries;

''(3) to support outreach efforts that enable students to attend institutions of higher education with academic programs or programs of training focused on high-growth occupations or industries;

''(4) to expand or create programs for distance, evening, weekend, modular, or compressed learning opportunities that provide relevant job skill training in high-growth occupations or industries;

''(5) to build partnerships with local businesses in high-growth occupations or industries; and

''(6) for other uses that the Secretary determines to be consistent with the intent of this section.

''(f) REQUIREMENTS.—

''(1) FISCAL AGENT.—For the purpose of this section, the institution of higher education in an eligible partnership shall serve as the fiscal agent and grant recipient for the eligible partnership.

''(2) DURATION.—The Secretary shall award grants under this section for a 1-year period.

''(3) AVAILABILITY OF GRANT FUNDS.—Grant funds awarded under this section shall be available for not more than 18 months unless, at the Secretary's discretion, the Secretary extends the availability of the grant funds.

''(4) SUPPLEMENT, NOT SUPPLANT.—Funds made available under this section shall be used to supplement and not supplant other Federal, State, and local funds available to the eligible partnership for carrying out the activities described in subsection (e).

"Subpart 2—Small Business Innovation Partnership Grants

"SEC. 375. SMALL BUSINESS INNOVATION PARTNERSHIP GRANTS.

''(a) GRANTS AUTHORIZED.—The Secretary is authorized to award grants to eligible partnerships to enable the eligible partnerships to provide training and relevant job skills to small business owners or operators for the purpose of facilitating small business development in the communities served by the eligible partnerships.

''(b) DEFINITION OF ELIGIBLE PARTNERSHIP.—In this section the term 'eligible partnership' means a partnership between or among an institution of higher education and 1 or more entities that the Secretary, in consultation with the Administrator of the Small Business Administration, identifies as facilitating small business development, which may include—

''(1) a community development financial institution;

''(2) a small business development center; or

''(3) a microenterprise lending institution.

''(c) AWARD BASIS.—The Secretary shall award grants under this section on the basis of—

''(1) the ability of an eligible partnership to facilitate small business development; and

''(2)(A) the ability of an eligible partnership to serve a rural community;

''(B) the ability of an eligible partnership to serve a low-income population; or

''(C) other criteria developed by the Secretary in consultation with the Administrator of the Small Business Administration.

''(d) LIMITATION.—Of the funds appropriated under section 378 for this part for a fiscal year, the Secretary is authorized to use not more than $15,000,000 of such funds to carry out this section.

"Subpart 3—Administrative Provisions

"SEC. 378. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this part $65,000,000 for fiscal year 2005 and such sums as may be necessary for each of the 4 succeeding fiscal years.''.

SEC. 5. LEAP APPLICATIONS.

Section 415C of the Higher Education Act of 1965 (20 U.S.C. 1070c–2) is amended—

(1) in subsection (a), by inserting after the first sentence the following: ''A State agency may submit an application under this section in partnership with a philanthropic organization within the State, a public or private degree granting institution of higher education within the State, or a combination of such organizations or institutions.''; and

(2) in subsection (b)(10), by inserting '', from philanthropic, institutional, or private funds, or from a combination of such sources'' before the period.

SEC. 6. WORKFORCE DEVELOPMENT LOAN PROGRAM.

Part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) is amended by inserting after section 428K (20 U.S.C. 1078–11) the following:

"SEC. 428L. HIGH-GROWTH OCCUPATION OR INDUSTRY WORKFORCE DEVELOPMENT STUDENT LOANS.

''(a) LOAN PROGRAM AUTHORIZED.—The Secretary shall carry out a loan program under which eligible students may receive a loan of not more than $2,000 for each of the first 2 years of the eligible students' undergraduate program of study in the same manner as the eligible students receive loans under this part and part D.

''(b) DEFINITIONS.—

''(1) ELIGIBLE INSTITUTION OF HIGHER EDUCATION.—The term 'eligible institution of higher education' means an institution of higher education that offers undergraduate academic programs or undergraduate programs of training in a subject identified under subsection (d)(1) by the State board of the State where the institution of higher education is located.

''(2) ELIGIBLE STUDENT.—The term 'eligible student' means an undergraduate student who—

''(A) is otherwise eligible for a loan under this part or part D;

''(B) enters into an agreement with the eligible institution of higher education where the student is or will be in attendance, under which the student agrees to pursue an undergraduate academic program or undergraduate program of training that trains the student for employment in a high-growth occupation or industry identified under subsection (d)(1);

''(C) is age 18 or older; and

''(D) has an expected family contribution (calculated under part F) equal to or less than zero.

''(3) STATE BOARD; LOCAL BOARD.—The terms 'State board' and 'local board' have the meanings given such terms in section 101 of the Workforce Investment Act of 1998.

