[118th Congress Public Law 82]
[From the U.S. Government Publishing Office]

Public Law 118-82
118th Congress

An Act

Making supplemental appropriations for the fiscal year ending September 30, 2024, and for other purposes. <<NOTE: Sept. 20, 2024 - [H.R. 9468]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Veterans Benefits Continuity and Accountability Supplemental Appropriations Act, 2024.>> That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2024, and for other purposes, namely:

DEPARTMENT OF VETERANS AFFAIRS

Veterans Benefits Administration

compensation and pensions

For an additional amount for ``Compensation and Pensions'', $2,285,513,000, to remain available until expended.

Veterans Benefits Administration

readjustment benefits

For an additional amount for ``Readjustment Benefits'', $596,969,000, to remain available until expended.

GENERAL PROVISIONS--THIS ACT

Sec. 101. Each amount appropriated or made available by this Act is in addition to amounts otherwise appropriated for the fiscal year involved.

Sec. 102. Unless otherwise provided for by this Act, the additional amounts appropriated by this Act to appropriations accounts shall be available under the authorities and conditions applicable to such appropriations accounts for fiscal year 2024.

Sec. 103. (a) <<NOTE: Reports.>> Budget Formulation and Forecasting.--Not later than 30 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Appropriations and the Committees on Veterans Affairs of the House of Representatives and the Senate a report detailing corrections the Department will make to improve forecasting, data quality and budget assumptions relating to budget submissions for funds provided under the headings ``Compensations and Pensions'' and ``Readjustment Benefits''.

(b) Reporting Requirement.--Not later than 60 days after the enactment of this Act, the Secretary of Veterans Affairs shall

[[Page 138 STAT. 1522]]

submit to the Committees on Appropriations and the Committees on Veterans Affairs of the House of Representatives and the Senate a report on status of funds made available under the headings ``Compensations and Pensions'' and ``Readjustment Benefits'' for fiscal years 2024, 2025, and 2026 in this or any other Act: Provided, That <<NOTE: Time period.>> such report shall be updated and submitted to such Committees every 90 days thereafter until September 30, 2026, and shall include information detailing any changes to estimates or assumptions on obligations and expenditures, including data supporting these changes.

Sec. 104. (a) <<NOTE: Review.>> The Inspector General of the Department of Veterans Affairs shall conduct a review of the circumstances surrounding and the underlying causes of the announced funding shortfall for the Veterans Benefits Administration for fiscal year 2024 described in the letter to Congress from the Secretary of Veterans Affairs on July 19, 2024, and the announced funding shortfall for the Veterans Health Administration in fiscal year 2025 described in the letter to Congress from the Secretary of Veterans Affairs on July 31, 2024.

(b) <<NOTE: Analysis.>> Relating to the shortfall in the funding of the Veterans Benefits Administration in fiscal year 2024 and the

expected shortfall in the funding of the Veterans Health Administration in fiscal year 2025, the review shall include, but not be limited to: a comparison of monthly obligations and expenditures in relevant accounts against the spend plan of the Department; the reasons for any significant diversions of obligations or expenditures from the spend plan; an analysis of the accuracy of projections and estimates relevant to such diversions; and any other matter determined relevant by the Inspector General.

(c) Relating to the expected shortfall in the funding of the Veterans Health Administration in fiscal year 2025, the review also shall include: any changes, abnormalities, or significant events as determined significant by the Inspector General of the Department of Veterans Affairs in the transfer, reallocation, or other movement of funding between or within the Central Office, a Veterans Integrated Service Network, a facility, a program or office, a special purpose fund, the Veterans Equitable Resource Allocation process, or the Medical Center Allocation System.

(d) Actions the Department of Veterans Affairs can take to improve the accuracy of supporting information submitted under section 1105(a) of title 31, United States Code, with respect to the Department of Veterans Affairs and to prevent funding shortfalls for the Department.

(e) <<NOTE: Reports.>> Not later than 180 days after the date of enactment of this Act, the Inspector General of the Department of Veterans Affairs shall submit to the Committees on Appropriations and the Committees on Veterans Affairs of the House of Representatives and the Senate a report detailing the conduct and findings of the review.

[[Page 138 STAT. 1523]]

This Act may be cited as the ``Veterans Benefits Continuity and Accountability Supplemental Appropriations Act, 2024''.

Approved September 20, 2024.

LEGISLATIVE HISTORY--H.R. 9468:

CONGRESSIONAL RECORD, Vol. 170 (2024):
Sept. 17, considered and passed House.
Sept. 19, considered and passed Senate.

<all>

[Congressional Bills 115th Congress]
[From the U.S. Government Publishing Office]
[S. 2868 Introduced in Senate (IS)]

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115th CONGRESS
2d Session

S. 2868

To enhance the Bulletproof Vest Partnership Program to assist law enforcement agencies in protecting law enforcement officers.

IN THE SENATE OF THE UNITED STATES

May 16, 2018

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

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A BILL

To enhance the Bulletproof Vest Partnership Program to assist law enforcement agencies in protecting law enforcement officers.

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 ``Law Enforcement Protection Act''.

SEC. 2. IMPROVEMENTS TO THE BULLETPROOF VEST PARTNERSHIP PROGRAM.

(a) Uses of Funds.--Section 2501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10531(b)) is amended--

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the margins accordingly;

(2) in the matter preceding subparagraph (A), as so redesignated, by striking ``Grants awarded under this section'' and inserting the following:

``(1) In general.--Except as provided in paragraph (2), grants awarded under this part'';

(3) in paragraph (1)(B), as so redesignated, by inserting ``subject to paragraph (2),'' before ``used for''; and

(4) by adding at the end the following:

``(2) Type iii body armor grants.--A type III body armor grant shall be--

``(A) distributed in accordance with paragraph (1)(A); and

``(B) used for the purchase of body armor that meets the standards for type III body armor, as determined by the National Institute of Justice, in an amount that is proportionate to the number of sworn law enforcement officers employed by the grantee on the date of the application submitted by the grantee under section 2502.''.

(b) Minimum Amount.--Section 2501(d) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10531(d)) is amended by striking ``Unless'' and inserting ``With respect to grants awarded under this part that are not type III body armor grants, unless''.

(c) Maximum Amount.--Section 2501(e) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10531(e)) is amended by striking ``A qualifying'' and inserting ``With respect to grants awarded under this part that are not type III body armor grants, a qualifying''.

(d) Matching Funds.--Section 2501(f) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10531(f)) is amended--

(1) in paragraph (1), in the matter preceding subparagraph (A), by striking ``The portion'' and inserting ``Except as

otherwise provided in this subsection, the portion''; and

(2) by adding at the end the following:

``(5) Type iii body armor grants.--A type III body armor grant shall not be subject to the matching requirement under paragraph (1).''.

(e) Expiration of Appropriated Funds.--Section 2501(h) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10531(h)) is amended--

(1) by striking paragraph (1) and inserting the following:

``(1) Definition.--In this subsection, the term `appropriated funds'--

``(A) means any amount appropriated for any of fiscal years 2016 through 2023; and

``(B) does not include any amount appropriated to the Bulletproof Vest Partnership Program Type III Body Armor Fund.'';

(2) in paragraph (2)--

(A) by striking ``2022'' and inserting ``2025''; and

(B) by striking ``2023'' and inserting ``2026''; and

(3) by adding at the end the following:

``(3) Funds appropriated to the bulletproof vest partnership program type iii body armor fund.--All funds that are appropriated to the Bulletproof Vest Partnership Program Type III Body Armor Fund shall remain available until expended.''.

(f) Bulletproof Vest Partnership Program Type III Body Armor Fund.--Section 2501 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10531) is amended by adding at the end the following:

``(i) Bulletproof Vest Partnership Program Type III Body Armor Fund.--

``(1) Establishment.--There is established in the Treasury a fund to be known as the `Bulletproof Vest Partnership Program Type III Body Armor Fund'.

``(2) Use of funds.--The Attorney General may, without further appropriation, use amounts in the Bulletproof Vest Partnership Program Type III Body Armor Fund to award type III body armor grants under this part.''.

(g) Definitions.--Section 2503 of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10533) is amended--

(1) in paragraph (4), by striking the semicolon and

inserting a period;

(2) in paragraph (5), by striking ``and'' at the end;

(3) in paragraph (6), by striking the period and inserting a semicolon;

(4) by redesignating paragraph (4) as paragraph (9) and moving paragraph (9), as so redesignated, to follow paragraph (6);

(5) by inserting after paragraph (6) the following:

``(7) the term `sworn law enforcement officer' means a law enforcement officer who is formally authorized to make arrests while acting within the scope of explicit legal authority;

``(8) the term `type III body armor grant' means a grant that is--

``(A) awarded under this part using funds from the Bulletproof Vest Partnership Program Type III Body Armor Fund; and

``(B) to be used in accordance with section 2501(b)(2); and'';

(6) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively;

(7) by redesignating paragraph (3) as paragraph (6) and moving paragraph (6), as so redesignated, to follow paragraph (5), as so redesignated; and

(8) by inserting after paragraph (2) the following:

``(3) the term `Bulletproof Vest Partnership Program Type III Body Armor Fund' means the fund established under section 2501(i);''.

(h) Authorization of Appropriations.--Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10261(a)) is amended--

(1) in paragraph (23), by striking ``$25,000,000 for each of fiscal years 2016 through 2020'' and inserting ``$50,000,000 for each of fiscal years 2019 through 2023, of which $3,000,000 shall be made available each fiscal year to the National Institute of Standards and Technology for research and development of body armor, as defined in section 2503 of that part.''; and

(2) by adding at the end the following:

``(28) There is authorized to be appropriated to the Bulletproof Vest Partnership Program Type III Body Armor Fund established under section 2501(i) of part Y $1,100,000,000.''.

<all>

[Congressional Bills 103th Congress]
[From the U.S. Government Publishing Office]
[H.R. 1078 Introduced in House (IH)]

103d CONGRESS
1st Session

H. R. 1078

To improve immigration law enforcement.

IN THE HOUSE OF REPRESENTATIVES

February 24, 1993

Mr. Gallegly (for himself, Mr. Sensenbrenner, Mr. Hyde, Mr. Hunter, Mr. Oxley, Mr. Stump, Mr. Baker of Louisiana, Mr. Doolittle, Mr. Rohrabacher, Mr. Moorhead, Mr. Dreier, Mr. McKeon, Mr. Stearns, Mr. Archer, Mr. Cunningham, Mr. Lewis of California, Mr. McCandless, Mr. Dornan, Mr. Weldon, Mr. Royce, Mr. Barton of Texas, Mr. Packard, Mr. Gordon, Mr. Smith of Texas, Mr. Hefley, Mr. McCollum, Mr. Hancock, Mr. Herger, Mr. Calvert, Mr. Horn, Mr. Kyl, Mr. Pombo, and Mr. Cox) introduced the following bill; which was referred jointly to the Committees on the Judiciary, Education and Labor, and Foreign Affairs

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A BILL

To improve immigration law enforcement.

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 ``Improved Immigration Law Enforcement Act of 1993''.

SEC. 2. INCREASED PERSONNEL LEVELS OF THE BORDER PATROL.

The number of full-time positions in the Border Patrol of the Department of Justice for fiscal year 1994 shall be increased to 6,600.

SEC. 3. INCREASED FUNDING FOR THE BORDER PATROL.

In addition to funds otherwise available for such purposes, there are authorized to be appropriated to the Attorney General $50,000,000 for the fiscal year 1993, which amount shall be available only for equipment, support services, and initial training for the Border Patrol. Funds appropriated pursuant to this section are authorized to remain available until expended.

SEC. 4. INSERVICE TRAINING FOR THE BORDER PATROL.

(a) Requirement.--Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end the following new subsection:

``(e)(1) The Attorney General shall continue to provide for such programs of inservice training for full-time and part-time personnel of the Border Patrol in contact with the public as will familiarize the personnel with the rights and varied cultural backgrounds of aliens and citizens in order to ensure and safeguard the constitutional and civil rights, personal safety, and human dignity of all individuals, aliens as well as citizens, within the jurisdiction of the United States with whom they have contact in their work.

``(2) The Attorney General shall provide that the annual report of the Service include a description of steps taken to carry out paragraph (1).''.

(b) Authorization of Appropriations.--There are authorized to be appropriated to the Attorney General $1,000,000 for fiscal year 1994 to carry out the inservice training described in section 103(e) of the Immigration and Nationality Act. The funds appropriated pursuant to this subsection are authorized to remain available until expended.

SEC. 5. INCREASE IN I.N.S. SUPPORT PERSONNEL.

In order to provide support for the increased personnel levels of the border patrol authorized in section 2, the number of full-time support positions for investigation, detention and deportation, intelligence, information and records, legal proceedings, and

management and administration in the Immigration and Naturalization Service shall be increased by 580 positions above the number of equivalent positions as of September 30, 1992.

SEC. 6. STRENGTHENED ENFORCEMENT OF WAGE AND HOUR LAWS.

(a) In General.--The number of full-time positions in the Wage and Hour Division with the Employment Standards Administration of the Department of Labor for the fiscal year 1994 shall be increased by 250 positions above the number of equivalent positions available to the Wage and Hour Division as of September 30, 1992.

(b) Assignment.--Individuals employed to fill the additional positions described in subsection (a) shall be assigned to investigate violations of wage and hour laws in areas where the Attorney General has notified the Secretary of Labor that there are high concentrations of undocumented aliens.

SEC. 7. STRENGTHENED ENFORCEMENT OF THE EMPLOYER SANCTIONS PROVISIONS.

(a) In General.--The number of full-time positions in the Investigations Division within the Immigration and Naturalization Service of the Department of Justice for the fiscal year 1994 shall be increased by 250 positions above the number of equivalent positions available to such Division as of September 30, 1992.

(b) Assignment.--Individuals employed to fill the additional positions described in subsection (a) shall be assigned to investigate violations of the employer sanctions provisions contained in section 274A of the Immigration and Nationality Act, including investigating reports of violations received from officers of the Employment Standards Administration of the Department of Labor.

SEC. 8. INCREASED NUMBER OF ASSISTANT UNITED STATES ATTORNEYS.

(a) In General.--The number of Assistant United States Attorneys that may be employed by the Department of Justice for the fiscal year 1994 shall be increased by 21 above the number of Assistant United States Attorneys that could be employed as of September 30, 1992.

(b) Assignment.--Individuals employed to fill the additional positions described in subsection (a) shall be specially trained to be used for the prosecution of persons who bring into the United States or harbor illegal aliens, fraud, and other criminal statutes involving illegal aliens.

SEC. 9. ENHANCED PENALTIES FOR CERTAIN ALIEN SMUGGLING.

Subsection 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended--

(1) in paragraph (1), by striking ``five years'' and inserting ``10 years (or 20 years in the case of an offense described in paragraph (3))'', and

(2) by adding at the end the following new paragraph:

``(3) For purposes of paragraph (1), an offense described in this paragraph if--

``(A) the offense involves 5 or more aliens;

``(B) the offense involves other criminal activity;

``(C) one or more of the aliens referred to in paragraph (1) were under the age of 18 at the time of the offense and the offense was committed either for the purpose of illegal adoption or for the purpose of sexual or commercial exploitation; or

``(D) the offense involves the dangerous, inhumane treatment, or death of, or serious bodily injury to, an alien referred to in paragraph (1).''.

SEC. 10. CHANGES IN CRIMINAL PENALTIES FOR BRINGING IN ALIENS.

Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) is amended--

(1) in subsection (a)(2), by inserting before the period at the end thereof the following: ``, except that a person who commits an offense under subparagraph (B)(ii) shall be fined in accordance with that title, or imprisoned not more than 10 years, or both'', and

(2) by adding at the end thereof the following new subsection:

``(d) For purposes of this section, the mere employment of an individual (including the usual and normal practices incident to employment) by itself shall not be deemed to constitute harboring.''.

SEC. 11. NEGOTIATIONS WITH MEXICO AND CANADA.

It is the sense of the Congress that--

(1) the Attorney General, jointly with the Secretary of State, should initiate discussions with Mexico and Canada to establish formal bilateral programs with those countries to prevent and to prosecute the smuggling of undocumented aliens

into the United States;

(2) not later than one year after the date of enactment of this Act, the Attorney General shall report to the Congress the progress made in establishing such programs; and

(3) in any such program established under this Act, major emphasis should be placed on deterring and prosecuting persons involved in the organized and continued smuggling of undocumented aliens.

<all>

[Congressional Bills 112th Congress]
[From the U.S. Government Publishing Office]
[S. 1267 Introduced in Senate (IS)]

112th CONGRESS
1st Session

S. 1267

To strengthen United States trade laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 23, 2011

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

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A BILL

To strengthen United States trade laws, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.--This Act may be cited as the ``Strengthening America's Trade Laws Act''.

(b) Table of Contents.--The table of contents for this Act is as follows:

Subtitle E--Regulatory Authority

Sec. 541. Regulatory authority.

TITLE VI--MISCELLANEOUS

Sec. 601. Application to Canada and Mexico.

TITLE I--DISPUTE SETTLEMENT

Subtitle A--Findings, Purpose, and Definitions

SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) Findings.--The Congress finds the following:

(1) The United States joined the World Trade Organization as an original member with the goal of creating an improved global trading system and providing expanded economic opportunities for United States workers, farmers, and businesses.

(2) The dispute settlement rules of the WTO were created to enhance the likelihood that governments will observe their WTO obligations.

(3) Successful operation of the WTO dispute settlement system was critical to congressional approval of the Uruguay Round Agreements and is critical to continued support by the United States for the WTO. In particular, it is imperative that dispute settlement panels and the Appellate Body--

(A) operate with fairness and in an impartial manner;

(B) strictly observe the terms of reference and any applicable standard of review set forth in the Uruguay Round Agreements; and

(C) not add to the obligations, or diminish the rights, of WTO members under the Uruguay Round Agreements in violation of Articles 3.2 and 19.2 of the Dispute Settlement Understanding.

(4) An increasing number of reports by dispute settlement panels and the Appellate Body have raised serious concerns within the Congress about the ability of the WTO dispute settlement system to operate in accordance with paragraph (3).

(5) In particular, several reports of dispute settlement panels and the Appellate Body have added to the obligations and diminished the rights of WTO members, particularly under the

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards.

(6) In order to come into compliance with reports of dispute settlement panels and the Appellate Body that have been adopted by the Dispute Settlement Body, the Congress may need to amend or repeal statutes of the United States. In such cases, the Congress must have a high degree of confidence that the reports are in accordance with paragraph (3).

(7) The Congress needs impartial, objective, and juridical advice to determine the appropriate response to reports of dispute settlement panels and the Appellate Body.

(8) The United States remains committed to the multilateral, rules-based trading system.

(b) Purpose.--It is the purpose of this subtitle to provide for the establishment of the Congressional Advisory Commission on WTO Dispute Settlement to provide objective and impartial advice to the Congress on the operation of the dispute settlement system of the World Trade Organization.

SEC. 102. DEFINITIONS.

In this title:

(1) Adverse finding.--The term ``adverse finding'' means--

(A) in a proceeding of a dispute settlement panel or the Appellate Body that is initiated against the United States, a finding by the panel or the Appellate Body that any law, regulation, practice, or interpretation of the United States, or any State, is inconsistent with the obligations of the United States under a Uruguay Round Agreement (or nullifies or impairs benefits accruing to a WTO member under such an Agreement); or

(B) in a proceeding of a panel or the Appellate Body in which the United States is a complaining party, any finding by the panel or the Appellate Body that a measure of the party complained against is not inconsistent with that party's obligations under a Uruguay Round Agreement (or does not nullify or impair benefits accruing to the United States under such an Agreement).

(2) Appellate body.--The term ``Appellate Body'' means the Appellate Body established by the Dispute Settlement Body

pursuant to Article 17.1 of the Dispute Settlement Understanding.

(3) Appropriate congressional committees.--The term ``appropriate congressional committees'' means the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(4) Dispute settlement body.--The term ``Dispute Settlement Body'' means the Dispute Settlement Body established pursuant to the Dispute Settlement Understanding.

(5) Dispute settlement panel; panel.--The terms ``dispute settlement panel'' and ``panel'' mean a panel established pursuant to Article 6 of the Dispute Settlement Understanding.

(6) Dispute settlement understanding.--The term ``Dispute Settlement Understanding'' means the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 101(d)(16) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(16)).

(7) Terms of reference.--The term ``terms of reference'' has the meaning given that term in the Dispute Settlement Understanding.

(8) Trade representative.--The term ``Trade Representative'' means the United States Trade Representative.

(9) United states person.--The term ``United States person'' means--

(A) a United States citizen or an alien admitted for permanent residence into the United States; and

(B) a corporation, partnership, labor organization, or other legal entity organized under the laws of the United States or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(10) Uruguay round agreement.--The term ``Uruguay Round Agreement'' means any of the Agreements described in section 101(d) of the Uruguay Round Agreements Act.

(11) World trade organization; wto.--The terms ``World Trade Organization'' and ``WTO'' mean the organization established pursuant to the WTO Agreement.

(12) WTO agreement.--The term ``WTO Agreement'' means the Agreement Establishing the World Trade Organization entered into on April 15, 1994.

(13) WTO member.--The term ``WTO member'' has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act (19 U.S.C. 3501(10)).

Subtitle B--Participation in WTO Panel Proceedings

SEC. 111. PARTICIPATION IN WTO PANEL PROCEEDINGS.

(a) In General.--If the Trade Representative, in proceedings before a dispute settlement panel or the Appellate Body of the WTO, seeks--

(1) to enforce United States rights under a multilateral trade agreement, or

(2) to defend an action or determination of the United States Government that is challenged,

a United States person that is supportive of the United States Government's position before the panel or Appellate Body and that has a direct economic interest in the panel's or Appellate Body's resolution of the matters in dispute shall be permitted to participate in consultations and panel or Appellate Body proceedings. The Trade Representative shall issue regulations, consistent with subsections (b) and (c), ensuring full and effective participation by any such person.

(b) Access to Information.--The Trade Representative shall make available to persons described in subsection (a) all information presented to or otherwise obtained by the Trade Representative in connection with the WTO dispute settlement proceeding in which such persons are participating. The Trade Representative shall promulgate regulations to protect information designated as confidential in the proceeding.

(c) Participation in Panel Process.--Upon request from a person described in subsection (a), the Trade Representative shall--

(1) consult in advance with such person regarding the content of written submissions from the United States to the panel or Appellate Body concerned or to the other member countries involved;

(2) include, if appropriate, such person or the person's appropriate representative as an advisory member of the delegation in sessions of the dispute settlement panel or Appellate Body;

(3) allow such person, if such person would bring special knowledge to the proceeding, to appear before the panel or Appellate Body, directly or through counsel, under the supervision of responsible United States Government officials; and

(4) in proceedings involving confidential information, allow the appearance of such person only through counsel as a member of the special delegation.

Subtitle C--Congressional Advisory Commission on WTO Dispute Settlement

SEC. 121. ESTABLISHMENT OF COMMISSION.

(a) Establishment.--There is established a commission to be known as the Congressional Advisory Commission on WTO Dispute Settlement (in this subtitle referred to as the ``Commission'').

(b) Membership.--

(1) Composition.--The Commission shall be composed of 5 members, all of whom shall be judges or former judges of the Federal judicial circuits and shall be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate after considering the recommendations of the Chairman and ranking member of each of the appropriate congressional committees. Commissioners shall be chosen without regard to political affiliation and solely on the basis of each Commissioner's fitness to perform the duties of a Commissioner.

(2) Date.--The appointments of the initial members of the Commission shall be made not later than 90 days after the date of the enactment of this Act.

(c) Period of Appointment; Vacancies.--

(1) In general.--Members of the Commission shall each be appointed for a term of 5 years, except that of the members first appointed, 3 members shall each be appointed for a term of 3 years.

(2) Vacancies.--

(A) In general.--Any vacancy on the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made and shall be subject to the same conditions as the original appointment.

(B) Unexpired term.--An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) Initial Meeting.--Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) Meetings.--Except for the initial meeting, the Commission shall meet at the call of the Chairperson.

(f) Quorum.--A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) Chairperson and Vice Chairperson.--The Commission shall select

a Chairperson and Vice Chairperson from among its members.

(h) Funding.--Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

SEC. 122. DUTIES OF THE COMMISSION.

(a) Advising the Congress on the Operation of the WTO Dispute Settlement System.--

(1) In general.--The Commission shall review--

(A) all adverse findings that are--

(i) adopted by the Dispute Settlement Body; and

(ii) the result of a proceeding initiated against the United States by a WTO member; and

(B) upon the request of either of the appropriate congressional committees--

(i) any adverse finding of a dispute settlement panel or the Appellate Body--

(I) that is adopted by the Dispute Settlement Body; and

(II) in which the United States is a complaining party; or

(ii) any other finding that is contained in a report of a dispute settlement panel or the Appellate Body that is adopted by the Dispute Settlement Body.

(2) Scope of review.--The Commission shall advise the Congress in connection with each adverse finding under paragraph (1)(A) or (1)(B)(i) or other finding under paragraph (1)(B)(ii) on--

(A) whether the dispute settlement panel or the Appellate Body, as the case may be--

(i) exceeded its authority or its terms of reference;

(ii) added to the obligations, or diminished the rights, of the United States under the Uruguay Round Agreement that is the subject of the finding;

(iii) acted arbitrarily or capriciously, engaged in misconduct, or demonstrably departed

from the procedures specified for panels and the Appellate Body in the applicable Uruguay Round Agreement; or

(iv) deviated from the applicable standard of review, including in antidumping, countervailing duty, and other trade remedy cases, the standard of review set forth in Article 17.6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; and

(B) whether the finding is consistent with the original understanding by the United States of the Uruguay Round Agreement that is the subject of the finding as explained in the statement of administrative action approved under section 101(a) of the Uruguay Round Agreements Act (19 U.S.C. 3511(a)).

(3) No deference.--In advising the Congress under paragraph (2), the Commission shall not accord deference to findings of law made by the dispute settlement panel or the Appellate Body, as the case may be.

(b) Determination; Report.--

(1) Determination.--

(A) In general.--Not later than 150 days after the date on which the Commission receives notice of a report or request under section 123(b), the Commission shall make a written determination with respect to the matters described in paragraph (2) of subsection (a), including a full analysis of the basis for its determination. A vote by a majority of the members of the Commission shall constitute a determination of the Commission, although the members need not agree on the basis for their vote.

(B) Dissenting or concurring opinions.--Any member of the Commission who disagrees with a determination of the Commission or who concurs in such a determination on a basis different from that of the Commission or other members of the Commission, may write an opinion expressing such disagreement or concurrence, as the case may be.

(2) Report.--The Commission shall promptly report the determinations described in paragraph (1)(A) to the appropriate congressional committees. The Commission shall include with the report any opinions written under paragraph (1)(B) with respect

to the determination.

(c) Availability to the Public.--Each report of the Commission under subsection (b)(2), together with the opinions included with the report, shall be made available to the public.

SEC. 123. POWERS OF THE COMMISSION.

(a) Hearings.--The Commission may hold a public hearing to solicit views concerning an adverse finding or other finding described in section 122(a)(1), if the Commission considers such hearing to be necessary to carry out the purpose of this subtitle. The Commission shall provide reasonable notice of a hearing held pursuant to this subsection.

(b) Information From Interested Parties and Federal Agencies.--

(1) Notice to commission.--

(A) Under section 122(a)(1)(A).--The Trade Representative shall advise the Commission not later than 5 business days after the date the Dispute Settlement Body adopts an adverse finding that is to be reviewed by the Commission under section 122(a)(1)(A).

(B) Under section 122(a)(1)(B).--Either of the appropriate congressional committees may make and notify the Commission of a request under section 122(a)(1)(B) not later than 1 year after the Dispute Settlement Body adopts the adverse finding or other finding that is the subject of the request.

(C) Findings adopted prior to appointment of commission.--With respect to any adverse finding or other finding to which section 122(a)(1)(B) applies and that is adopted before the date on which the first members of the Commission are appointed under section 121(b)(2), either of the appropriate congressional committees may make and notify the Commission of a request under section 122(a)(1)(B) with respect to the adverse finding or other finding not later than 1 year after the date on which the first members of the Commission are appointed under section 121(b)(2).

(2) Submissions and requests for information.--

(A) In general.--The Commission shall promptly publish in the Federal Register notice of--

(i) the notice received under paragraph (1) from the Trade Representative or either of the appropriate congressional committees; and

(ii) an opportunity for interested parties to submit written comments to the Commission.

(B) Comments available to public.--The Commission shall make comments submitted pursuant to subparagraph (A)(ii) available to the public.

(C) Information from federal agencies and departments.--The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this subtitle. Upon the request of the chairperson of the Commission, the head of such department or agency shall furnish the information requested to the Commission in a timely manner.

(3) Access to panel and appellate body documents.--

(A) In general.--The Trade Representative shall make available to the Commission all submissions and relevant documents relating to an adverse finding described in section 122(a)(1), including any information contained in such submissions and relevant documents identified by the provider of the information as proprietary information or information designated as confidential by a foreign government.

(B) Public access.--Any document that the Trade Representative submits to the Commission shall be available to the public, except information that is identified as proprietary or confidential or the disclosure of which would otherwise violate the rules of the WTO.

(c) Assistance From Federal Agencies; Confidentiality.--

(1) Administrative assistance.--Any agency or department of the United States that is designated by the President shall provide administrative services, funds, facilities, staff, or other support services to the Commission to assist the Commission with the performance of the Commission's functions.

(2) Confidentiality.--

(A) Documents and information from agencies.--The Commission shall protect from disclosure any document or information submitted to it by a department or agency of the United States that the agency or department requests be kept confidential.

(B) Disclosure of documents and information of commission.--The Commission shall not be considered to be an agency for purposes of section 552 of title 5,

United States Code.

Subtitle D--Congressional Approval of Regulatory Action Relating to Adverse WTO Decisions

SEC. 131. CONGRESSIONAL APPROVAL OF REGULATORY ACTIONS RELATING TO ADVERSE WTO DECISIONS.

(a) In General.--Section 123(g) of the Uruguay Round Agreements Act (19 U.S.C. 3533(g)) is amended--

(1) in paragraph (1)--

(A) in subparagraph (E), by striking ``and'';

(B) by redesignating subparagraph (F) as subparagraph (H); and

(C) by inserting after subparagraph (E) the following new subparagraphs:

``(F) the appropriate congressional committees have received the report on the determinations of the Congressional Advisory Commission on WTO Dispute Settlement under section 122(b)(2) of the Strengthening America's Trade Laws Act with respect to the relevant dispute settlement panel or Appellate Body decision;

``(G) a joint resolution, described in paragraph (2), approving the proposed modification or final rule is enacted into law after the appropriate congressional committees receive the report on the determinations of the Congressional Advisory Commission on WTO Dispute Settlement under section 122(b)(2) of the Strengthening America's Trade Laws Act; and''; and

(2) by amending paragraph (2) to read as follows:

``(2) Joint resolution to approve modification in agency regulation or practice.--

``(A) In general.--For the purposes of paragraph (1)(G), a joint resolution is a joint resolution of the 2 Houses of the Congress, the matter after the resolving clause of which is as follows: `That the Congress approves the modifications to the regulation or practice of the United States proposed in a report submitted to the Congress under subparagraph (D) or (F) of section 123(g)(1) of the Uruguay Round Agreements Act (19 U.S.C. 3533(g)(1) (D) and (F)) on _____, relating to _____.', with the first blank space being filled with the date on which the report is submitted

to the Congress and the second blank space being filled with the specific modification proposed to the regulation or practice of the United States.

``(B) Procedural provisions.--The procedural provisions of subsections (d) through (i) of section 206 of the Strengthening America's Trade Laws Act shall apply to a joint resolution described in subparagraph (A).''.

(b) Effective Date.--

(1) In general.--The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Modifications made between january 1, 2007, and the date of the enactment of this act.--

(A) In general.--Modifications to any regulation or practice of a department or agency of the United States made pursuant to the provisions of section 123(g) of the Uruguay Round Agreements Act (19 U.S.C. 3533(g)) that became effective on or after January 1, 2007, and before the date of the enactment of this Act, shall be suspended upon the enactment of this Act and have no effect.

(B) Approval of modifications.--On or after the date of the enactment of this Act, the Trade Representative and the head of the department or agency within whose jurisdiction the modification described in subparagraph (A) falls may seek approval of such modification pursuant to the procedures set out in section 123(g)(1) of the Uruguay Round Agreements Act (19 U.S.C. 3533(g)(1)), as amended by subsection (a).

Subtitle E--Clarification of Rights and Obligations Through Negotiations

SEC. 141. CLARIFICATION OF RIGHTS AND OBLIGATIONS IN THE WTO THROUGH NEGOTIATIONS.

(a) In General.--After an adverse finding, the United States shall work within the World Trade Organization to obtain clarification of the Uruguay Round Agreement to which the adverse finding applies to conform the Agreement to the understanding of the United States regarding the rights and obligations of the United States and shall not modify the law, regulation, practice, or interpretation of the United States in response to the adverse finding if--

(1) the United States has stated at the Dispute Settlement Body that the adverse finding has created obligations never agreed to by the United States;

(2) either of the appropriate congressional committees by resolution finds that the adverse finding has created obligations never agreed to by the United States; or

(3) the Congressional Advisory Commission on WTO Dispute Resolution makes a determination under section 122(a)(2)(A)(ii) that the adverse finding has created obligations never agreed to by the United States.

(b) Applicability.--

(1) In general.--This section shall apply to any adverse finding on or after January 1, 2002.

(2) Effect on modification of regulation, practice, or interpretation adopted before enactment of this act.--

(A) In general.--Any agency that modified a regulation, practice, or interpretation in response to an adverse finding between January 1, 2002, and the date of the enactment of this Act shall provide notice that the modification shall cease to have force and effect on the date that is 30 days after the date of the enactment of this Act and such modification shall cease to have force and effect on such date.

(B) Applicability in trade remedy cases.--The cessation of the force and effect of the modification described in subparagraph (A) shall apply with respect to--

(i) investigations initiated--

(I) on the basis of petitions filed under section 702(b), 732(b), or 783(a) of the Tariff Act of 1930 (19 U.S.C. 1671a(b), 1673a(b), and 1677n(a)) or section 202(a), 221, 251(a), or 292(a) of the Trade Act of 1974 (19 U.S.C. 2252(a), 2271, 2341(a), and 2401a(a)) after the date on which the modification ceases to have force and effect under subparagraph (A);

(II) by the administering authority under section 702(a) or 732(a) of the Tariff Act of 1930 (19 U.S.C. 1671a(a) and 1673a(a)) after such date; or

(III) under section 753 of the

Tariff Act of 1930 (19 U.S.C. 1675b) after such date;

(ii) reviews initiated under section 751 of the Tariff Act of 1930 (19 U.S.C. 1675)--

(I) by the administering authority or the International Trade Commission on their own initiative after such date; or

(II) pursuant to a request filed after such date; and

(iii) all proceedings conducted under section 129 of the Uruguay Round Agreements Act (19 U.S.C. 3538) commenced after such date.

(3) Effect on prior statutory changes.--

(A) In general.--Paragraph (2)(A) shall not apply to modifications to statutes of the United States made in response to adverse findings.

(B) Clarification of united states rights.--If a statute of the United States has been modified in response to an adverse finding, the United States shall obtain clarification of the rights and obligations of the United States affected by the adverse finding pursuant to subsection (a).

TITLE II--STRENGTHENING ANTIDUMPING AND COUNTERVAILING DUTY LAWS

SEC. 201. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE.

Section 772(c)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1677a(c)(2)(A)) is amended by inserting ``(including antidumping and countervailing duties imposed under this title)'' after ``duties''.

SEC. 202. NONMARKET ECONOMY METHODOLOGY.

Section 773(c)(4) of the Tariff Act of 1930 (19 U.S.C. 1677b(c)(4)) is amended to read as follows:

``(4) Valuation of factors of production.--

``(A) In general.--The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are--

``(i) at a level of economic development

comparable to that of the nonmarket economy country; and

``(ii) significant producers of comparable merchandise.

In this paragraph, the term `surrogate' refers to the values, calculations, and market economy countries used under this subparagraph.

``(B) Valuing materials used in production.--In determining the value of materials used in production under subparagraph (A), the following applies:

``(i) The administering authority may use the value of inputs that are purchased from market economy suppliers and are not suspected of being dumped or subsidized, only for the quantity of such purchases.

``(ii) All materials purchased or otherwise obtained from nonmarket economy countries shall be valued using surrogate values under subparagraph (A).

``(iii) A purchased material shall be viewed as suspected of being subsidized if there are any affirmative findings by the United States or another WTO member of export subsidy programs in the supplying country.

``(iv) A purchased material shall be viewed as suspected of being dumped if there are any affirmative findings by the United States or other WTO member of dumping in the general category of merchandise, or if information supplied by the petitioner or otherwise of record suggests significant underpricing to the purchaser in the nonmarket economy country.

``(v) Surrogate values for materials from a market economy country shall be disregarded as not reflective of prices in that surrogate market only if prices in that market are viewed as aberrational, such as a case in which prices undersell or exceed any reported price in that surrogate market by a large amount.

``(vi) There shall be a presumption that the administering authority will include all market prices from a surrogate market. Prices that are high or low shall be excluded only

when it is demonstrated that the prices are not reflective of prices in the surrogate country for the relevant category of merchandise.

``(vii) If amounts pertaining to the cost of production of imports into a surrogate country from market economy suppliers are used for valuing the materials used, such amounts shall be valued on the basis of CIF (cost, insurance, and freight), plus duties paid, to provide a proxy for prices in the surrogate country competing with locally produced goods. Such values shall not be reduced by the import duties.

``(C) Valuing labor.--

``(i) The administering authority may use an average of wage rates for market economies, but shall ensure that labor rates used fully reflect all labor costs, including benefits, health care, and pension costs.

``(ii) Labor shall be the total labor employed by a nonmarket economy country producer or used by a nonmarket economy country producer in the overall business, with allocations to other merchandise produced or sold by that producer that is not subject merchandise.

``(iii) Labor shall reflect the average labor for all other producers in the nonmarket economy country that are producing the particular merchandise subject to investigation or review, and shall not be limited to operations used for export.

``(D) Valuing factory overhead, selling, general, and administrative expenses, and profit.--

``(i) In general.--The administering authority shall use the best information available with respect to likely values of factory overhead, selling, general, and administrative expenses, and profit from a surrogate country. If the values determined under subparagraphs (B) and (C) for materials used and labor consumed result in amounts that are demonstrably larger or smaller than the

amounts used in determining surrogate ratios from financial or other reports from a surrogate country, adjustments shall be made to the ratios to reflect fully the level of such costs and profits in the surrogate country on a per item produced basis.

``(ii) Ratios defined.--For purposes of this subparagraph, the term `ratios' means--

``(I) the ratio of factory overhead to labor, materials, and energy;

``(II) the ratio of selling, general, and administrative costs to factory overhead, labor, materials, and energy; and

``(III) the ratio of profit to selling, general, and administrative costs, factory overhead, labor, materials, and energy.