''(c) LIMITS ON LOAN AMOUNTS.—

''(1) ANNUAL LOAN LIMITS.—The total aggregate amount of loans made to an eligible student under this part (including this section) and part D for each of the first and second years of the eligible student's program of study at an eligible institution of higher education, or their equivalent (as determined by the Secretary), that may be covered by Federal loan insurance may not exceed $4,625 for each such year, notwithstanding sections 425 and 428.

''(2) AGGREGATE LIMITS.—The Secretary shall include the amount of any loans received by an eligible student under this section in calculating the eligible student's aggregate loan limits under sections 425(a)(2) and 428(b)(1)(B).

''(3) AVAILABILITY OF OTHER FUNDS.—An eligible student who receives the maximum loan amount allowed under this section remains eligible for any other program for which the eligible student qualifies under this Act.

''(d) IDENTIFICATION OF HIGH-GROWTH OCCUPATIONS OR INDUSTRIES.—

''(1) IN GENERAL.—The State board, in consultation with the local boards and the State entity or agency responsible for licensing institutions of higher education, shall identify high growth occupations or industries in accordance with paragraph (2).

''(2) TIMING.—The State board shall review and update the identification required under paragraph (1) each time the State board is required to submit or resubmit a State plan under section 112 of the Workforce Investment Act of 1998.

''(3) SPECIAL RULE.—A student who has completed 1 year of a 2-year undergraduate academic program or undergraduate program of training in a subject which was previously identified as preparation for a high-growth occupation or industry but, after the review under paragraph (2), is no longer so identified, shall be eligible to receive a loan under this section for the student's second year of such program of study if the student—

''(A) qualified as an eligible student, as defined in subsection (b)(2), and received a loan under this section, for the first year of such program of study; and

''(B) meets the qualifications of subparagraphs (A), (C), and (D) of subsection (b)(2).

''(e) FUNDS FOR ADMINISTRATION.—

''(1) IN GENERAL.—From funds appropriated under subsection (f), the Secretary shall make available to each eligible institution of higher education serving an eligible student with a loan made under this section not more than the amount determined under paragraph (2).

''(2) AMOUNT.—The amount referred to in paragraph (1) for each eligible institution of higher education serving an eligible student with a loan made under this section is 2 percent of the total amount of all loans made under this section to eligible students at the eligible institution of higher education, or $100,000, whichever is less.

''(3) USES.—The funds made available under paragraph (1) may be used for the following purposes:

''(A) OFFICE.—To create an office of business and workforce partnerships at the eligible institution of higher education to provide staff support for building relationships between the eligible institution of higher education and local businesses.

''(B) ANNUAL REPORT.—To provide an annual report to the Secretary regarding the number of eligible students receiving loans made under this section who—

''(i) remain in their academic program or program of training;

''(ii) graduate from their academic program or program of training;

''(iii) transfer to another institution of higher education; or

''(iv) are placed in unsubsidized employment not later than 12 months after graduation.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2005 and each of the 4 succeeding fiscal years.''.

SEC. 7. REQUIREMENT RELATING TO CREDIT TRANSFER.

(a) PROGRAM PARTICIPATION AGREEMENTS.—Section 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)) is amended by adding at the end the following:

''(24) The institution will not exclude the transfer of credits earned by a student completing courses or programs at other eligible institutions of higher education solely on the basis of the agency or association that accredited such other eligible institution if that agency or association is recognized by the Secretary pursuant to section 496 to be a reliable authority as to the quality of the education or training offered and is currently listed by the Secretary pursuant to section 101(c).''.

(b) ACCREDITING AGENCY AND ASSOCIATION REQUIREMENTS.—Section 496(a) (20 U.S.C. 1099b(a)) is amended—

(1) by striking ''and'' at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting ''; and''; and

(3) by adding at the end the following:

''(9) such agency or association not adopt or apply standards, policies, or practices that restrict or deny the transfer of credits earned by a student completing courses or programs at other eligible institutions of higher education solely on the basis of the agency or association that accredited such other eligible institution if that agency or association is recognized by the Secretary pursuant to this section to be a reliable authority as to the quality of the education or training offered and is currently listed by the Secretary pursuant to section 101(c).''.

(c) ACCREDITING AGENCY STANDARDS.—Section 496(a)(5) of the Higher Education Act of 1965 (20 U.S.C. 1099b(a)(5)) is amended—

(1) by striking ''and'' at the end of subparagraph (I);

(2) by inserting ''and'' after the semicolon at the end of subparagraph (J); and

(3) by inserting after subparagraph (J) the following new subparagraph:

''(K) policies for the transfer of credit and the notification of the public of such policies;''.