``(E) Use of confidential information from a foreign producer in a surrogate country.--The administering authority shall generally use publicly available information to value factors of production, except that, in a case in which any foreign producer in the surrogate country that is willing to provide information to the administering authority on factors of production to produce the same class of merchandise and such information is subject to verification, the administering authority shall accept and use such information. The relationship of the foreign producer providing the information to a party to the proceeding shall not be a basis for disqualification.''.

SEC. 203. DETERMINATIONS ON THE BASIS OF FACTS AVAILABLE.

Section 776(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1677e(a)(2)(B)) is amended to read as follows:

``(B) fails to provide such information by the deadline for submission of the information or in the form and manner required, and in conformity with prior administering authority determinations in the proceeding and final judicial decisions in the proceeding, subject to subsections (c)(1) and (e) of section 782,''.

SEC. 204. CLARIFICATION OF DETERMINATION OF MATERIAL INJURY.

(a) In General.--Section 771(7) of the Tariff Act of 1930 (19 U.S.C. 1677(7)) is amended by adding at the end the following new subparagraph:

``(J) Clarification of determination of material injury.--In determining if there is material injury, or threat of material injury, by reason of imports of the subject merchandise, the Commission shall make the Commission's determination without regard to--

``(i) whether other imports would have replaced or are likely to replace imports of the subject merchandise if an order were issued or a suspension agreement were accepted under this title, or

``(ii) the effect of a potential order or suspension agreement on the domestic industry, except for a finding required by section 771(7)(F)(ii).''.

(b) Likelihood of Continuation or Recurrence of Material Inquiry.--Section 752(a)(4) of the Tariff Act of 1930 (19 U.S.C. 1675a(a)(4)) is amended by adding at the end the following: ``In reaching a decision as to whether revocation of an order or termination of a suspended investigation is likely to lead to a continuation or recurrence of material injury, the Commission shall make its determination without regard to whether other imports are likely to replace imports of the subject merchandise if an order is revoked or a suspension agreement terminated under this title.''.

SEC. 205. REVOCATION OF NONMARKET ECONOMY COUNTRY STATUS.

(a) Amendment of Definition of ``Nonmarket Economy Country''.--Section 771(18)(C)(i) of the Tariff Act of 1930 (19 U.S.C. 1677(18)(C)(i)) is amended to read as follows:

``(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until--

``(I) the administering authority makes a final determination to revoke the determination under subparagraph (A); and

``(II) a joint resolution is

enacted into law pursuant to section 206 of the Strengthening America's Trade Laws Act.''.

(b) Notification by President; Joint Resolution.--Whenever the administering authority makes a final determination under section 771(18)(C)(i)(I) of the Tariff Act of 1930 (19 U.S.C. 1677(18)(C)(i)(I)) to revoke the determination that a foreign country is a nonmarket economy country--

(1) the President shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of that determination not later than 10 days after the publication of the administering authority's final determination in the Federal Register;

(2) the President shall transmit to the Congress a request that a joint resolution be introduced pursuant to this section; and

(3) a joint resolution shall be introduced in the Congress pursuant to this section.

(c) Definition.--For purposes of this section, the term ``joint resolution'' means only a joint resolution of the 2 Houses of the Congress, the matter after the resolving clause of which is as follows: ``That the Congress approves the change of nonmarket economy status with respect to the products of _____ transmitted by the President to the Congress on _____.'', the first blank space being filled in with the name of the country with respect to which a determination has been made under section 771(18)(C)(i) of the Tariff Act of 1930 (19 U.S.C. 1677(18)(C)(i)), and the second blank space being filled with the date on which the President notified the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives under subsection (b)(1).

(d) Introduction.--A joint resolution shall be introduced (by request) in the House by the majority leader of the House, for himself, or by Members of the House designated by the majority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself, or by Members of the Senate designated by the majority leader of the Senate.

(e) Amendments Prohibited.--No amendment to a joint resolution shall be in order in either the House of Representatives or the Senate, and no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the presiding officer to entertain a request to suspend the application of this subsection by unanimous consent.

(f) Period for Committee and Floor Consideration.--

(1) In general.--If the committee or committees of either House to which a joint resolution has been referred have not reported the joint resolution at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the joint resolution and it shall be placed on the appropriate calendar. A vote on final passage of the joint resolution shall be taken in each House on or before the close of the 15th day after the joint resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the joint resolution. If, prior to the passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then--

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House, but

(B) the vote on final passage shall be on the joint resolution of the other House.

(2) Computation of days.--For purposes of paragraph (1), in computing a number of days in either House, there shall be excluded any day on which that House is not in session.

(g) Floor Consideration in the House.--

(1) Motion privileged.--A motion in the House of Representatives to proceed to the consideration of a joint resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate limited.--Debate in the House of Representatives on a joint resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit a joint resolution or to move to reconsider the vote by which a joint resolution is agreed to or disagreed to.

(3) Motions to postpone.--Motions to postpone, made in the House of Representatives with respect to the consideration of a joint resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) Appeals.--All appeals from the decisions of the Chair relating to the application of the Rules of the House of

Representatives to the procedure relating to a joint resolution shall be decided without debate.

(5) Other rules.--Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a joint resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(h) Floor Consideration in the Senate.--

(1) Motion privileged.--A motion in the Senate to proceed to the consideration of a joint resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate limited.--Debate in the Senate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Control of debate.--Debate in the Senate on any debatable motion or appeal in connection with a joint resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) Other motions.--A motion in the Senate to further limit debate is not debatable. A motion to recommit a joint resolution is not in order.

(i) Rules of House of Representatives and Senate.--Subsections (c) through (h) are enacted by the Congress--

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such subsections (c) through (h) are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of joint resolutions described in subsection (c), and subsections (c) through (h) supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of

either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

TITLE III--EXPANSION OF APPLICABILITY OF COUNTERVAILING DUTIES

SEC. 301. APPLICATION OF COUNTERVAILING DUTIES TO NONMARKET ECONOMY COUNTRIES AND STRENGTHENING APPLICATION OF THE LAW.

(a) Application of Countervailing Duties to Nonmarket Economies.--Section 701(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by inserting ``(including a nonmarket economy country)'' after ``country'' each place it appears.

(b) Recognition of Countervailable Subsidies in Nonmarket Economy Countries.--Section771(5)(C) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is amended to read as follows:

> ``(C) Other factors.--(i) The determination of whether a subsidy exists shall be made without regard to--
>
> ``(I) whether the recipient of the subsidy is publicly or privately owned;
>
> ``(II) whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise; and
>
> ``(III)(aa) whether the country is a nonmarket economy country, or
>
> ``(bb) the level of economic reforms in a country that is a nonmarket economy country, at the time the subsidy is provided.
>
> ``(ii) The administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists under this paragraph.''.

(c) Use of Alternate Methodologies Involving China.--Section 771(5)(E) of the Tariff Act of 1930 U.S.C. 1677(5)(E)) is amended by adding at the end the following:

> ``If the administering authority encounters special difficulties in identifying and calculating the amount of a benefit under clauses (i) through (iv) with respect to an investigation or review involving the People's Republic of China, irrespective of whether the administering authority determines that China is a nonmarket economy country under paragraph (18) of this section, the administering authority shall use

methodologies to identify and calculate the amount of the benefit that take into account the possibility that terms and conditions prevailing in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the administering authority should take into account and adjust terms and conditions prevailing in China before using terms and conditions prevailing outside of China. If the administering authority has determined that China is a nonmarket economy country under paragraph (18) of this section, the administering authority shall presume that special difficulties exist in calculating the amount of a benefit under clauses (i) through (iv) with respect to an investigation or review involving China and that it is not practicable to take into account and adjust terms and conditions prevailing in China, and the administering authority shall use terms and conditions prevailing outside of China.''.

(d) Subsidies Provided to State-Owned Enterprises in the People's Republic of China.--Section 771(5A) of the Tariff Act of 1930 (19 U.S.C. 1677(5A)) is amended by adding at the end the following:

``For purposes of this paragraph, subsidies provided to state-owned enterprises in the People's Republic of China shall be deemed to be specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies.''.

(e) Antidumping Provisions Not Affected.--The amendments made by this section shall not affect the status of a country as a nonmarket economy country for the purposes of any matter relating to antidumping duties under subtitle B of title VII of the Tariff Act of 1930 (19 U.S.C. 1673 et seq.). In cases involving a nonmarket economy country, no offset or reduction shall be made to the amount of either the antidumping or countervailing duty imposed based on the finding of a domestic subsidy and the simultaneous application of antidumping duties.

SEC. 302. TREATMENT OF EXCHANGE-RATE MANIPULATION AS COUNTERVAILABLE SUBSIDY UNDER TITLE VII OF THE TARIFF ACT OF 1930.

(a) Amendments to Definition of Countervailable Subsidy.--Section 771(5)(D) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(D)) is amended--

(1) by striking ``The term'' and inserting ``(i) The

term'';

(2) by redesignating clauses (i) through (iv) as subclauses (I) through (IV), respectively; and

(3) by adding at the end the following:

``(ii) The term `provides a financial contribution' includes engaging in exchange-rate manipulation (as defined in paragraph (5C)).''.

(b) Definition of Exchange-Rate Manipulation.--Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended by inserting after paragraph (5B) the following new paragraph:

``(5C) Definition of exchange-rate manipulation.--

``(A) In general.--For purposes of paragraphs (5) and (5A), the term `exchange-rate manipulation' means protracted large-scale intervention by a country to undervalue the country's currency in the exchange market that prevents effective balance-of-payments adjustment or that gains an unfair competitive advantage over any other country.

``(B) Factors.--In determining whether exchange-rate manipulation is occurring and a benefit thereby conferred, the administering authority in each case--

``(i) shall consider the exporting country's--

``(I) bilateral balance-of-trade surplus or deficit with the United States;

``(II) balance-of-trade surplus or deficit with its other trading partners individually and in the aggregate;

``(III) foreign direct investment in its territory;

``(IV) currency-specific and aggregate amounts of foreign currency reserves; and

``(V) mechanisms employed to maintain its currency at a fixed exchange rate relative to another currency and, particularly, the nature, duration, monetary expenditures, and potential monetary expenditures of those mechanisms;

``(ii) may consider such other economic factors as are relevant; and

``(iii) shall measure the trade surpluses or deficits described in subclauses (I) and (II) of clause (i) with reference to the trade data reported by the United States and the other trading partners of the exporting country, unless such trade data are not available or are demonstrably inaccurate, in which case the exporting country's trade data may be relied upon if shown to be sufficiently accurate and trustworthy.

``(C) Type of economy.--A country found to be engaged in exchange-rate manipulation may have--

``(i) a market economy;

``(ii) a nonmarket economy; or

``(iii) a combination thereof.''.

SEC. 303. AFFIRMATION OF NEGOTIATING OBJECTIVE ON BORDER TAXES.

The Congress reaffirms the negotiating objective relating to border taxes set forth in section 2102(b)(15) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3802(b)(15)).

SEC. 304. PRESIDENTIAL CERTIFICATION; APPLICATION OF COUNTERVAILING DUTY LAW.

(a) Certification by the President.--

(1) In general.--The President shall certify to the Congress by January 1, 2014, that, under the Agreement on Subsidies and Countervailing Measures or subsequent agreement of the World Trade Organization, the full or partial exemption, remission, or deferral specifically related to exports of direct taxes is treated in the same manner as the full or partial exemption, remission, or deferral specifically related to exports of indirect taxes.

(2) Effect of failure to certify.--If the President does not make the certification to Congress required by paragraph (1) by January 1, 2014, the Secretary of Commerce, in any investigation conducted under subtitle A of title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.) to determine whether a countervailable subsidy is being provided with respect to a product of a country that provides the full or partial exemption, remission, or deferral specifically related to exports of indirect taxes on products exported from that

country, shall treat as a countervailable subsidy the full or partial exemption, remission, or deferral specifically related to exports of indirect taxes paid on that product.

(b) Definitions.--In this section:

(1) Agreement on subsidies and countervailing measures.--The term ``Agreement on Subsidies and Countervailing Measures'' means the agreement referred to in section 101(d)(12) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(12)).

(2) Direct taxes.--The term ``direct taxes'' means taxes on wages, profits, interest, rents, royalties, and all other forms of income, and taxes on the ownership of real property.

(3) Import charges.--The term ``import charges'' means tariffs, duties, and other fiscal charges that are levied on imports.

(4) Indirect taxes.--The term ``indirect taxes'' means sales, excise, turnover, value added, franchise, stamp, transfer, inventory, and equipment taxes, border taxes, and all taxes other than direct taxes and import charges.

(5) Full or partial exemption, remission, or deferral specifically related to exports of direct taxes.--The term ``full or partial exemption, remission, or deferral specifically related to exports of direct taxes'' means direct taxes that are paid to the United States Government by a business concern and are fully or partially exempted, remitted, or deferred by the Government by reason of the export by that business concern of its products from the United States.

(6) Full or partial exemption, remission, or deferral specifically related to exports of indirect taxes.--The term ``full or partial exemption, remission, or deferral specifically related to exports of indirect taxes'' means indirect taxes that are paid to the government of a country by a business concern and are fully or partially exempted, remitted, or deferred by that government by reason of the export by that business concern of its products from that country.

(c) Effective Period.--Subsection (a) shall cease to be effective on the date on which the President makes a certification described in subsection (a).

TITLE IV--LIMITATION ON PRESIDENTIAL DISCRETION IN ADDRESSING MARKET DISRUPTION

SEC. 401. STANDARD FOR PRESIDENTIAL ACTION ON ITC FINDING OF MARKET

DISRUPTION.

Section 421 of the Trade Act of 1974 (19 U.S.C. 2451) is amended--

(1) in subsection (a)--

(A) by inserting ``any'' before ``increased duties''; and

(B) by striking ``, to the extent and for such period'' and all that follows to the end period and inserting ``recommended by the International Trade Commission'';

(2) in subsection (e), in the second sentence, by striking ``agreed upon by either group'' and all that follows to the end period and inserting ``shall be considered an affirmative determination under subsection (b)'';

(3) in subsection (f)--

(A) in the heading, by striking ``on Proposed Remedies'' and inserting ``for Relief'';

(B) in the first sentence--

(i) by striking ``the President or Trade Representative may consider as'' and inserting ``is to be considered''; and

(ii) by striking ``the Commission shall propose'' and inserting ``the Commission shall recommend''; and

(C) in the second sentence, by striking ``proposed action'' and inserting ``recommended action'';

(4) in subsection (g)(2)(B)--

(A) by striking ``or may be considered by the President or the Trade Representative as'' and inserting ``or if the determination is considered to be''; and

(B) by striking ``on proposed remedies'' and inserting ``for relief'';

(5) in subsection (h)--

(A) in the heading, by striking ``Proposed Measure and Recommendation to the President'' and inserting ``Recommended Relief and Report by Trade Representative'';

(B) in paragraph (1)--

(i) by striking ``measure proposed by the Trade Representative to be taken pursuant to subsection (a)'' and inserting ``relief recommended by the Commission under subsection

(f)''; and

(ii) by striking ``proposed measure'' and inserting ``recommended relief'';

(C) in paragraph (2), by striking ``on the measure proposed by the Trade Representative'' and all that follows to the end period and inserting ``, shall transmit a report to the President recommending what action to take under subsection (k)''; and

(D) by adding at the end the following new paragraph:

``(3) The Trade Representative, after submitting a report to the President under paragraph (2), shall promptly make the report available to the public, excluding any proprietary or confidential information. The Trade Representative shall publish a summary of the report in the Federal Register.'';

(6) in subsection (i)--

(A) in the flush sentence at the end of paragraph (1), by striking ``agreed upon by either group'' and all that follows to the end period and inserting ``shall be considered an affirmative determination of the Commission''; and

(B) by striking paragraphs (2), (3), and (4), and inserting the following:

``(2) On the date on which the Commission completes its determinations under paragraph (1), the Commission shall transmit a report on the determinations to the President and the Trade Representative, including the reasons for its determinations. If the determinations under paragraph (1) are affirmative or if the determinations are considered to be affirmative under paragraph (1), the Commission shall include in its report its recommendations on provisional relief to be taken to prevent or remedy the market disruption. Only those members of the Commission who agreed to the affirmative determinations under paragraph (1) are eligible to vote on the recommended provisional relief to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determinations may submit, in the report, dissenting or separate views regarding the determination and any recommendation of provisional relief referred to in this paragraph.

``(3) The provisional relief referred to in paragraph (2) may include--

``(A) the imposition of or increase in any duty;

``(B) any modification, or imposition of any quantitative restriction on the importation of any article into the United

States; or

``(C) any combination of actions under subparagraph (A) or (B).

``(4) If the determinations under paragraph (1) are affirmative or if the determinations are considered to be affirmative under paragraph (1), the Trade Representative shall, within 10 days after receipt of the Commission's report, transmit a report to the President recommending what action to take with respect to provisional relief under subsection (k).

``(5)(A) The President shall proclaim any provisional relief recommended by the Commission not later than 10 days after the date the President receives the report described in paragraph (4) from the Trade Representative.

``(B) Any provisional relief proclaimed by the President pursuant to a determination of critical circumstances shall remain in effect for a period not to exceed 200 days.

``(C) Provisional relief shall cease to apply upon the effective date of relief proclaimed under subsection (a), upon a decision by the President not to provide such relief under subsection (k), or upon a negative determination by the Commission under subsection (b).'';

(7) in subsection (j)--

(A) in paragraph (1), by striking ``which the Trade Representative considers to be'' and inserting ``that is considered to be''; and

(B) by striking paragraph (2) and inserting the following:

``(2) If no agreement is reached with the People's Republic of China pursuant to consultations under paragraph (1) in the time required for Presidential action under subsection (k), or if the President determines that an agreement reached pursuant to such consultations is not preventing or remedying the market disruption at issue in the time required for Presidential action under subsection (k), the President shall provide import relief in accordance with subsection (a).'';

(8) in subsection (k)--

(A) in the heading, by striking ``Standard for Presidential Action'' and inserting ``Timing for Presidential Action; Exceptions'';

(B) in paragraph (1), by striking ``a recommendation from the Trade Representative'' and all that follows to the end period and inserting ``a report from the Trade Representative under subsection (h)(2), the President shall, pursuant to subsection (a),

proclaim the relief recommended by the Commission''; and

(C) by amending paragraph (2) to read as follows:

``(2) The President may decline to proclaim relief pursuant to subsection (a), may proclaim relief pursuant to subsection (a) that differs from the relief recommended by the Commission, may decline to proclaim provisional relief pursuant to subsection (i), or may proclaim provisional relief pursuant to subsection (i) that differs from the relief recommended by the Commission--

``(A) only in extraordinary cases; and

``(B) only if the President determines that providing relief or provisional relief pursuant to subsection (a) or (i) or providing relief recommended by the Commission pursuant to subsection (a) or (i) would cause serious harm to the economic interests or to the national security of the of the United States.'';

(9) in subsection (l), by amending paragraph (1) to read as follows:

``(1) The President's decision under subsection (k) shall be submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and shall be published in the Federal Register within 15 days of the decision. In the submission to the committees and in publication in the Federal Register, the President shall include the reasons for the decision and the scope and duration of any action taken. If the President takes action that differs from the action recommended by the Commission under subsection (f) or declines to take action pursuant to subsection (k)(2), the President shall state in detail the reasons for such action or inaction.'';

(10) by redesignating subsections (m) through (o) as subsections (n) through (p), respectively;

(11) by inserting after subsection (l) the following new subsection:

``(m) Implementation of Action Recommended by Commission.--(1) If the President takes action that differs from the action recommended by the Commission under subsection (f) or declines to take action pursuant to subsection (k)(2)(B)(i), the action recommended by the Commission under subsection (f) shall take effect (as provided in subsection (n)(2)) upon the enactment of a joint resolution described in paragraph (2) within the 90-day period beginning on the date on which the President's decision is transmitted to the Congress pursuant to subsection (l).

``(2) For purposes of this section, the term `joint resolution'

means a joint resolution of the 2 Houses of the Congress, the sole matter after the resolving clause of which is as follows: `That the Congress does not approve the action taken by, or the determination of, the President under section 421 of the Trade Act of 1974, notice of which was transmitted to the Congress on _____.', with the blank space being filled with the appropriate case number and date.

``(3) The provisions of section 152(b), (c), (d), (e), and (f) of the Trade Act of 1974 (19 U.S.C. 2192(b), (c), (d), (e), and (f)) shall apply to joint resolutions under this section.'';

(12) in subsection (n), as redesignated, by striking ``Import relief under this section'' and all that follows to the end period and inserting the following:

``(1) Except as provided in paragraph (2), import relief under this section shall take effect not later than 15 days after the President's determination to provide such relief.

``(2) If the action recommended by the Commission takes effect pursuant to subsection (m), the President shall, within 15 days after the date of the enactment of the joint resolution referred to in subsection (m), proclaim the action recommended by the Commission under subsection (f). Such action shall take effect not later than 15 days after the date of the President's proclamation.'';

(13) in subsection (o), as redesignated--

(A) in paragraph (1), by striking ``6-month'' and inserting ``1-year''; and

(B) in paragraph (3), by inserting ``or (m)'' after ``subsection (k)''; and

(14) in subsection (p), as redesignated--

(A) in paragraph (1), by inserting ``or (m)'' after ``subsection (k);''; and

(B) in paragraph (3), by striking ``subsection (m)'' and inserting ``subsection (n)''.

TITLE V--STRENGTHENING ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS AT U.S. BORDERS

Subtitle A--Coordination of Enforcement of Intellectual Property Rights

SEC. 501. DEFINITIONS.

In this title:

(1) Assistant secretary for ice.--The term ``Assistant Secretary for ICE'' means the Assistant Secretary for U.S. Immigration and Customs Enforcement.

(2) Commissioner.--The term ``Commissioner'' means the Commissioner responsible for U.S. Customs and Border Protection.

(3) Counterfeiting; counterfeit goods.--

(A) Counterfeiting.--The term ``counterfeiting'' means activities related to production of or trafficking in goods, including packaging, that bear a spurious mark or designation that is identical to or substantially indistinguishable from a mark or designation protected under the trademark laws or related legislation.

(B) Counterfeit goods.--The term ``counterfeit goods'' means those goods described in subparagraph (A).

(4) CBP.--The term ``CBP'' means U.S. Customs and Border Protection.

(5) Director.--The term ``Director'' means the Director of Intellectual Property Rights Enforcement of the Department of the Treasury established in section 502.

(6) Enforcement of intellectual property rights.--The term ``enforcement of intellectual property rights'' means activities to enforce copyrights, patents, trademarks, and other forms of intellectual property, including activities to control counterfeiting and piracy, and activities to enforce exclusion orders issued by the United States International Trade Commission by reason of any of subparagraphs (B) through (E) of subsection (a)(1) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(a)(1)(B) through (E)).

(7) Exclusion order.--The term ``exclusion order'' means an order of the United States International Trade Commission issued under section 337(d) of the Tariff Act of 1930 to exclude goods from entry into the United States.

(8) ICE.--The term ``ICE'' means U.S. Immigration and Customs Enforcement.

(9) Piracy; pirated goods.--

(A) Piracy.--The term ``piracy'' means activities related to production of or trafficking in unauthorized copies or phonorecords of works protected under copyright law or related legislation.

(B) Pirated goods.--The term ``pirated goods'' means those copies or phonorecords described in subparagraph (A).

SEC. 502. DIRECTOR OF INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT.

(a) Establishment.--There is established within the Department of the Treasury the position of Director of Intellectual Property Rights Enforcement.

(b) Appointment.--The Director shall be appointed by the Secretary of the Treasury, and shall be responsible to and shall report directly to the Deputy Secretary of the Treasury.

(c) Duties.--The Director shall--

(1) coordinate all activities of the Department of the Treasury involving the enforcement of intellectual property rights, with particular reference to the activities of CBP and ICE;

(2) oversee the development and implementation of the strategic plan for the enforcement of intellectual property rights required under section 503;

(3) coordinate the policy and regulatory changes set forth in subtitle D;

(4) serve as staff representative of the Department of the Treasury in interagency bodies with responsibility for coordination of activities involving the enforcement of intellectual property rights;

(5) conduct an evaluation of the effectiveness of the organizational structure of CBP for reducing the entry into the United States of counterfeit or pirated goods, goods in violation of exclusion orders, and other goods in violation of other intellectual property rights; and

(6) carry out other duties, as assigned by the Secretary or Deputy Secretary of the Treasury, to improve the effectiveness of the efforts of the Department of the Treasury under the laws within its jurisdiction with respect to enforcement of intellectual property rights.

SEC. 503. STRATEGIC PLAN FOR THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS.

(a) In General.--The Director shall develop, for approval by the Deputy Secretary of the Treasury, an annual strategic plan for the enforcement of intellectual property rights.

(b) Consultation.--In developing the annual strategic plan required under subsection (a), the Director shall consult with--

(1) the CBP coordinator of intellectual property enforcement activities and the ICE coordinator of intellectual

property enforcement authorities appointed under section 504;

(2) all other entities within the Department of the Treasury with expertise and experience in the enforcement of intellectual property rights;

(3) the Advisory Committee;

(4) other agencies of the executive branch engaged in the enforcement of intellectual property rights, including any officials designated to coordinate such enforcement efforts on an interagency basis; and

(5) officials from foreign law enforcement agencies and international organizations, including the World Customs Organization, with experience and expertise in border control measures relating to the enforcement of intellectual property rights.

(c) Contents of Plan.--The annual strategic plan shall set forth objectives, goals, and strategies for more effective use of the authorities of CBP and ICE relating to the enforcement of intellectual property rights, and shall--

(1) provide for specific measurement of the current effectiveness of enforcement tools, including targeting, examination, post-entry auditing, and penalty actions;

(2) give priority to those enforcement tools determined under paragraph (1) to be most effective;

(3) identify best practices, both in the United States and abroad, in the enforcement of intellectual property rights, taking into account the practices of enforcement authorities of other countries, and implement those practices;

(4) identify and apply the specific performance measures to be used to evaluate the progress of CBP and ICE in improving the effectiveness of its efforts relating to the enforcement of intellectual property rights;

(5) address border control programs administered by CBP and ICE at ports of entry for passengers and freight, and at points of entry for postal and courier services, as well as for goods in transit through United States ports and in the process of being exported from the United States;

(6) recommend the optimal feasible allocation of human, financial, physical, and technological resources that CBP and ICE should use to achieve the goals of the annual strategic plan;

(7) report on the key activities of CBP and ICE during the preceding year in the enforcement of intellectual property rights ; and

(8) contain such other information as the Director considers appropriate to convey what CBP and ICE will do, over the ensuing year, with respect to the enforcement of intellectual property rights and reduce the costs that violations of intellectual property rights impose on the United States economy and public safety.

(d) Submission to Congress.--Upon the approval by the Deputy Secretary of the Treasury of the annual strategic plan, after ensuring its consistency with relevant interagency strategic plans for the enforcement of intellectual property rights, the Deputy Secretary of the Treasury shall transmit the annual strategic plan to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, along with any recommendations of the Department of the Treasury for statutory changes or funding authorizations needed to improve the effectiveness of the Department's efforts in the enforcement of intellectual property rights.

(e) Timing.--The Deputy Secretary of the Treasury shall submit the annual strategic plan under subsection (d) not later than 180 days after the date of the enactment of this Act and annually thereafter.

SEC. 504. CBP AND ICE COORDINATORS.

(a) CBP Coordinators.--

(1) Appointment.--The Commissioner shall appoint a CBP coordinator of intellectual property rights enforcement activities (in this subtitle referred to as the ``CBP Coordinator''), who shall report directly to the Commissioner.

(2) Duties.--The CBP Coordinator shall--

(A) assist the Director of Intellectual Property Rights Enforcement of the Department of the Treasury in the development of the annual strategic plan, and coordinate the implementation of those aspects of the plan that involve CBP;

(B) coordinate all efforts, at all ports of entry and elsewhere, carried out by CBP in the enforcement of intellectual property rights, including training and staffing;

(C) supervise the implementation of those aspects of the regulatory and policy reforms set out in this title that involve CBP; and

(D) carry out such other duties, as assigned by the Commissioner, the purpose of which is to improve the performance of CBP in the enforcement of intellectual

property rights.

(b) ICE Coordinator.--

(1) Appointment.--The Assistant Secretary for United States Immigration and Customs Enforcement shall appoint an ICE coordinator of intellectual property enforcement activities (referred to in this subtitle as the ``ICE Coordinator''), who shall report directly to the Assistant Secretary for ICE.

(2) Duties.--The ICE Coordinator shall--

(A) assist the Director of Intellectual Property Rights Enforcement of the Department of the Treasury in the development of the annual strategic plan, and coordinate the implementation of those aspects of the plan that involve ICE;

(B) coordinate all efforts carried out by ICE the enforcement of intellectual property rights, including training and staffing;

(C) supervise the implementation of those aspects of the regulatory and policy reforms set out in this title that involve ICE; and

(D) carry out such other duties, as assigned by the Assistant Secretary for ICE, the purpose which is to improve the performance of ICE in the enforcement of intellectual property rights.

Subtitle B--Regulatory and Policy Improvements Against Counterfeiting and Piracy

SEC. 511. IN GENERAL.

(a) Commissioner's Responsibilities.--The Commissioner, acting through the CBP Coordinator, shall undertake the initiatives provided in this subtitle.

(b) CBP Coordinator's Responsibilities.--Except as otherwise provided in this subtitle, the CBP Coordinator shall--

(1) prepare an annual report on activities carried out under this subtitle; and

(2) provide the annual report to the Director of Intellectual Property Rights Enforcement of the Department of the Treasury in a timely manner that will permit its inclusion in the annual strategic plan prepared under section 503.

SEC. 512. IDENTIFICATION OF CERTAIN UNLAWFUL GOODS.

(a) In General.--The Secretary of the Treasury, acting through the Commissioner, shall accelerate efforts to apply risk assessment modeling techniques to border enforcement activities to combat counterfeiting and piracy. These efforts shall include, but not be limited to--

(1) preparing a report and evaluation on CBP's pilot project in risk assessment modeling with respect to shipments of counterfeit or pirated products;

(2) expanding the pilot project to include development of a rule set for the Automated Targeting System; and

(3) developing a plan for the development, testing, evaluation, and continuous improvement of risk assessment modeling techniques for purposes of targeting goods that violate intellectual property rights.

(b) Inclusion in Strategic Plan.--The report specified in subsection (a)(1), and the plan specified in subsection (a)(3), shall be included in the annual strategic plan that is prepared under section 503.

SEC. 513. TRAINING IN NEW TECHNOLOGIES.

(a) Training of Personnel.--The Commissioner shall consult with the Advisory Committee to determine the feasibility of training CBP personnel in the use of new technological means for detecting and identifying, at ports of entry, counterfeit and pirated goods, and goods that are the subject of exclusion orders, whether for entry into the United States or in transit to other destinations.

(b) Identification of Technologies and Sources of Training.--In consultation with the Advisory Committee, the Commissioner shall identify--

(1) new technologies with the cost-effective capability to detect and identify goods described in subsection (a) at ports of entry; and

(2) economical sources of training CBP personnel in using such new technologies,

to the extent such training is determined to be feasible under subsection (a).

(c) Regulatory and Policy Changes.--The United States Government Accountability Office shall provide to the Congress a report analyzing the costs and benefits of allowing necessary regulatory and policy changes to enable the receipt of donations of hardware, software, equipment, and similar technologies, and the acceptance of training and other support services, from the private sector, to facilitate the

achievement of the purposes of this section.

SEC. 514. DISCLOSURE OF INFORMATION AND SAMPLES OF SHIPMENTS TO INTELLECTUAL PROPERTY OWNERS.

The Commissioner shall make the necessary regulatory and policy changes to--

(1) increase disclosure to owners of copyrights, trademarks, patents, and other forms of intellectual property of information about shipments of goods that have been detained at ports of entry on suspicion that their importation into, or transit through, the United States would violate the intellectual property rights of the owners of those rights, including--

(A) disclosure of the identities and contact information of all parties involved in the shipments, including importers, exporters, declarants, consignees, freight forwarders, and warehouse owners;

(B) providing documents relating to the shipments; and

(C) identifying points of origin and destination of the shipments; and

(2) improve the process of making available to representatives of owners of copyrights, trademarks, patents, and other forms of intellectual property, in an efficient and cost-effective manner, samples of shipments of goods suspected of infringing intellectual property rights, for the purpose of inspection or analysis.

SEC. 515. IMPROVEMENTS TO RECORDATION PROCESS.

(a) Improvements in Recordation Process.--The Commissioner shall make the necessary regulatory and policy changes to ensure that the system for recordation of copyrights, trademarks, and other forms of intellectual property that may be subject to recordation does not impede the rapid seizure of goods that infringe the rights of the owners of such copyrights, trademarks, and other forms of intellectual property.

(b) Simultaneous Recordation.--

(1) In general.--In consultation with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and the Register of Copyrights, the Commissioner shall provide a system whereby

trademarks may be recorded with CBP simultaneously with the issuance of trademark registration, and whereby copyrights of audiovisual works and sound recordings may be recorded with CBP simultaneously with the filing of an application for a certificate of copyright registration or an application for registration of another intellectual property right under title 17, United States Code.

(2) Definitions.--In this subsection, the terms ``audiovisual works'' and ``sound recordings'' have the meanings given those terms in section 101 of title 17, United States Code.

SEC. 516. IDENTIFICATION OF LOW-RISK SHIPPERS.

(a) Voluntary Certification Program.--The Commissioner shall create a voluntary certification program for low-risk shippers that have taken specific measures to strengthen and protect their supply chains to prevent the infiltration of counterfeit and pirated goods, goods that are the subject to exclusions orders, and goods that violate other forms of intellectual property rights.

(b) Self Certifications; Verifications.--The program under subsection (a) shall generally operate on a self-certification basis, except that the Commissioner shall identify any circumstances in which third party verifications and attestations are required for inclusion in the program, which may include importations from the People's Republic of China.

(c) Expedited Movement.--The Commissioner shall create incentives for shippers to participate in the certification program, including providing expedited movement of the goods of the shippers through the customs inspection process.

(d) Definition.--In this section, the term ``international supply chain'' means the end-to-end process for transporting goods to or from the United States beginning with the point of origin (including manufacturer, supplier, or vendor) through the point of distribution to the destination.

SEC. 517. ``WATCH LIST'' DATABASE.

(a) In General.--The Commissioner shall prepare a plan for the implementation of a ``Watch List'' database of importers, shippers, freight forwarders, and other participants in the import, export, and transshipment process, whose activities merit additional scrutiny at ports of entry with respect to the risk of importation or transshipment

of counterfeit or pirated goods and goods that are the subject to exclusions orders.

(b) Working Groups.--The Commissioner shall consult with the Advisory Committee on the development of criteria for the ``Watch List'' database.

(c) Information Sources.--The plan under subsection (a) shall identify legitimate information sources for the database from within CBP, from other law enforcement sources, and from the private sector.

(d) Criteria for Access to Database.--The plan under subsection (a) shall specify criteria under which the database should be made available to qualified CBP and other law enforcement officers, for intelligence purposes, and for use in flagging and diverting for enhanced scrutiny shipments to ports of entry that are associated with entities listed in the database.

(e) Other Matters.--The plan under subsection (a) shall identify any regulatory or policy changes that the Department of the Treasury would make in order to bring the database into operation, as well as any recommendations for needed changes to legislation to make the database more effective. The plan shall also include budget estimates for implementation and operation of the database, and for evaluation of its effectiveness, and a timetable for such implementation.

(f) Timing.--The Commissioner shall complete the plan in a timely fashion that will permit its inclusion in the first annual strategic plan prepared under section 503.

SEC. 518. CIVIL FINES FOR IMPORTATION OF PIRATED OR COUNTERFEIT GOODS.

(a) Limitation on Mitigation, Dismissal, and Vacation of Fines.--Unless otherwise ordered by a court of competent jurisdiction, any civil fine imposed pursuant to section 526(f) of the Tariff Act of 1930 (19 U.S.C. 1526(f))--

(1) may not be mitigated, except pursuant to regulations issued by the Commissioner; and

(2) may not be dismissed or vacated, except pursuant to regulations issued by the Commissioner that require the specific approval of the Commissioner or the Commissioner's designee for such dismissal or vacation.

(b) Extraordinary Cases.--In issuing regulations under subsection (a), the Commissioner shall ensure that the mitigation, dismissal, or vacation of civil fines for involvement in the importation, exportation, or transshipment of pirated or counterfeit goods is limited to extraordinary cases in which the interests of justice will clearly be served by such action.

(c) Report to Congress.--The Commissioner shall, not later than 180 days after the date of the enactment of this Act, report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the following:

(1) Whether CBP currently has the authority to employ effective collection techniques for collecting civil fines it imposes on participants in the importation, exportation, or transshipment of pirated or counterfeit goods.

(2) If CBP lacks such authority, the Commissioner's recommendations for legislation to provide CBP with such authority.

(3) If CBP has such authority, how CBP is using such authority, and with what results in terms of increased collections of fines imposed.

(4) The Commissioner's recommendations on whether, in specific cases, copyright or trademark owners should be authorized to pursue and collect fines imposed because of activities that infringe their intellectual property rights, and whether such copyright or trademark owners should be allowed to retain some or all of the funds that they collect.

(5) Any other recommendations for statutory, regulatory, or policy changes not under the control of CBP that would improve the ability of CBP to impose civil fines, at deterrent levels, on participants in trafficking in counterfeit or pirated goods, and to collect the fines imposed.

(d) Definition.--As used in subsection (c), the term ``effective collection techniques'' includes--

(1) confiscation of the proceeds of acts for which civil fines can be imposed;

(2) seizure of and execution upon property acquired with such proceeds;

(3) imposition of liens on the real or personal property of persons upon whom civil fines are imposed;

(4) use of bonds to secure full payment of fines;

(5) piercing the corporate veil of corporations upon which civil fines are imposed, in order to satisfy the fine from the assets of natural persons or of other legal persons; and

(6) engaging private sector entities to collect civil fines imposed.

Subtitle C--Training Enhancements

SEC. 521. INTERNATIONAL TRAINING AND TECHNICAL ASSISTANCE ENHANCEMENTS.

The Secretary of the Treasury shall take the necessary steps--

(1) to increase staffing and resources of offices of CBP and ICE engaged in providing training and technical assistance to the customs services and enforcement agencies of other countries in order to improve the effectiveness of such foreign services and agencies in detecting, intercepting, and imposing deterrent penalties upon the export, import, or transshipment of counterfeit or pirated goods, goods that are the subject to exclusions orders, and goods that violate other forms of intellectual property rights;

(2) to ensure that the Director, in order to make the most efficient and effective use of training and technical assistance resources--

(A) coordinates the international training and technical assistance activities of CBP and ICE as part of the Director's coordination responsibilities under section 502;

(B) gives priority to such activities in those countries where such programs can be carried out most effectively and with the greatest benefit to protecting the intellectual property rights of United States right holders;

(C) takes steps to minimize duplication, overlap, or inconsistency of international training and technical assistance efforts; and

(D) coordinates such activities of the Department of the Treasury with international training and technical assistance activities against counterfeiting and piracy carried out by other agencies, and enhances the participation of Department of the Treasury personnel in interagency training and technical assistance activities in this field.