Mr. ALEXANDER. Mr. President, it is my pleasure to co-sponsor, the Higher Education Access, Affordability and Opportunity Act being introduced today by Senator ENZI. This legislation is an issue of great concern to Senators and our constituents: job loss. There is really nothing new about job loss in America. Our strength as an economy is not measured by how many jobs we lose; it is measured by how many good new jobs we create to replace those jobs and how well we train those people to fill those jobs. We don't want to lose any jobs. We want to recognize the pain that goes with moving from one job to another. But, the best thing we can do about job loss is to create an environment in which good new jobs can grow and to offer the training resources necessary to hold those jobs.

Senator ENZI believes, as do I, that a comprehensive approach to creating jobs and training workers is necessary to adapt to the changing demands of the modern economy. The Higher Education Act was enacted to give more students a change to attend college. It was not intended to be a job training bill, nor should it become one. There is, however, a need to create a stronger partnership between institutions of higher education and the 21st century workforce. The goal of access to higher education and the goal of training a highly skilled workforce are not mutually exclusive.

Community colleges are our secret weapons in workforce development. This bill used our secret weapon to create a competitive grant program to help community colleges develop academic programs focusing on areas of high-growth employment. Among other things, it provides additional subsidized loans for high-growth job sector training programs such as technology and health care.

In higher education we focus really on two principles: The first is autonomy and the second is choice. We allow generous amounts of government money to follow students to the schools of their choice. These principles provide students with flexibility to choose among fast moving institutions, and facilitate contracts with businesses. These competitive grants and additional subsidized loans will give local governments both the resources necessary and autonomy to work with their local community colleges to develop programs that will train workers for the jobs that are available within their communities.

I will continue to work with Senator ENZI on these important legislative initiatives and make them a part of the reauthorization of the Higher Education Act.

By Mr. CRAIG (for himself and Mr. DURBIN):

S. 2796. A bill to clarify that service marks, collective marks, and certification marks are entitled to the same protections, rights, and privileges of trademarks; to the Committee on the Judiciary.

Mr. CRAIG. Mr. President, today Senator DURBIN and I are introducing legislation strengthening current law concerning certification marks, collective marks, and service marks.

While some of our colleagues may not recognize these terms, I doubt there is any Senator who has not come into contact with one of these marks. For example, if you bought the best baking potatoes in the world, you are familiar with the ''Grown in Idaho®'' or ''Idaho Potatoes®'' certification mark. Perhaps you know the certification mark ''UL,'' which stands for Underwriters Laboratory and signifies that an electrical product meets certain safety standards. If you watch network television and have seen the CBS ''eye,'' you have seen a service mark. The union labels on many products are collective marks.

To explain the differences among these marks: service marks are words, names, symbols, or characters that distinguish the mark holder's services, while trademarks distinguish the mark holder's goods. Collective marks are trademarks that are used by organization or association to identify goods or services produced by members of a group. The certification mark is a trade or service mark used to certify characteristics about a product or service; it may indicate that the product or service originates in a specific geographic region, or meets certain standards of quality or mode of manufacture, or the work that went into it was performed by members of an organization.

While they are somewhat different, these marks all serve the same purpose—that is, they enable the public to distinguish among products and services and prevent consumers from being deceived by similar brands. Congress

determined that marks would serve the public interest by enhancing product quality and safety, and provided legal protection to these marks under the Lanham Act. The federal law protects all four kinds of marks equally; specifically, 15 U.S.C. §1503 and 15 U.S.C. §1504 provide that service marks, collective marks, and certification marks ''shall be entitled to the protection provided'' to trademarks, except where Congress provides otherwise by statute.

The principle of equal treatment also applies to ''no challenge'' provisions in license agreements for the use of a trademark, service mark, collective mark, or certification mark. It is common for such agreements to include provisions under which licensees acknowledge the validity of and agree not to challenge the marks. By protecting the validity of the marks, these provisions reduce potential litigation costs for mark owners and protect the investment made by licensees. A long line of cases has upheld ''no challenge'' provisions in trademark licenses and dismissed validity challenges.

Unfortunately, the clarity of the Lanham Act on these points has been confused by a recent decision of the Second Circuit Court of Appeals in the case of Idaho Potato Commission v. M&M Produce Farm and Sales. That decision interpreted the Lanham Act as requiring that certification marks should be treated differently from trademarks with respect to ''no challenge'' provisions. The court mistakenly likened the public policy considerations surrounding certification marks to those surrounding patents.

This decision has raised great consternation among the holders of certification marks and their licenses throughout the United States—more than two dozen of whom joined in an amicus brief challenging the court's reasoning. Congress should be equally concerned, because this decision has the potential to undermine the Lanham Act and the certification mark system itself.