Subtitle D--New Legal Tools for Border Enforcement

SEC. 531. EXPANDED PROHIBITIONS ON IMPORTATION OR EXPORTATION OF COUNTERFEIT OR PIRATED GOODS.

Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) is amended--

(1) in the section heading, by inserting ``or protected by copyright'' after ``trademark'';

(2) in subsection (e), by inserting ``or exported from the

United States'' after ``imported into the United States'';

(3) in subsection (f), by striking paragraph (1) and inserting the following:

``(1) Any person who engages in, directs, assists financially or otherwise, or aids and abets the importation or exportation of merchandise that is seized under subsection (e) of this section, or under regulations issued pursuant to section 603(c) of title 17, United States Code, shall be subject to a civil fine.''; and

(4) in subsection (f)--

(A) by redesignating paragraph (4) as paragraph (5); and

(B) by inserting after paragraph (3) the following:

``(4) When the seizure giving rise to the civil fine is made under circumstances indicating that the importation or exportation was for the purpose of sale or public distribution of the good seized, the maximum fine amounts set forth in paragraphs (2) and (3) shall be tripled.''.

SEC. 532. DECLARATIONS REGARDING COUNTERFEIT AND INFRINGING MERCHANDISE.

(a) Declarations.--Section 485(a) of the Tariff Act of 1930 (19 U.S.C. 1485(a)), is amended--

(1) in paragraph (1), by striking ``Whether'' and inserting ``whether'';

(2) in paragraph (2), by striking ``That'' and inserting ``that'';

(3) in paragraph (3)--

(A) by striking ``That'' and inserting ``that''; and

(B) by striking ``and'' after the semicolon;

(4) in paragraph (4)--

(A) by striking ``That'' and inserting ``that''; and

(B) by striking the period and inserting a semicolon; and

(5) by adding at the end the following:

``(5) that the merchandise being imported does not bear a mark that is counterfeit as that term is defined in section 45 of the of July 5, 1946 (commonly referred to as the `Trademark Act of 1946'; 15 U.S.C. 1127);

``(6) that the merchandise is not an infringing copy or

phonorecord or one whose making would have constituted an infringement of copyright if title 17, United States Code, had applied; and

``(7) that the merchandise does not violate--

``(A) does not violate an exclusion order of the United States International Trade Commission under section 337(d) by reason of any of subparagraphs (B) through (E) of subsection (a)(1) of section 337; or

``(B) infringe any other intellectual property right not covered by subparagraph (A) or by paragraph (5) or (6).''.

(b) Regulations.--The Secretary of the Treasury shall issue regulations requiring that the declarations required by paragraphs (5), (6), and (7) of section 485(a) of the Tariff Act of 1930 be made by all persons arriving in the United States with respect to articles carried on their person or contained in their baggage.

Subtitle E--Regulatory Authority

SEC. 541. REGULATORY AUTHORITY.

The Secretary may issue such regulations as are necessary to carry out this title.

TITLE VI--MISCELLANEOUS

SEC. 601. APPLICATION TO CANADA AND MEXICO.

Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3438), this Act and the amendments made by this Act shall apply with respect to goods from Canada and Mexico.

<all>

[Congressional Bills 109th Congress]
[From the U.S. Government Publishing Office]
[H.R. 354 Introduced in House (IH)]

109th CONGRESS
1st Session

H. R. 354

To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement officers, and to require States to enact law enforcement discipline, accountability, and due process laws.

IN THE HOUSE OF REPRESENTATIVES

January 25, 2005

Mr. Ramstad introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement officers, and to require States to enact law enforcement discipline, accountability, and due process laws.

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 ``State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2005''.

SEC. 2. FINDINGS AND DECLARATION OF PURPOSE AND POLICY.

(a) Findings.--Congress finds that--

(1) the rights of law enforcement officers to engage in political activity or to refrain from engaging in political activity, except when on duty, or to run as candidates for public office, unless such service is found to be in conflict with their service as officers, are activities protected by the first amendment of the United States Constitution, as applied to the States through the 14th amendment of the United States Constitution, but these rights are often violated by the management of State and local law enforcement agencies;

(2) a significant lack of due process rights of law enforcement officers during internal investigations and disciplinary proceedings has resulted in a loss of confidence in these processes by many law enforcement officers, including those unfairly targeted for their labor organization activities or for their aggressive enforcement of the laws, demoralizing many rank and file officers in communities and States;

(3) unfair treatment of officers has potentially serious long-term consequences for law enforcement by potentially deterring or otherwise preventing officers from carrying out their duties and responsibilities effectively and fairly;

(4) the lack of labor-management cooperation in disciplinary matters and either the perception or the actuality that officers are not treated fairly detrimentally impacts the recruitment of and retention of effective officers, as potential officers and experienced officers seek other careers which has serious implications and repercussions for officer morale, public safety, and labor-management relations and strife and can affect interstate and intrastate commerce, interfering with the normal flow of commerce;

(5) there are serious implications for the public safety of the citizens and residents of the United States which threatens the domestic tranquility of the United States because of a lack of statutory protections to ensure--

(i) the due process and political rights of law enforcement officers;

(ii) fair and thorough internal investigations and

interrogations of and disciplinary proceedings against law enforcement officers; and

(iii) effective procedures for receipt, review, and investigation of complaints against officers, fair to both officers and complainants; and

(6) resolving these disputes and problems and preventing the disruption of vital police services is essential to the well-being of the United States and the domestic tranquility of the Nation.

(b) Declaration of Policy.--Congress declares that it is the purpose of this Act and the policy of the United States to--

(1) protect the due process and political rights of State and local law enforcement officers and ensure equality and fairness of treatment among such officers;

(2) provide continued police protection to the general public;

(3) provide for the general welfare and ensure domestic tranquility; and

(4) prevent any impediments to the free flow of commerce, under the rights guaranteed under the United States Constitution and Congress' authority thereunder.

SEC. 3. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF OFFICERS.

(a) In General.--Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781 et seq.) is amended by adding at the end the following:

``SEC. 820. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS.

``(a) Definitions.--In this section:

``(1) Disciplinary action.--The term `disciplinary action' means any adverse personnel action, including suspension, reduction in pay, rank, or other employment benefit, dismissal, transfer, reassignment, unreasonable denial of secondary employment, or similar punitive action taken against a law enforcement officer.

``(2) Disciplinary hearing.--The term `disciplinary hearing' means an administrative hearing initiated by a law enforcement agency against a law enforcement officer, based on an alleged violation of law, that, if proven, would subject the law enforcement officer to disciplinary action.

``(3) Emergency suspension.--The term `emergency suspension' means the temporary action by a law enforcement agency of relieving a law enforcement officer from the active performance of law enforcement duties without a reduction in pay or benefits when the law enforcement agency, or an official within that agency, determines that there is probable cause, based upon the conduct of the law enforcement officer, to believe that the law enforcement officer poses an immediate threat to the safety of that officer or others or the property of others.

``(4) Investigation.--The term `investigation'--

``(A) means an action taken to determine whether a law enforcement officer violated a law by a public agency or a person employed by a public agency, acting alone or in cooperation with or at the direction of another agency, or a division or unit within another agency, regardless of a denial by such an agency that any such action is not an investigation; and

``(B) includes--

``(i) asking questions of any other law enforcement officer or non-law enforcement officer;

``(ii) conducting observations;

``(iii) reviewing and evaluating reports, records, or other documents; and

``(iv) examining physical evidence.

``(5) Law enforcement officer.--The terms `law enforcement officer' and `officer' have the meaning given the term `law enforcement officer' in section 1204, except the term does not include a law enforcement officer employed by the United States, or any department, agency, or instrumentality thereof.

``(6) Personnel record.--The term `personnel record' means any document, whether in written or electronic form and irrespective of location, that has been or may be used in determining the qualifications of a law enforcement officer for employment, promotion, transfer, additional compensation, termination or any other disciplinary action.

``(7) Public agency and law enforcement agency.--The terms `public agency' and `law enforcement agency' each have the meaning given the term `public agency' in section 1204, except the terms do not include the United States, or any department, agency, or instrumentality thereof.

``(8) Summary punishment.--The term `summary punishment'

means punishment imposed--

``(A) for a violation of law that does not result in any disciplinary action; or

``(B) for a violation of law that has been negotiated and agreed upon by the law enforcement agency and the law enforcement officer, based upon a written waiver by the officer of the rights of that officer under subsection (i) and any other applicable law or constitutional provision, after consultation with the counsel or representative of that officer.

``(b) Applicability.--

``(1) In general.--This section sets forth the due process rights, including procedures, that shall be afforded a law enforcement officer who is the subject of an investigation or disciplinary hearing.

``(2) Nonapplicability.--This section does not apply in the case of--

``(A) an investigation of specifically alleged conduct by a law enforcement officer that, if proven, would constitute a violation of a statute providing for criminal penalties; or

``(B) a nondisciplinary action taken in good faith on the basis of the employment related performance of a law enforcement officer.

``(c) Political Activity.--

``(1) Right to engage or not to engage in political activity.--Except when on duty or acting in an official capacity, a law enforcement officer shall not be prohibited from engaging in political activity or be denied the right to refrain from engaging in political activity.

``(2) Right to run for elective office.--A law enforcement officer shall not be--

``(A) prohibited from being a candidate for an elective office or from serving in such an elective office, solely because of the status of the officer as a law enforcement officer; or

``(B) required to resign or take an unpaid leave from employment with a law enforcement agency to be a candidate for an elective office or to serve in an elective office, unless such service is determined to be in conflict with or incompatible with service as a law enforcement officer.

``(3) Adverse personnel action.--An action by a public

agency against a law enforcement officer, including requiring the officer to take unpaid leave from employment, in violation of this subsection shall be considered an adverse personnel action within the meaning of subsection (a)(1).

``(d) Effective Procedures for Receipt, Review, and Investigation of Complaints Against Law Enforcement Officers.--

``(1) Complaint process.--Not later than 1 year after the effective date of this section, each law enforcement agency shall adopt and comply with a written complaint procedure that--

``(A) authorizes persons from outside the law enforcement agency to submit written complaints about a law enforcement officer to--

``(i) the law enforcement agency employing the law enforcement officer; or

``(ii) any other law enforcement agency charged with investigating such complaints;

``(B) sets forth the procedures for the investigation and disposition of such complaints;

``(C) provides for public access to required forms and other information concerning the submission and disposition of written complaints; and

``(D) requires notification to the complainant in writing of the final disposition of the complaint and the reasons for such disposition.

``(2) Initiation of an investigation.--

``(A) In general.--Except as provided in subparagraph (B), an investigation based on a complaint from outside the law enforcement agency shall commence not later than 15 days after the receipt of the complaint by--

``(i) the law enforcement agency employing the law enforcement officer against whom the complaint has been made; or

``(ii) any other law enforcement agency charged with investigating such a complaint.

``(B) Exception.--Subparagraph (A) does not apply if--

``(i) the law enforcement agency determines from the face of the complaint that each allegation does not constitute a violation of law; or

``(ii) the complainant fails to comply

substantially with the complaint procedure of the law enforcement agency established under this section.

``(3) Complainant or victim conflict of interest.--The complainant or victim of the alleged violation of law giving rise to an investigation under this subsection may not conduct or supervise the investigation or serve as an investigator.

``(e) Notice of Investigation.--

``(1) In general.--Any law enforcement officer who is the subject of an investigation shall be notified of the investigation 24 hours before the commencement of questioning or to otherwise being required to provide information to an investigating agency.

``(2) Contents of notice.--Notice given under paragraph (1) shall include--

``(A) the nature and scope of the investigation;

``(B) a description of any allegation contained in a written complaint;

``(C) a description of each violation of law alleged in the complaint for which suspicion exists that the officer may have engaged in conduct that may subject the officer to disciplinary action; and

``(D) the name, rank, and command of the officer or any other individual who will be conducting the investigation.

``(f) Rights of Law Enforcement Officers Prior to and During Questioning Incidental to an Investigation.--If a law enforcement officer is subjected to questioning incidental to an investigation that may result in disciplinary action against the officer, the following minimum safeguards shall apply:

``(1) Counsel and representation.--

``(A) In general.--Any law enforcement officer under investigation shall be entitled to effective counsel by an attorney or representation by any other person who the officer chooses, such as an employee representative, or both, immediately before and during the entire period of any questioning session, unless the officer consents in writing to being questioned outside the presence of counsel or representative.

``(B) Private consultation.--During the course of any questioning session, the officer shall be afforded the opportunity to consult privately with counsel or a representative, if such consultation does not

repeatedly and unnecessarily disrupt the questioning period.

``(C) Unavailability of counsel.--If the counsel or representative of the law enforcement officer is not available within 24 hours of the time set for the commencement of any questioning of that officer, the investigating law enforcement agency shall grant a reasonable extension of time for the law enforcement officer to obtain counsel or representation.

``(2) Reasonable hours and time.--Any questioning of a law enforcement officer under investigation shall be conducted at a reasonable time when the officer is on duty, unless exigent circumstances compel more immediate questioning, or the officer agrees in writing to being questioned at a different time, subject to the requirements of subsections (e) and (f)(1).

``(3) Place of questioning.--Unless the officer consents in writing to being questioned elsewhere, any questioning of a law enforcement officer under investigation shall take place--

``(A) at the office of the individual conducting the investigation on behalf of the law enforcement agency employing the officer under investigation; or

``(B) the place at which the officer under investigation reports for duty.

``(4) Identification of questioner.--Before the commencement of any questioning, a law enforcement officer under investigation shall be informed of--

``(A) the name, rank, and command of the officer or other individual who will conduct the questioning; and

``(B) the relationship between the individual conducting the questioning and the law enforcement agency employing the officer under investigation.

``(5) Single questioner.--During any single period of questioning of a law enforcement officer under investigation, each question shall be asked by or through 1 individual.

``(6) Reasonable time period.--Any questioning of a law enforcement officer under investigation shall be for a reasonable period of time and shall allow reasonable periods for the rest and personal necessities of the officer and the counsel or representative of the officer, if such person is present.

``(7) No threats, false statements, or promises to be made.--

``(A) In general.--Except as provided in

subparagraph (B), no threat against, false or misleading statement to, harassment of, or promise of reward to a law enforcement officer under investigation shall be made to induce the officer to answer any question, give any statement, or otherwise provide information.

``(B) Exception.--The law enforcement agency employing a law enforcement officer under investigation may require the officer to make a statement relating to the investigation by explicitly threatening disciplinary action, including termination, only if--

``(i) the officer has received a written grant of use and derivative use immunity or transactional immunity by a person authorized to grant such immunity; and

``(ii) the statement given by the law enforcement officer under such an immunity may not be used in any subsequent criminal proceeding against that officer.

``(8) Recording.--

``(A) In general.--All questioning of a law enforcement officer under an investigation shall be recorded in full, in writing or by electronic device, and a copy of the transcript shall be provided to the officer under investigation before any subsequent period of questioning or the filing of any charge against that officer.

``(B) Separate recording.--To ensure the accuracy of the recording, an officer may utilize a separate electronic recording device, and a copy of any such recording (or the transcript) shall be provided to the public agency conducting the questioning, if that agency so requests.

``(9) Use of honesty testing devices prohibited.--No law enforcement officer under investigation may be compelled to submit to the use of a lie detector, as defined in section 2 of the Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001).

``(g) Notice of Investigative Findings and Disciplinary Recommendation and Opportunity to Submit a Written Response.--

``(1) Notice.--Not later than 30 days after the conclusion of an investigation under this section, the person in charge of the investigation or the designee of that person shall notify the law enforcement officer who was the subject of the

investigation, in writing, of the investigative findings and any recommendations for disciplinary action.

``(2) Opportunity to submit written response.--

``(A) In general.--Not later than 30 days after receipt of a notification under paragraph (1), and before the filing of any charge seeking the discipline of such officer or the commencement of any disciplinary proceeding under subsection (h), the law enforcement officer who was the subject of the investigation may submit a written response to the findings and recommendations included in the notification.

``(B) Contents of response.--The response submitted under subparagraph (A) may include references to additional documents, physical objects, witnesses, or any other information that the law enforcement officer believes may provide exculpatory evidence.

``(h) Disciplinary Hearing.--

``(1) Notice of opportunity for hearing.--Except in a case of summary punishment or emergency suspension (subject to subsection (k)), before the imposition of any disciplinary action the law enforcement agency shall notify the officer that the officer is entitled to a due process hearing by an independent and impartial hearing officer or board.

``(2) Requirement of determination of violation.--No disciplinary action may be taken against a law enforcement officer unless an independent and impartial hearing officer or board determines, after a hearing and in accordance with the requirements of this subsection, that the law enforcement officer committed a violation of law.

``(3) Time limit.--No disciplinary charge may be brought against a law enforcement officer unless--

``(A) the charge is filed not later than the earlier of--

``(i) 1 year after the date on which the law enforcement agency filing the charge had knowledge or reasonably should have had knowledge of an alleged violation of law; or

``(ii) 90 days after the commencement of an investigation; or

``(B) the requirements of this paragraph are waived in writing by the officer or the counsel or representative of the officer.

``(4) Notice of hearing.--Unless waived in writing by the

officer or the counsel or representative of the officer, not later than 30 days after the filing of a disciplinary charge against a law enforcement officer, the law enforcement agency filing the charge shall provide written notification to the law enforcement officer who is the subject of the charge, of--

``(A) the date, time, and location of any disciplinary hearing, which shall be scheduled in cooperation with the law enforcement officer, or the counsel or representative of the officer, and which shall take place not earlier than 30 days and not later than 60 days after notification of the hearing is given to the law enforcement officer under investigation;

``(B) the name and mailing address of the independent and impartial hearing officer, or the names and mailing addresses of the independent and impartial hearing board members; and

``(C) the name, rank, command, and address of the law enforcement officer prosecuting the matter for the law enforcement agency, or the name, position, and mailing address of the person prosecuting the matter for a public agency, if the prosecutor is not a law enforcement officer.

``(5) Access to documentary evidence and investigative file.--Unless waived in writing by the law enforcement officer or the counsel or representative of that officer, not later than 15 days before a disciplinary hearing described in paragraph (4)(A), the law enforcement officer shall be provided with--

``(A) a copy of the complete file of the pre-disciplinary investigation; and

``(B) access to and, if so requested, copies of all documents, including transcripts, records, written statements, written reports, analyses, and electronically recorded information that--

``(i) contain exculpatory information;

``(ii) are intended to support any disciplinary action; or

``(iii) are to be introduced in the disciplinary hearing.

``(6) Examination of physical evidence.--Unless waived in writing by the law enforcement officer or the counsel or representative of that officer--

``(A) not later than 15 days before a disciplinary

hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of that officer of all physical, non-documentary evidence; and

``(B) not later than 10 days before a disciplinary hearing, the prosecuting agency shall provide a reasonable date, time, place, and manner for the law enforcement officer or the counsel or representative of the law enforcement officer to examine the evidence described in subparagraph (A).

``(7) Identification of witnesses.--Unless waived in writing by the law enforcement officer or the counsel or representative of the officer, not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of the officer, of the name and address of each witness for the law enforcement agency employing the law enforcement officer.

``(8) Representation.--During a disciplinary hearing, the law enforcement officer who is the subject of the hearing shall be entitled to due process, including--

``(A) the right to be represented by counsel or a representative;

``(B) the right to confront and examine all witnesses against the officer; and

``(C) the right to call and examine witnesses on behalf of the officer.

``(9) Hearing board and procedure.--

``(A) In general.--A State or local government agency, other than the law enforcement agency employing the officer who is subject of the disciplinary hearing, shall--

``(i) determine the composition of an independent and impartial disciplinary hearing board;

``(ii) appoint an independent and impartial hearing officer; and

``(iii) establish such procedures as may be necessary to comply with this section.