The legislation we are introducing today would not change current law, but would only underscore the policy that Congress clearly intended in the first place. We propose to add the words ''rights an privileges'' to the two sections of the law that I quoted above, which would clarify that registered service marks, collective marks, and certification marks are ''entitled to the protections, rights, and privileges'' provided to trademarks. While I have learned never to call legislation ''simple,'' I would stress that at least our intention is simple: to reinstate the original intent of Congress and indicate our support of the view that these marks are to be given equal legal treatment.

I invite all my colleagues to review this legislation and consider the important public policy interests it would protect. It is not only the mark holders and licensees in your State, but all consumers across the nation who have a stake in this bill, and I hope the Senate will act swiftly to approve it.

I ask unanimous consent the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2796

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROTECTIONS, RIGHTS, AND PRIVILEGES OF SERVICE MARKS, COLLECTIVE MARKS, AND CERTIFICATION MARKS.

The Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (commonly referred to as the Trademark Act of 1946) is amended—

(1) in section 3 (15 U.S.C. 1053) in the first sentence, by striking ''protection'' and inserting ''protections, rights, and privileges''; and

(2) in section 4 (15 U.S.C. 1054) in the first sentence, by striking ''protection'' and inserting ''protections, rights, and privileges''.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 136—HONORING AND MEMORIALIZING THE PASSENGERS AND CREW OF UNITED AIRLINES FLIGHT 93

Mr. CONRAD (for himself and Mr. JEFFORDS) submitted the following concurrent resolution; which was referred to the Committee on Rules and Administration:

S. CON. RES. 136

Whereas on September 11, 2001, acts of war involving the hijacking of commercial airplanes were committed against the United States, killing and injuring thousands of innocent people;

Whereas 1 of the hijacked planes, United Airlines Flight 93, crashed in a field in Pennsylvania;

Whereas while Flight 93 was still in the air, the passengers and crew, through cellular phone conversations with loved ones on the ground, learned that other hijacked airplanes had been used to attack the United States;

Whereas during those phone conversations, several of the passengers indicated that there was an agreement among the passengers and crew to try to overpower the hijackers who had taken over Flight 93;

Whereas Congress established the National Commission on Terrorist Attacks Upon the United States (commonly referred to as ''the 9–11 Commission'') to study the September 11, 2001, attacks and how they occurred;

Whereas the 9–11 Commission concluded that ''the nation owes a debt to the passengers of Flight 93. Their actions saved the lives of countless others, and may have saved either the U.S. Capitol or the White House from destruction.''; and

Whereas the crash of Flight 93 resulted in the death of everyone on board: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) the United States owes the passengers and crew of United Airlines Flight 93 deep respect and gratitude for their decisive actions and efforts of bravery;

(2) the United States extends its condolences to the families and friends of the passengers and crew of Flight 93;

(3) not later than January 1, 2006, the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall determine a location in the United States Capitol Building (including the Capitol Visitor Center) that shall be named in honor of the passengers and crew of Flight 93, who saved the United States Capitol Building from destruction; and

(4) a memorial plaque shall be placed at the site of the determined location that states the purpose of the honor and the names of the passengers and crew of Flight 93 on whom the honor is bestowed.

Mr. CONRAD. Mr. President, I rise today to submit a concurrent resolution to honor the memory of the passengers on flight 93. This past weekend marked the third anniversary of the vicious and merciless attacks that took place on American soil on September 11, 2001.

As we reflect on those events and mourn the great loss we suffered, we remember the innocent who perished and we are reminded of the valiant efforts of those who saved lives, including the passengers and crew of flight 93. Those brave people gave up their lives in order to save others that fateful day.

In the last several months, the 9/11 Commission released its report about the series of events that took place on September 11, 2001. The Senate has subsequently undertaken an evaluation of the Commission's findings through a series of hearings. As the story continues to unfold, it becomes more clear how important the actions of the passengers and crew of flight 93 were. We now know that flight 93 was almost certainly headed to the U.S. Capitol or the White House. We also know the passengers of flight 93 learned through a series of phone calls to loved ones that hijackers on three other flights had turned airplanes into flying bombs that morning, crashing them into the World Trade Center and the Pentagon.

Armed only with that knowledge and their own courage and resolve, those brave passengers attacked the hijackers and forced them to crash flight 93 into rural Pennsylvania far short of its intended target.

The 9/11 Commission concluded that the Nation owes a debt to the passengers of flight 93. Their actions saved the lives of countless others and may have saved either the U.S. Capitol or the White House from destruction.

Those of us who work here in the Capitol owe a special debt of gratitude to those heroes. Their actions saved one of the greatest symbols of our democracy. Had flight 93 reached its intended target, the dreadful day might have been even worse.

Today I am submitting a resolution honoring and memorializing the passengers and crew of United Airline flight 93. This legislation expresses our deepest respect and gratitude to them, as well as condolences to their families