``(B) Peer representation on disciplinary hearing board.--A disciplinary hearing board that includes employees of the law enforcement agency employing the law enforcement officer who is the subject of the hearing, shall include not less than 1 law enforcement

officer of equal or lesser rank to the officer who is the subject of the hearing.

``(10) Summonses and subpoenas.--

``(A) In general.--The disciplinary hearing board or independent hearing officer--

``(i) shall have the authority to issue summonses or subpoenas, on behalf of--

``(I) the law enforcement agency employing the officer who is the subject of the hearing; or

``(II) the law enforcement officer who is the subject of the hearing; and

``(ii) upon written request of either the agency or the officer, shall issue a summons or subpoena, as appropriate, to compel the appearance and testimony of a witness or the production of documentary evidence.

``(B) Effect of failure to comply with summons or subpoena.--With respect to any failure to comply with a summons or a subpoena issued under subparagraph (A)--

``(i) the disciplinary hearing officer or board shall petition a court of competent jurisdiction to issue an order compelling compliance; and

``(ii) subsequent failure to comply with such a court order issued pursuant to a petition under clause (i) shall--

``(I) be subject to contempt of a court proceedings according to the laws of the jurisdiction within which the disciplinary hearing is being conducted; and

``(II) result in the recess of the disciplinary hearing until the witness becomes available to testify and does testify or is held in contempt.

``(11) Closed hearing.--A disciplinary hearing shall be closed to the public unless the law enforcement officer who is the subject of the hearing requests, in writing, that the hearing be open to specified individuals or to the general public.

``(12) Recording.--All aspects of a disciplinary hearing, including pre-hearing motions, shall be recorded by audio tape,

video tape, or transcription.

``(13) Sequestration of witnesses.--Either side in a disciplinary hearing may move for and be entitled to sequestration of witnesses.

``(14) Testimony under oath.--The hearing officer or board shall administer an oath or affirmation to each witness, who shall testify subject to the laws of perjury of the State in which the disciplinary hearing is being conducted.

``(15) Final decision on each charge.--

``(A) In general.--At the conclusion of the presentation of all the evidence and after oral or written argument, the hearing officer or board shall deliberate and render a written final decision on each charge.

``(B) Final decision isolated to charge brought.--The hearing officer or board may not find that the law enforcement officer who is the subject of the hearing is liable for disciplinary action for any violation of law, as to which the officer was not charged.

``(16) Burden of persuasion and standard of proof.--The burden of persuasion or standard of proof of the prosecuting agency shall be--

``(A) by clear and convincing evidence as to each charge alleging false statement or representation, fraud, dishonesty, deceit, moral turpitude, or criminal behavior on the part of the law enforcement officer who is the subject of the charge; and

``(B) by a preponderance of the evidence as to all other charges.

``(17) Factors of just cause to be considered by the hearing officer or board.--A law enforcement officer who is the subject of a disciplinary hearing shall not be found guilty of any charge or subjected to any disciplinary action unless the disciplinary hearing board or independent hearing officer finds that--

``(A) the officer who is the subject of the charge could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct set forth in the charge against the officer;

``(B) the rule, regulation, order, or procedure that the officer who is the subject of the charge allegedly violated is reasonable;

``(C) the charging party, before filing the charge,

made a reasonable, fair, and objective effort to discover whether the officer did in fact violate the rule, regulation, order, or procedure as charged;

``(D) the charging party did not conduct the investigation arbitrarily or unfairly, or in a discriminatory manner, against the officer who is the subject of the charge, and the charge was brought in good faith; and

``(E) the proposed disciplinary action reasonably relates to the seriousness of the alleged violation and to the record of service of the officer who is the subject of the charge.

``(18) No commission of a violation.--If the officer who is the subject of the disciplinary hearing is found not to have committed the alleged violation--

``(A) the matter is concluded;

``(B) no disciplinary action may be taken against the officer;

``(C) the personnel file of that officer shall not contain any reference to the charge for which the officer was found not guilty; and

``(D) any pay and benefits lost or deferred during the pendency of the disposition of the charge shall be restored to the officer as though no charge had ever been filed against the officer, including salary or regular pay, vacation, holidays, longevity pay, education incentive pay, shift differential, uniform allowance, lost overtime, or other premium pay opportunities, and lost promotional opportunities.

``(19) Commission of a violation.--

``(A) In general.--If the officer who is the subject of the charge is found to have committed the alleged violation, the hearing officer or board shall make a written recommendation of a penalty to the law enforcement agency employing the officer or any other governmental entity that has final disciplinary authority, as provided by applicable State or local law.

``(B) Penalty.--The employing agency or other governmental entity may not impose a penalty greater than the penalty recommended by the hearing officer or board.

``(20) Appeal.--Any officer who has been found to have

committed an alleged violation may appeal from a final decision of a hearing officer or hearing board to a court of competent jurisdiction or to an independent neutral arbitrator to the extent available in any other administrative proceeding under applicable State or local law, or a collective bargaining agreement.

``(i) Waiver of Rights.--

``(1) In general.--An officer who is notified that the officer is under investigation or is the subject of a charge may, after such notification, waive any right or procedure guaranteed by this section.

``(2) Written waiver.--A written waiver under this subsection shall be--

``(A) in writing; and

``(B) signed by--

``(i) the officer, who shall have consulted with counsel or a representative before signing any such waiver; or

``(ii) the counsel or representative of the officer, if expressly authorized by subsection (h).

``(j) Summary Punishment.--Nothing in this section shall preclude a public agency from imposing summary punishment.

``(k) Emergency Suspension.--Nothing in this section may be construed to preclude a law enforcement agency from imposing an emergency suspension on a law enforcement officer, except that any such suspension shall--

``(1) be followed by a hearing in accordance with the requirements of subsection (h); and

``(2) not deprive the affected officer of any pay or benefit.

``(l) Retaliation for Exercising Rights.--There shall be no imposition of, or threat of, disciplinary action or other penalty against a law enforcement officer for the exercise of any right provided to the officer under this section.

``(m) Other Remedies not Impaired.--Nothing in this section may be construed to impair any other right or remedy that a law enforcement officer may have under any constitution, statute, ordinance, order, rule, regulation, procedure, written policy, collective bargaining agreement, or any other source.

``(n) Declaratory or Injunctive Relief.--A law enforcement officer who is aggrieved by a violation of, or is otherwise denied any right afforded by, the Constitution of the United States, a State

constitution, this section, or any administrative rule or regulation promulgated pursuant thereto, may file suit in any Federal or State court of competent jurisdiction for declaratory or injunctive relief to prohibit the law enforcement agency from violating or otherwise denying such right, and such court shall have jurisdiction, for cause shown, to restrain such a violation or denial.

``(o) Protection of Law Enforcement Officer Personnel Files.--

``(1) Restrictions on adverse material maintained in officers' personnel records.--

``(A) In general.--Unless the officer has had an opportunity to review and comment, in writing, on any adverse material included in a personnel record relating to the officer, no law enforcement agency or other governmental entity may--

``(i) include the adverse material in that personnel record; or

``(ii) possess or maintain control over the adverse material in any form as a personnel record within the law enforcement agency or elsewhere in the control of the employing governmental entity.

``(B) Responsive material.--Any responsive material provided by an officer to adverse material included in a personnel record pertaining to the officer shall be--

``(i) attached to the adverse material; and

``(ii) released to any person or entity to whom the adverse material is released in accordance with law and at the same time as the adverse material is released.

``(2) Right to inspection of, and restrictions on access to information in, the officer's own personnel records.--

``(A) In general.--Subject to subparagraph (B), a law enforcement officer shall have the right to inspect all of the personnel records of the officer not less than annually.

``(B) Restrictions.--A law enforcement officer shall not have access to information in the personnel records of the officer if the information--

``(i) relates to the investigation of alleged conduct that, if proven, would constitute or have constituted a definite violation of a statute providing for criminal penalties, but as to which no formal charge was

brought;

``(ii) contains letters of reference for the officer;

``(iii) contains any portion of a test document other than the results;

``(iv) is of a personal nature about another officer, and if disclosure of that information in non-redacted form would constitute a clearly unwarranted intrusion into the privacy rights of that other officer; or

``(v) is relevant to any pending claim brought by or on behalf of the officer against the employing agency of that officer that may be discovered in any judicial or administrative proceeding between the officer and the employer of that officer.

``(p) States' Rights.--

``(1) In general.--Nothing in this section may be construed--

``(A) to preempt any State or local law, or any provision of a State or local law, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2005, that confers a right or a protection that equals or exceeds the right or protection afforded by this section; or

``(B) to prohibit the enactment of any State or local law that confers a right or protection that equals or exceeds a right or protection afforded by this section.

``(2) State or local laws preempted.--A State or local law, or any provision of a State or local law, that confers fewer rights or provides less protection for a law enforcement officer than any provision in this section shall be preempted by this section.

``(q) Collective Bargaining Agreements.--Nothing in this section may be construed to--

``(1) preempt any provision in a mutually agreed-upon collective bargaining agreement, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2005, that provides for substantially the same or a greater right or protection afforded under this section; or

``(2) prohibit the negotiation of any additional right or protection for an officer who is subject to any collective bargaining agreement.''.

(b) Technical Amendment.--The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the item relating to section 819 the following:

``820. Discipline, accountability, and due process of State and local law enforcement officers.''.

SEC. 4. PROHIBITION OF FEDERAL CONTROL OVER STATE AND LOCAL CRIMINAL JUSTICE AGENCIES.

Nothing in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control of any police force or any criminal justice agency of any State or any political subdivision thereof.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to each State on the earlier of--

(1) 2 years after the date of enactment of this Act; or

(2) the conclusion of the second legislative session of the State that begins on or after the date of enactment of this Act.

<all>

[Congressional Bills 111th Congress]
[From the U.S. Government Publishing Office]
[S. 3600 Introduced in Senate (IS)]

111th CONGRESS
2d Session

S. 3600

To amend the Jones Act and related statutes with respect to the liability of vessel owners and operators for damages.

IN THE SENATE OF THE UNITED STATES

July 15, 2010

Mr. Rockefeller introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Jones Act and related statutes with respect to the liability of vessel owners and operators for damages.

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 ``Fairness in Admiralty and Maritime Law Act''.

SEC. 2. REPEAL OF LIMITATION OF SHIPOWNERS' LIABILITY ACT OF 1851.

(a) In General.--Chapter 305 of title 46, United States Code, is amended--

(1) by striking sections 30505, 30506, 30507, 30511, and 30512;

(2) by striking ``(except section 30503)'' after ``chapter'' in section 30502; and

(3) by redesignating sections 30508, 30509, and 30510 as sections 30505, 30506, and 30507, respectively.

(b) Conforming Amendments.--

(1) Oil pollution act of 1990.--Section 1018 of the Oil Pollution Act of 1990 (33 U.S.C. 2718) is amended--

(A) by striking ``or the Act of March 3, 1851'' in subsection (a); and

(B) by striking ``Act, the Act of March 3, 1851 (46

U.S.C. 183 et seq.),'' in subsection (c) and inserting ``Act''.

(2) Title 46.--Section 14305(a) of title 46, United States Code, is amended by striking paragraph (5) and re-designating the paragraphs that follow as paragraphs (5) through (14), respectively.

(c) Clerical Amendment.--The table of contents for chapter 305 of title 46, United States Code, is amended by striking the items relating to sections 30505 through 30512 and inserting the following:

``30505. Provisions requiring notice of claim or limiting time for bringing action
``30506. Provisions limiting liability for personal injury or death
``30507. Vicarious liability for medical malpractice with regard to crew''.

SEC. 3. ASSESSMENT OF PUNITIVE DAMAGES IN MARITIME LAW.

(a) In General.--Chapter 301 of title 46, United States Code, is amended by adding at the end the following:

`` 30107. Punitive damages

``In a civil action for damages arising out of a maritime tort, punitive damages may be assessed without regard to the amount of compensatory damages assessed in the action.''.

(b) Clerical Amendment.--The table of contents for chapter 301 of title 46, United States Code, is amended by adding at the end the following:

``30107. Punitive damages''.

SEC. 4. AMENDMENTS TO THE DEATH ON THE HIGH SEAS ACT.

(a) In General.--Chapter 303 of title 46, United States Code, is amended--

(1) by inserting ``or law'' after ``admiralty'' in section 30302;

(2) by inserting ``survivors, including the decedent's'' in section 30302;

(3) by inserting ``and nonpecuniary loss'' after ``pecuniary loss'' in section 30303;

(4) by striking ``sustained by'' and all that follows in section 30303 and inserting ``sustained, plus a fair compensation for the decedent's pain and suffering. In this

section, the term `nonpecuniary loss' means the loss of care, comfort, and companionship.'';

(5) by inserting ``or law'' after ``admiralty'' in section 30305;

(6) by inserting ``or law'' after ``admiralty'' in section 30306; and

(7) by striking section 30307.

(b) Clerical Amendment.--The table of sections for chapter 303 of title 46, United States Code, is amended by striking the item relating to section 30307.

SEC. 5. AMENDMENTS TO THE JONES ACT.

(a) In General.--Chapter 301 of title 46, United States Code, is amended--

(1) by adding at the end the following: ``In addition to other amounts authorized under such laws, the recovery for a seaman who so dies shall include recovery for loss of care, comfort, and companionship.''; and

(2) by striking section 30105.

(b) Clerical Amendment.--The table of contents for chapter 301 of title 46, United States Code, is amended by striking the item relating to section 30105.

SEC. 6. EFFECTIVE DATE.

The amendments made by this Act shall apply to--

(1) causes of action and claims arising after April 19, 2010; and

(2) actions commenced before the date of enactment of this Act that have not been finally adjudicated, including appellate review, as of that date.

<all>

[Congressional Bills 110th Congress]
[From the U.S. Government Publishing Office]
[H.R. 6706 Introduced in House (IH)]

110th CONGRESS
2d Session

H. R. 6706

To provide for enhanced retirement benefits for administrative law judges.

IN THE HOUSE OF REPRESENTATIVES

July 31, 2008

Mr. Kucinich (for himself, Mr. Shays, Mr. Gordon of Tennessee, Mr. Goode, Mr. Davis of Illinois, Mr. Grijalva, Ms. Schakowsky, Mr. Andrews, Mr. Hastings of Florida, Mr. Butterfield, and Mr. Cummings) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

---

A BILL

To provide for enhanced retirement benefits for administrative law judges.

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) Short Title.--This Act may be cited as the ``Administrative Law Judges Retirement Act of 2008''.

(b) References.--Whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 5, United States Code.

SEC. 2. PROVISIONS RELATING TO THE CIVIL SERVICE RETIREMENT SYSTEM.

(a) Definition.--Section 8331 is amended--

(1) in paragraph (30), by striking ``and'' at the end;

(2) in paragraph (31), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

``(32) `administrative law judge' means an administrative law judge appointed under section 3105 or a similar prior provision of law.''.

(b) Deductions, Contributions, and Deposits.--Section 8334 is amended--

(1) in subsection (a)(1)(A), by striking ``or customs and border protection officer,'' and inserting ``customs and border protection officer, or administrative law judge,'';

(2) in subsection (a)(1)(B)--

(A) in the first sentence of clause (i), by striking ``clause (ii),'' and inserting ``clause (ii) or (iii),''; and

(B) by adding after clause (ii) the following:

``(iii) In the case of an administrative law judge, the amount to be contributed under this subparagraph shall (instead of the amount described in clause (i)) be equal to the amount derived by multiplying the administrative law judge's basic pay by the percentage that is 1 percentage point less than the percentage applicable under subsection (c).''; and

(3) in subsection (c), by adding after the item relating to a nuclear materials courier the following:

``Administrative law judge.....	5	June 11, 1947, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6.5	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to December 31, 1998.

	7.25	January 1, 1999, to December 31, 1999.
	7.4	January 1, 2000, to December 31, 2000.
	7	January 1, 2001, to (but not including) the effective date of the Administrative Law Judges Retirement Act of 2008.
	8	The effective date of the Administrative Law Judges Retirement Act of 2008 and thereafter.''.

(c) Immediate Retirement.--

(1) In general.--Section 8336 is amended by adding at the end the following:

``(q) An employee who is separated from the service after completing 10 years of service as an administrative law judge and becoming 60 years of age is entitled to an annuity. An employee who is separated from the service voluntarily after completing 10 years of service as an administrative law judge but before becoming 60 years of age is entitled to a reduced annuity.''.

(2) Discontinued service or early voluntary retirement.--Section 8336(d) is amended by adding at the end the following: ``In the case of an administrative law judge, the preceding provisions of this subsection shall be applied by treating any reference in such provisions to removal or separation for `misconduct or delinquency' or for `misconduct or unacceptable performance' to refer to removal under section 1215, 7521, or 7532.''.

(d) Computation of Annuity.--Section 8339 is amended--

(1) in subsection (f), by striking ``(r), and (s)'' and inserting ``(r), (s), and (v)'';

(2) in subsection (h), by adding at the end the following: ``The annuity computed under subsections (f) and (v) for a employee retiring under the second sentence of section 8336(q) is reduced by ₩1/12₩ of 1 percent for each full month not in excess of 60 months, and ₩1/6₩ of 1 percent for each full month in excess of 60 months, the employee is under 60 years of age at the date of separation.'';

(3) in subsection (i), by striking ``(r), or (s)'' and inserting ``(r), (s), or (v)''; and

(4) by adding at the end the following:

``(v) The annuity of an employee retiring under section 8336(q) is computed under subsection (a), except, if the employee has had at least 5 years' service as an administrative law judge, the employee's annuity is computed with respect to--

``(1) such employee's service as an administrative law judge; and

``(2) such employee's military service not exceeding 5 years;

by multiplying 2₩1/2₩ percent of such employee's average pay by the years of that service.''.

(e) Technical and Conforming Amendments.--(1) Sections 8337(a) and 8339(g) are amended by striking ``or (s)'' each place it appears and inserting ``(s), or (v)''.

(2) Subsections (j), (k)(1), (l), and (m) of section 8339, subsections (b)(1) and (d) of section 8341, section 8343a(c), and section 8344(a)(A) are amended by striking ``and (s)'' each place it appears and inserting ``(s), and (v)''.

(3) Subsections (j)(3) (in the third sentence before the sentence containing subparagraph (A)), (j)(5)(C)(iii), and (k)(2)(C) of section 8339 are amended by striking ``and (r)'' and inserting ``(r), and (v)''.

(4) Section 8335(a) is amended by striking ``8331(29)(A)'' and inserting ``8331(30)(A)''.

SEC. 3. PROVISIONS RELATING TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

(a) Definition.--Section 8401 is amended--

(1) in paragraph (35), by striking ``and'' at the end;

(2) in paragraph (36), by striking the period and inserting ``; and''; and

(3) by adding at the end the following:

``(37) `administrative law judge' means an administrative law judge appointed under section 3105 or a similar prior provision of law.''.

(b) Early Retirement.--Section 8414(b) is amended by adding at the end the following:

``(4) In the case of an administrative law judge, the preceding provisions of this subsection shall be applied by treating any reference in such provisions to removal or separation for `misconduct

or delinquency' or for `misconduct or unacceptable performance' to refer to removal under section 1215, 7521, or 7532.''.

(c) Computation of Annuity.--Section 8415 is amended--

(1) in subsection (h)(2), by striking ``or customs and border protection officer'' and inserting ``customs and border protection officer, or administrative law judge.''; and

(2) by adding at the end the following:

``(n) The annuity of an administrative law judge, or a former administrative law judge, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as an administrative law judge, so much of the annuity as is computed with respect to such type of service, not exceeding a total of 20 years, shall be computed by multiplying 1₩7/10₩ percent of such employee's average pay by the years of that service.''.

(d) Deductions From Pay.--Section 8422(a)(3) is amended by adding after the item relating to a customs and border protection officer the following:

``Administrative law judge.....	7	January 1, 1987, to December 31, 1998.
	7.25	January 1, 1999, to December 31, 1999.
	7.4	January 1, 2000, to December 31, 2000.
	7	January 1, 2001, to (but not including) the effective date of the Administrative Law Judges Retirement Act of 2008.
	8	The effective date of the Administrative Law Judges Retirement Act of 2008 and thereafter.''.

(e) Government Contributions.--Section 8423 is amended--

(1) in subsection (a)(1)(B)(i), by striking ``and employees

under sections 302 and 303 of the Central Intelligence Agency Retirement Act, multiplied by'' and inserting ``employees under sections 302 and 303 of the Central Intelligence Agency Retirement Act, and administrative law judges, multiplied by'';

(2) by amending paragraph (2) of subsection (a) to read as follows:

``(2) In determining any normal-cost percentage to be applied under this subsection--

``(A) amounts provided for under section 8422 shall be taken into account; and

``(B) amounts provided by or for administrative law judges under subchapter III of chapter 83 (including sections 8334 and 8348, and whether provided before, on, or after the effective date of this subparagraph) shall, to the extent they exceed the normal cost of the benefits which are (i) provided for under subchapter III of chapter 83, and (ii) attributable to service performed as an administrative law judge (within the meaning of such subchapter), be taken into account as if they had been provided by or for administrative law judges under this chapter.''; and

(3) in subsection (a)(3)(A), by inserting ``administrative law judges,'' after ``military reserve technicians,'' each place it appears.

SEC. 4. EFFECTIVE DATE.

(a) In General.--This Act and the amendments made by this Act--

(1) shall take effect on the date of the enactment of this Act; and

(2) except as provided in subsection (b), shall apply only with respect to administrative law judges first appointed on or after the effective date of this Act.

(b) Exception.--

(1) Election for incumbents.--The amendments made by this Act shall apply with respect to any individual serving as an administrative law judge on the effective date of this Act if appropriate written application is submitted to the Office of Personnel Management within 12 months after such effective date.

(2) Treatment of prior service.--

(A) Deposit requirement.--An individual who makes an election under paragraph (1) shall, with respect to any administrative law judge service performed by such

individual prior to the date as of which deductions from such individual's pay begin to be made in accordance with the amendments made by this Act, be required to pay into the Civil Service Retirement and Disability Fund an amount equal to the difference between--

(i) the unrefunded individual contributions that were made for such prior service; and

(ii) the individual contributions that would have been required if the rate (or rates) in effect for such prior service had been equal to the rate (or rates) actually in effect for such prior service, increased by 1 percentage point.

(B) Effect of not making deposit.--If or to the extent that any amounts under subparagraph (A) are not paid by an individual making an election under paragraph (1), any annuity based on the service of such individual--

(i) shall be computed in accordance with the amendments made by this Act; but

(ii) shall be reduced in a manner similar to that set forth in section 8334(d)(2)(B) of title 5, United States Code.

(3) Survivor annuitants.--In the case of an individual described in paragraph (1) who dies before the end of the 12-month period beginning on the effective date of this Act, any application or deposit under this subsection may, for purposes of any survivor annuity based on the service of such individual, also be made by a survivor of such individual.

(c) Definition.--For purposes of this section, the term ``administrative law judge'' means an administrative law judge appointed under section 3105 of title 5, United States Code, or a similar prior provision of law.

(d) Regulations.--The Office of Personnel Management may prescribe any regulations necessary to carry out this section.

<all>

[Congressional Bills 115th Congress]
[From the U.S. Government Publishing Office]
[S. 867 Introduced in Senate (IS)]

<DOC>

115th CONGRESS
1st Session

S. 867

To provide support for law enforcement agency efforts to protect the mental health and well-being of law enforcement officers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

April 6 (legislative day, April 4), 2017

Mr. Donnelly (for himself, Mr. Young, Mrs. Feinstein, Mr. Cornyn, Mr. Blunt, and Mr. Coons) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To provide support for law enforcement agency efforts to protect the mental health and well-being of law enforcement officers, and for other purposes.

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 ``Law Enforcement Mental Health and Wellness Act of 2017''.

SEC. 2. SUPPORT FOR LAW ENFORCEMENT AGENCIES.

(a) Interagency Collaboration.--The Attorney General shall consult with the Secretary of Defense and the Secretary of Veterans Affairs to submit to Congress a report, which shall be made publicly available, on Department of Defense and Department of Veterans Affairs mental health practices and services that could be adopted by Federal, State, local, or tribal law enforcement agencies.

(b) Case Studies.--The Director of the Office of Community Oriented Policing Services shall submit to Congress a report--

(1) that is similar to the report entitled ``Health, Safety, and Wellness Program Case Studies in Law Enforcement'' published by the Office of Community Oriented Policing Services in 2015; and

(2) that focuses on case studies of programs designed primarily to address officer psychological health and well-being.

(c) Peer Mentoring Pilot Program.--Section 1701(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(b)) is amended--

(1) in paragraph (21), by striking ``; and'' and inserting a semicolon;

(2) in paragraph (22), by striking the period at the end and inserting ``; and''; and

(3) by adding at the end the following:

``(23) to establish peer mentoring mental health and wellness pilot programs within State, tribal, and local law enforcement agencies.''.

SEC. 3. SUPPORT FOR MENTAL HEALTH PROVIDERS.

The Attorney General, in coordination with the Secretary of Health and Human Services, shall develop resources to educate mental health providers about the culture of Federal, State, tribal, and local law enforcement agencies and evidence-based therapies for mental health issues common to Federal, State, local, and tribal law enforcement officers.

SEC. 4. SUPPORT FOR OFFICERS.

The Attorney General shall--

(1) in consultation with Federal, State, local, and tribal

law enforcement agencies--

(A) identify and review the effectiveness of any existing crisis hotlines for law enforcement officers;

(B) provide recommendations to Congress on whether Federal support for existing crisis hotlines or the creation of an alternative hotline would improve the effectiveness or use of the hotline; and

(C) conduct research into the efficacy of an annual mental health check for law enforcement officers;

(2) in consultation with the Secretary of Homeland Security and the head of other Federal agencies that employ law enforcement officers, examine the mental health and wellness needs of Federal law enforcement officers, including the efficacy of expanding peer mentoring programs for law enforcement officers at each Federal agency; and

(3) ensure that any recommendations, resources, or programs provided under this Act protect the privacy of participating law enforcement officers.

<all>

[Congressional Bills 118th Congress]
[From the U.S. Government Publishing Office]
[H. Con. Res. 5 Introduced in House (IH)]

<DOC>

118th CONGRESS
1st Session
H. CON. RES. 5

Expressing support for the Nation's law enforcement agencies and condemning any efforts to defund or dismantle law enforcement agencies.

IN THE HOUSE OF REPRESENTATIVES

January 9, 2023

Mr. Tiffany (for himself, Mrs. Hinson, Mr. Fitzgerald, Mr. Reschenthaler, Mrs. Lesko, Mr. Langworthy, Mr. Garbarino, Mr. Joyce of Pennsylvania, Mr. Wenstrup, and Mrs. Chavez-DeRemer) submitted the following concurrent resolution; which was referred to the Committee on the Judiciary

---

CONCURRENT RESOLUTION

Expressing support for the Nation's law enforcement agencies and condemning any efforts to defund or dismantle law enforcement agencies.

Whereas law enforcement officers protect the American people from criminals who seek to perpetrate violence and harm innocent lives regardless of the political circumstances of the day;

Whereas the brave men and women of the law enforcement community continually summon the courage to fulfill their solemn oath to ensure the safety of our communities and provide peace of mind for our Nation's citizens;

Whereas America's law enforcement community also seeks to assist the communities they serve through a variety of nontraditional means, including nonarrest pathways that connect individuals with treatment and recovery programs to overcome addiction, and juvenile diversion programs to prevent minors from entering the criminal justice system;

Whereas supporting law enforcement officers with the equipment, training, and funding necessary to serve our communities and keep our streets safe has long been a bipartisan issue;

Whereas law enforcement officers willingly face dangerous circumstances and the

threat of serious bodily injury or death on a daily basis to ensure the
safety of all Americans;
Whereas the National Law Enforcement Memorial and Museum's 2021 Law Enforcement
Officers Fatalities Report detailed that 458 law enforcement officers
were killed in the line of duty in 2021, an increase of 55 percent from
the previous year, including 62 officers who were killed in firearms-
related incidents;
Whereas protests have been hijacked by violent extremists seeking to sow
discord, damage property, loot businesses, and inflict harm against
civilians and law enforcement officers;
Whereas law enforcement officers have been run over, shot, hit with objects, and
stabbed attempting to maintain peace and the rule of law;
Whereas progressive politicians and interest groups have responded to this
violence with calls to defund State and local law enforcement agencies
across the Nation;
Whereas defunding or otherwise handcuffing law enforcement officers will make
officers less likely to intervene in dangerous situations and will
result in law enforcement pulling back from the neighborhoods they are
entrusted to protect;
Whereas violent crime increases when law enforcement is forced to withdraw from
neighborhoods;
Whereas the vilification of the Nation's law enforcement officers and the
embracing of hateful rhetoric against these brave men and women only
places them further in harm's way;
Whereas these brave men and women must operate in an environment where their
moral and legal authority is constantly being scrutinized, and they
undertake the critical yet difficult task of addressing the actions of
those affected by addiction, homelessness, and mental illness; and
Whereas efforts to defund police departments will cause irreparable and lasting

damage to the Nation: Now, therefore, be it

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

(1) offers its sincere gratitude and appreciation to the Nation's law enforcement officers who protect and serve our communities;

(2) recognizes the great sacrifice our law enforcement officers make to keep the Nation safe; and

(3) rejects the misguided and dangerous efforts to defund and dismantle the Nation's State and local law enforcement agencies.

<all>

15 U.S.C.
United States Code, 2023 Edition
Title 15 - COMMERCE AND TRADE
CHAPTER 47 - CONSUMER PRODUCT SAFETY
Sec. 2070 - Criminal penalties
From the U.S. Government Publishing Office, www.gpo.gov

§2070. Criminal penalties

(a) Violation of section 2068 of this title is punishable by—

(1) imprisonment for not more than 5 years for a knowing and willful violation of that section;

(2) a fine determined under section 3571 of title 18; or

(3) both.

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 2068 of this title shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a).

(c)(1) In addition to the penalties provided by subsection (a), the penalty for a criminal violation of this chapter or any other Act enforced by the Commission may include the forfeiture of assets associated with the violation.

(2) In this subsection, the term "criminal violation" means a violation of this chapter or any other Act enforced by the Commission for which the violator is sentenced to pay a fine, be imprisoned, or both.

(Pub. L. 92–573, §21, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 110–314, title II, §217(c)(1), (2), (d), Aug. 14, 2008, 122 Stat. 3060.)

EDITORIAL NOTES

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–314, §217(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Any person who knowingly and willfully violates section 2068 of this title after having received notice of noncompliance from the Commission shall be fined not more than $50,000 or be imprisoned not more than one year, or both."

Subsec. (b). Pub. L. 110–314, §217(c)(2), struck out ", and who has knowledge of notice of noncompliance received by the corporation from the Commission," after "section 2068 of this title".

Subsec. (c). Pub. L. 110–314, §217(d), added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the sixtieth day following Oct. 27, 1972, see section 34 of Pub. L. 92–573, set out as a note under section 2051 of this title.

[Federal Register Volume 69, Number 87 (Wednesday, May 5, 2004)]
[Notices]
[Pages 25174-25181]
From the Federal Register Online via the Government Publishing Office [www.gpo.gov]
[FR Doc No: 04-10131]

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's Office of General Counsel involving veterans' benefits under laws administered by

VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. They are being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretations regarding the legal matters at issue.

FOR FURTHER INFORMATION CONTACT: Susan P. Sokoll, Law Librarian, Department of Veterans Affairs (026H), 810 Vermont Ave., NW, Washington, DC 20420. (202) 273-6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(8) and 14.507 authorize the Department's Office of General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under the laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel, which must be, followed in future benefit matters and to

[[Page 25175]]

assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above or by accessing them on the Internet at http://www1.va.gov/OGC/.

VAOPGCPREC 11-2001

Question Presented

When a veteran is ineligible for burial in a national cemetery by operation of 38 U.S.C. 2411, may a headstone or marker or a memorial headstone or marker be provided under 38 U.S.C. 2306(a) or (b) for placement in a state, local, or private cemetery?

Held

A veteran who cannot qualify for a headstone or marker under 38 U.S.C. 2306(a), because he or she is not eligible for burial in a national cemetery due to 38 U.S.C. 2411, also cannot qualify for a memorial headstone or marker under U.S.C. 2306(b), in the event his or her remains are unavailable.

EFFECTIVE DATE: June 7, 2001.

VAOPGCPREC 12-2001

Question Presented

What did the United States Court of Appeals for the Federal Circuit hold in Roberson v. Principi, No. 00-7009, 2001 U.S. App. LEXIS 11008 (Fed. Cir. May 29, 2001)?

Held

The only holdings in Roberson v. Principi, No. 00-7009, 2001 U.S. App. LEXIS 11008 (Fed. Cir. May 29, 2001) are the following:

1. Once a veteran: (1) submits evidence of a medical disability; (2) makes a claim for the highest rating possible; and (3) submits evidence of unemployability, the requirement in 38 CFR 3.155(a) that an informal claim ``identify the benefit sought'' has been satisfied and VA must consider whether the veteran is entitled to total disability based upon individual unemployability (TDIU).

2. A veteran is not required to submit proof that he or she is 100% unemployable in order to establish an inability to maintain a substantially gainful occupation, as required for a TDIU award pursuant to 38 CFR 3. 340(a).

EFFECTIVE DATE: July 6, 2001.

VAOPGCPREC 13-2001

Question Presented

A. Whether the Due Process Clause of the Fifth Amendment to the United States Constitution prohibits the Department of Veterans Affairs (VA) from relying on field investigation reports in determining a nonresident alien claimant's entitlement to benefits without providing the claimant with the names of informers and field investigators and complete copies of relevant documents.

B. Whether, consistent with fair process principles stated in Thurber v. Brown, 5 Vet. App. 119, 122-26 (1993), and Austin v. Brown, 6 Vet. App. 547, 550-55 (1994), the Board of Veterans' Appeals (Board), in rendering a decision regarding entitlement to veterans benefits, may rely upon information provided by informers during the course of field examinations that is not available to a claimant.

C. Whether a claimant's failure to appeal a VA decision regarding disclosure of information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, is of legal significance with regard to due process and fair process concerns in the claimant's benefit claim.

D. Whether the Board may conduct a private inspection of evidence and release to a claimant exculpatory information that was redacted by VA in response to a request for release of information pursuant to the FOIA.

Held

A. In order to decide whether disclosure of the names of informers and field investigators and complete copies of relevant documents is required to ensure fair process and compliance with established adjudication procedures (38 CFR 3.103(c) and (d)), the Board of Veterans' Appeals (Board) must consider whether a claimant's ability to rebut negative evidence or challenge the credibility of an informer's or investigator's statement would be impaired where a claimant has not had an opportunity to view the evidence or learn the name of an informer or investigator who has provided information that will be used in the adjudication of a benefit claim.

B. The Department of Veterans Affairs (VA) may assert the informer's privilege and/or the law enforcement information privilege against disclosure to a claimant of the names of informers and field investigators and complete copies of relevant documents upon which the Board intends to rely in making its decision. Where such a privilege is asserted and the Board finds that the privilege would be applicable to the information that VA seeks to withhold, the Board must balance the public interest in protecting the flow of information for purposes of preventing fraud in the payment of veterans benefits against the claimant's right to rebut or challenge the credibility of an informer's statements or information provided in an investigative report in order to decide whether disclosure to a claimant of the name of an informer or field investigator and complete copies of relevant documents upon which the Board intends to rely in making its decision is necessary in a particular case. If the Board finds that the claimant's need for the name of an informer or field investigator outweighs the public's

interest in protecting the name from disclosure, the Board should disclose the name to the claimant and may consider the information provided by the informer or field investigator in deciding the claim. If the Board finds that the public's interest in protecting the name of an informer or field investigator outweighs the claimant's need for the information, the Board should not disclose the name and may consider the information provided by the informer or field investigator in deciding the claim. If the Board finds that the claimant's need and the public's interest are of equal weight, it should decide the claim without considering information derived from sources not disclosed to the claimant. Under those circumstances, the Board would have to rely upon other evidence of record in deciding the claim.

C. A claimant's failure to appeal a decision by VA regarding disclosure of public information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, is not controlling in assessing the adequacy of the procedures employed in VA's adjudication of a claim for benefits. However, there is a strong correlation between FOIA privileges relating to law enforcement and common law evidentiary privileges, and applicability of the FOIA exemptions may lend support to a claim of privilege by the Government.

D. The Board may review, in private, evidence upon which it intends to rely in order to determine whether particular information should be redacted as privileged. However, at a minimum, the claimant should be informed as fully as possible concerning the Board's action and be given an opportunity to address the issue of the need for full disclosure.

EFFECTIVE DATE: August 31, 2001.

VAOPGCPREC 14-2001

Question Presented

A. May the Board of Veterans' Appeals (Board) itself complete the development it ordered be completed by

[[Page 25176]]

an agency of original jurisdiction (AOJ) in a remanded case?

B. May an AOJ to which the Board has remanded a case for development return the case to the Board for completion of the development by the Board?

C. If the Board may recall a remanded case before the AOJ has

completed the development ordered in the remand, must the AOJ readjudicate the case and issue a supplemental statement of the case (SSOC) as to any pertinent evidence it has received following the prior remand by the Board?

Held

A. Section 19.9(a) of title 38, Code of Federal Regulations, currently requires the Board of Veterans' Appeals (Board) to remand a case to the agency of original jurisdiction (AOJ) if the Board determines that additional evidence, clarification of the evidence, or correction of a procedural defect is essential for a proper appellate decision. Provided that Sec. 19.9(a) is amended to permit the Board either to remand the case to the AOJ or to direct its own personnel to undertake the action necessary, the Board may itself complete the evidentiary development it ordered to be completed by the AOJ in a remanded case, subject to any regulatory requirements for vacating remand orders that may be established.

B. Section 19.38 to title 38, Code of Federal Regulations, requires the AOJ to which the Board has remanded a case to complete the development ordered in the remand. The subordinate status of AOJs relative to the Board and the nature of the statutory and regulatory adjudication and appeal scheme require that AOJs abide by the Board's decision to remand a case for development. Accordingly, an AOJ may not itself return a case remanded to it by the Board before it has completed (or attempted to complete) the development ordered in the remand. However, the Board may vacate its previous remand order, recall the remanded case, and complete the necessary development itself. Before any Board remand order is vacated, however, 38 CFR 20.904 should be amended to expressly authorize this action and, preferably, to specify standards to guide the exercise of discretion by the Board. Under such a regulation, if the Board would rather itself conduct the development of a case that it has already remanded to an AOJ, it could vacate the remand order and call the case back to the Board, regardless of whether the AOJ has completed the ordered development.

C. Section 19.31 of title 38, Code of Federal Regulations, generally requires the AOJ to issue a supplemental statement of the case (SSOC) following development pursuant to a remand by the Board unless the Board specifies that a SSOC is not required. Provided that Sec. 19.31 is amended so as not to require a SSOC if pertinent evidence is developed pursuant to a Board remand in a case that is recalled by the Board, the AOJ need not readjudicate the case or issue a SSOC as to any such evidence. In addition, 38 CFR 20.903 should be

amended to assure that the appellant is given adequate notice and an opportunity to respond if the Board intends to rely on additional evidence developed by the AOJ in a claim remanded and then recalled by the Board.

Caution: However, see Disabled American Veterans v. Secretary of Veterans Affairs, 327 F.3d 1339 (Fed. Cir. 2003), which invalidated VA regulations permitting the Board of Veterans' Appeals to consider evidence that was not already considered by the agency of original jurisdiction, without obtaining the appellant's waiver of the right to initial consideration by the agency of original jurisdiction.

EFFECTIVE DATE: December 14, 2001.

VAOPGCPREC 1-2002

Question Presented

May an individual receive concurrent Chapter 35 Survivors' and Dependents' Educational Assistance program benefits when both parents are permanently and totally (P&T) disabled due to a service-connected condition?

Held

Chapter 35 educational assistance allowance may not be paid concurrently to a child by reason of the P&T service-connected disability of more than one parent.

EFFECTIVE DATE: January 25, 2002.

VAOPGCPREC 2-2002

Question Presented:

Does 38 U.S.C. 5301(a) prohibit the Department of Veterans Affairs (VA) from deducting from benefit payments, at the direction of the beneficiary, dental-insurance premiums to be paid to a private insurer as part of the Civilian Health and Medical Program of VA (CHAMPVA)?

Held

Section 5301(a) of title 38, United States Code, prohibits the assignment of payments of Department of Veterans Affairs (VA) benefits

due or to become due, except to the extent specifically authorized by law. In the absence of a specific statutory exception, VA may not deduct from VA benefits, at the direction of the beneficiary, premiums charged for dental insurance provided by a private insurer through a contract with the Department of Defense.

EFFECTIVE DATE: March 5, 2002.

VAOPGCPREC 3-2002

Question Presented

Can a Committee on Waivers and Compromises continue to consider a veteran's request for waiver of indebtedness if the veteran dies while the waiver request is pending?

Held

A Committee on Waivers and Compromises can continue consideration of a request for waiver of indebtedness brought by a veteran-debtor notwithstanding the death of the veteran-debtor while the waiver proceeding is pending.

EFFECTIVE DATE: March 7, 2002.

VAOPGCPREC 4-2002

Question Presented

Whether a former member of the Army Reserve who received two anthrax inoculations during inactive duty training and who alleges suffering from chronic fatigue and chronic Lyme-like disease as a result of these inoculations may be considered to have been disabled by an injury in determining whether the member incurred disability due to active service.

Held

If evidence establishes that an individual suffers from a disabling condition as a result of administration of an anthrax vaccination during inactive duty training, the individual may be considered disabled by an ``injury'' incurred during such training as the term is used in 38 U.S.C. 101 (24), which defines ``active military, naval, or

air service'' to include any period of inactive duty training during which the individual was disabled or died from an injury incurred or aggravated in line of duty. Consequently, such an individual may be found to have incurred disability in active military, naval, or air service for purposes of disability compensation under 38 U.S.C. 1110 or 1131.

EFFECTIVE DATE: May 14, 2002.

VAOPGCPREC 5-2002

Question Presented

Whether all regulations found in Part 4 of title 38, Code of Federal Regulations, are exempt from judicial review under 38 U.S.C. 502 or 7252(c).

[[Page 25177]]

Held

Placement of a regulation in Part 3 or Part 4 of the CFR is not determinative of its susceptibility to judicial review. Whether a section in Part 4 of the CFR is considered part of the ``schedule of ratings'' must be assessed on a case-by-case basis. Generally, the prohibition on judicial review, under 38 U.S.C. 502 or 7252(c), of the schedule of ratings or disabilities refers only to the provisions that prescribe the average impairments of earning capacities, divided into ten grades of disability upon which payments of compensation are based, adopted and adjusted under 38 U.S.C. 1155.

EFFECTIVE DATE: May 17, 2002.

VAOPGCPREC 6-2002

Question Presented

A. May the Department of Veterans Affairs (VA) sever service connection of a disability erroneously and recently granted but with an effective date more than ten years earlier than the date of the decision granting service connection?

B. If such a grant of service connection is protected from severance, must VA retroactively award compensation for that

disability, if otherwise in order?

Held

A. Section 1159 of title 38, United States Code, and its implementing regulation, 38 CFR 3.957, protect a grant of service connection (unless the grant was based on fraud or military records clearly show that the person concerned did not have the requisite service or character of discharge) that has been in effect for ten years or longer, as computed from the effective date of the establishment of service connection. Those provisions protect even service connection erroneously and recently granted, but with an effective date more than ten years before the date of the decision establishing service connection. The Department of Veterans Affairs (VA) may not sever such a grant of service connection (in the absence of fraud or lack of requisite service or character of discharge).

B. Sections 1110 and 1131 of title 38, United States Code, direct the payment of compensation in accordance with the provisions of chapter 11, title 38, United States Code, to a veteran with the requisite service who is disabled by a service-connected disability, unless the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs. In the absence of the veteran's own willful misconduct or abuse of alcohol or drugs, VA must pay, in accordance with the provisions of chapter 11, compensation otherwise in order for a disability that was erroneously service connected, where service connection is protected from severance.

EFFECTIVE DATE: July 11, 2002.

VAOPGCPREC 7-2002

Question Presented

A. When the benefits of a veteran's surviving spouse are terminated pursuant to 38 U.S.C. 5313B because the surviving spouse is a fugitive felon, may benefits be paid to the surviving spouse's dependent children?

B. When the benefits of a veteran's child are terminated pursuant to 38 U.S.C. 5313B because the child is a fugitive felon, and there are other children of the veteran in receipt of benefits, how are the other children's benefits affected?

Held

A. If a surviving spouse of a veteran becomes a fugitive felon and consequently loses eligibility for dependency and indemnity compensation (DIC) or improved death pension benefits by operation of 38 U.S.C. 5313B, additional benefits payable to the surviving spouse for children of the veteran would cease. Statutes governing DIC, 38 U.S.C. 1313(a), and improved death pension, 38 U.S.C. 1542, provide independent eligibility for a veteran's children where there is no surviving spouse eligible for benefits. Thus, the children may receive benefits in their own right.

B. If a veteran's child in receipt of improved death pension benefits loses eligibility for those benefits by operation of 38 U.S.C. 5313B upon becoming a fugitive felon, the improved pension benefits payable to other children of the veteran would not be affected. Similarly, in the case of DIC, as long as the child who loses eligibility under 38 U.S.C. 5313B continues to meet the definition of child for title 38 purposes, the shares of other children receiving DIC will not increase.

EFFECTIVE DATE: December 2, 2002.

VAOPGCPREC 1-2003

Question Presented

A. What effect does the decision of the United States Court of Appeals for the Federal Circuit in Disabled American Veterans v. Secretary of Veterans Affairs, Case Nos. 02-7304, -7305, -7316 (Fed. Cir. May 1, 2003) (DAV decision), have on the authority of the Board of Veterans' Appeals (Board) to develop evidence with respect to cases pending before the Board on appeal?

B. May the Board adjudicate claims where new evidence has been obtained if the appellant waives initial consideration of the new evidence by first-tier adjudicators in the Veterans Benefits Administration (VBA)?

C. What effect does the DAV decision have on the Board's authority to send claimants the notice required by 38 U.S.C. 5103(a) in cases pending before the Board on appeal?

D. Is the Board required to identify and readjudicate any claims decided before May 1, 2003 (the date of the DAV decision) in which the Board applied the regulatory provisions that the Federal Circuit held invalid in the DAV decision?

Held

A. The decision of the United States Court of Appeals for the Federal Circuit in Disabled American Veterans v. Secretary of Veterans Affairs, Case Nos. 02-7304, -7305, -7316 (Fed. Cir. May 1, 2003) (DAV decision), does not prohibit the Board of Veterans' Appeals (Board) from developing evidence in a case on appeal before the Board, provided that the Board does not adjudicate the claim based on any new evidence it obtains unless the claimant waives initial consideration of such evidence by first-tier adjudicators in the Veterans Benefits Administration (VBA). Existing statutes and regulations may reasonably be construed to authorize the Board to develop evidence in such cases. If considered necessary or appropriate to clarify the Board's authority, the Secretary of Veterans Affairs may expressly delegate to the Board the authority to develop evidence in accordance with 38 U.S.C. 5103A.

B. The Board may adjudicate claims where new evidence has been obtained if the appellant waives initial consideration of the new evidence by VBA.

C. The DAV decision does not prohibit the Board from issuing the notice required by 38 U.S.C. 5103(a) in a case on appeal before the Board. Existing statutes and regulations may reasonably be construed to authorize the Board to provide the required notice in such cases. If considered necessary or appropriate to clarify the Board's authority, the Secretary of Veterans Affairs may expressly delegate to the Board the authority to issue notice required by 38 U.S.C. 5103(a). The content of any notice issued by the Board must adhere to the requirements of 38 U.S.C. 5103 as described by the Federal Circuit in the DAV decision.

[[Page 25178]]

D. The Board is not required to identify and readjudicate any claims decided by the Board before May 1, 2003 (the date of the DAV decision) in which the Board applied the regulatory provisions that the Federal Circuit held invalid in the DAV decision. However, if a claim was finally denied by the Board and the claimant subsequently submits requested information or evidence within one year after the date of the request, the Department of Veterans Affairs must review the claim.

EFFECTIVE DATE: May 21, 2003.

VAOPGCPREC 2-2003

Question Presented

Whether Diagnostic Code (DC) 6260, as in effect prior to June 10, 1999, and as amended as of that date, authorizes a single 10% disability rating for tinnitus, regardless of whether tinnitus is perceived as unilateral, bilateral, or in the head, or whether separate disability ratings for tinnitus in each ear may be assigned under that or any other diagnostic code?

Held

Diagnostic Code 6260 (currently codified at 38 CFR 4.87), as in effect prior to June 10, 1999, and as amended as of that date, authorized a single 10% disability rating for tinnitus, regardless of whether tinnitus is perceived as unilateral, bilateral, or in the head. Separate ratings for tinnitus for each ear may not be assigned under DC 6260 or any other diagnostic code.

EFFECTIVE DATE: May 22, 2003.

VAOPGCPREC 3-2003

Question Presented

A. Does 38 CFR 3.304(b), which provides that the presumption of sound condition may be rebutted by clear and unmistakable evidence that an injury or disease existed prior to service, conflict with 38 U.S.C. 1111, which provides that the presumption of sound condition may be rebutted by clear and unmistakable evidence that an injury or disease existed prior to service ``and was not aggravated by such service''?

B. Does 38 CFR 3.306(b), which provides that the presumption of aggravation under 38 U.S.C. 1153 does not apply when a preexisting disability did not increase in severity during service, conflict with 38 U.S.C. 1111?

Held

A. To rebut the presumption of sound condition under 38 U.S.C. 1111, the Department of Veterans Affairs (VA) must show by clear and unmistakable evidence both that the disease or injury existed prior to service and that the disease or injury was not aggravated by service. The claimant is not required to show that the disease or injury

increased in severity during service before VA's duty under the second prong of this rebuttal standard attaches. The provisions of 38 CFR 3.304(b) are inconsistent with 38 U.S.C. 1111 insofar as Sec. 3.304(b) states that the presumption of sound condition may be rebutted solely by clear and unmistakable evidence that a disease or injury existed prior to service. Section 3.304(b) is therefore invalid and should not be followed.

B. The provisions of 38 CFR 3.306(b) providing that aggravation may not be conceded unless the preexisting condition increased in severity during service, are not inconsistent with 38 U.S.C. 1111. Section 3.306(b) properly implements 38 U.S.C. 1153, which provides that a preexisting injury or disease will be presumed to have been aggravated in service in cases where there was an increase in disability during service. The requirement of an increase in disability in 38 CFR 3.306(b) applies only to determinations concerning the presumption of aggravation under 38 U.S.C. 1153 and does not apply to determinations concerning the presumption of sound condition under 38 U.S.C. 1111.

EFFECTIVE DATE: July 16, 2003.

VAOPGCPREC 4-2003

Question Presented

A. Who has the authority to consider whether collection of a debt should be suspended or terminated?

B. Is a denial of suspension or termination of collection activity under 31 U.S.C. Sec. 3711 reviewable by the Board of Veterans' Appeals (Board)?

C. If regional-office rating personnel and/or the Board have the authority to consider whether collection of a debt should be suspended or terminated, must the Department of Veterans Affairs (VA) consider this issue in all cases where a debtor has requested a waiver of overpayment?

D. If regional-office rating personnel and/or the Board have the authority to consider whether collection of a debt should be suspended or terminated, then what is the relationship between the criteria for suspending or terminating collection activity and waiving recovery of an overpayment?

Held

A. Various Department of Veterans Affairs (VA) and non-VA personnel

have the authority to suspend or terminate collection action under the Federal Claims Collection Act (FCCA) on debts arising out of VA activities, depending upon the amount, nature, and status of the debt. The Department of Justice may suspend or terminate collection on debts of more than $100,000. Designated officials in VA's Office of the General Counsel may suspend or terminate collection on debts of less that $100,000 involving liability for negligent damage to or loss of Government property or for the cost of hospital, medical, surgical, or dental care of a person. The Chief of the Fiscal Activity at individual Veterans Benefits Administration or Veterans Health Administration stations and the Director of VA's Debt Management Center may suspend or terminate collection on debts of up to $100,000 arising out of the operations of their offices. The Secretary of the Treasury, a Federal debt-collection center, a private collection contractor, or the Department of Justice may suspend or terminate collection on debts that have been referred to them for servicing or litigation under the FCCA.

B. The Board of Veterans' Appeals does not have jurisdiction to review discretionary decisions by authorized VA and non-VA officials concerning suspension or termination of collection of a benefit debt.

EFFECTIVE DATE: August 28, 2003.

VAOPGCPREC 5-2003

Question Presented

May the language of 38 CFR 3.157(b)(1) that provides that the date of admission to a Department of Veterans Affairs (VA) or uniformed services hospital will be accepted as the date of receipt of a claim for an increased disability rating be construed as including the date of admission to a private hospital pursuant to the prior authorization of a contractor that administers the Department of Defense's (DoD) TRICARE program?

Held

The provision of 38 CFR 3.157(b)(1) stating that the date of admission to a ``uniformed services hospital will be accepted as the date of receipt of a claim'' for increased benefits is applicable to veterans hospitalized in private facilities at DoD expense under DoD's TRICARE program.

EFFECTIVE DATE: September 15, 2003.

VAOPGCPREC 6-2003

Question Presented

Under 38 U.S.C. 1103, 1110, and 1131, may service connection be established for a tobacco-related disability or death on the basis that the disability or death was secondary to a

[[Page 25179]]

service-connected mental disability that caused the veteran to use tobacco products?

Held

Neither 38 U.S.C. 1103(a), which prohibits service connection of a disability or death on the basis that it resulted from injury or disease attributable to the use of tobacco products by the veteran during service, nor VA's implementing regulations at 38 CFR 3.300, bar a finding of secondary service connection for a disability related to the veteran's use of tobacco products after the veteran's service, where that disability is proximately due to a service-connected disability that is not service connected on the basis of being attributable to the veteran's use of tobacco products during service. The questions that adjudicators must resolve with regard to a claim for service connection for a tobacco-related disability alleged to be secondary to a disability not service connected on the basis of being attributable to the veteran's use of tobacco products during service are: (1) Whether the service-connected disability caused the veteran to use tobacco products after service; (2) if so, whether the use of tobacco products as a result of the service-connected disability was a substantial factor in causing a secondary disability; and (3) whether the secondary disability would not have occurred but for the use of tobacco products caused by the service-connected disability. If these questions are answered in the affirmative, the secondary disability may be service connected. Further, the secondary disability may be considered as a possible basis for service connection of the veteran's death, applying the rules generally applicable in determining eligibility for dependency and indemnity compensation.

EFFECTIVE DATE: October 28, 2003.

VAOPGCPREC 7-2003

Question Presented

A. What effect does the decision of the United States Court of Appeals for the Federal Circuit in Kuzma v. Principi, 341 F.3d 1327 (Fed. Cir. 2003), have upon the rule set forth by the United States Court of Appeals for Veterans Claims (CAVC) in Karnas v. Derwinski, 1 Vet. App. 308 (1991), concerning the applicability of changes in law?

B. Do the standards governing the retroactive application of statutes and regulations differ from those governing the retroactive application of rules announced in judicial decisions?

C. How should the Department of Veterans Affairs (VA) determine whether applying a new statute or regulation to a pending claim would have a prohibited retroactive effect?

D. In determining the applicability of a change in law, is there a difference between claims that were pending before VA when the change occurred and claims that had already been decided by the Board of Veterans' Appeals (Board) and were pending on direct appeal to a court when that change occurred?

E. If certain provisions of the Veterans Claims Assistance Act of 2000 (VCAA) were held to be inapplicable to claims filed before November 9, 2000 (the date the VCAA was enacted) and still pending before VA on that date, would VA have authority, from sources other than the VCAA, to continue applying its regulations implementing the VCAA to claims filed before that date?

F. Does VAOPGCPREC 11-2000 remain viable in light of the holdings in Kuzma, Dyment v. Principi, 287 F.3d 1377 (Fed. Cir. 2002), and Bernklau v. Principi, 291 F.3d 795 (Fed. Cir. 2002)?

Held

A. In Kuzma v. Principi, 341 F.3d 1327 (Fed. Cir. 2003), the United States Court of Appeals for the Federal Circuit overruled Karnas v. Derwinski, 1 Vet. App. 308 (1991), to the extent it conflicts with the precedents of the Supreme Court and the Federal Circuit. Karnas is inconsistent with Supreme Court and Federal Circuit precedent insofar as Karnas provides that, when a statute or regulation changes while a claim is pending before the Department of Veterans Affairs (VA) or a court, whichever version of the statute or regulation is most favorable to the claimant will govern unless the statute or regulation clearly specifies otherwise. Accordingly, that rule adopted in Karnas no longer applies in determining whether a new statute or regulation applies to a

pending claim. Pursuant to Supreme Court and Federal Circuit precedent, when a new statute is enacted or a new regulation is issued while a claim is pending before VA, VA must first determine whether the statute or regulation identifies the types of claims to which it applies. If the statute or regulation is silent, VA must determine whether applying the new provision to claims that were pending when it took effect would produce genuinely retroactive effects. If applying the new provision would produce such retroactive effects, VA ordinarily should not apply the new provision to the claim. If applying the new provision would not produce retroactive effects, VA ordinarily must apply the new provision.

B. Different standards govern the retroactive application of statutes and regulations and the retroactive application of rules announced in judicial decisions. As a general matter, rules announced in judicial decisions apply retroactively to all cases still open on direct review when the new rule is announced. Statutes and regulations, in contrast, are presumed not to apply in any manner that would produce genuinely retroactive effects, unless the statute or regulation itself provides for such retroactivity.

C. There is no simple test for determining whether applying a new statute or regulation to a particular claim would produce retroactive effects. Generally, a statute or regulation would have a disfavored retroactive effect if it attaches new legal consequences to events completed before its enactment or extinguishes rights that previously accrued. Provisions affecting only entitlement to prospective benefits ordinarily do not produce any retroactive effects when applied to claims that were pending when the new provision took effect. Changes in procedural rules often may be applied to pending cases without raising concerns about retroactivity, but may have a prohibited retroactive effect if applied to cases in which the procedural events governed by the new rule had previously been completed, such as cases pending on appeal to a court when a new rule of agency procedure is issued. In considering whether a new statute or regulation would produce retroactive effects, VA should consider whether the provision is substantive or procedural, whether it would impose new duties with respect to completed transactions or would only affect prospective relief, whether it would attach new legal consequences to events completed before its enactment or extinguish rights that previously accrued, and whether application of the new provision would be consistent with notions of fair notice and reasonable reliance. VA should consider the effects on the Government as well as the claimant and should consider the procedural posture of the pending claim in relation to the foregoing factors. Most statutes and regulations

liberalizing the criteria for entitlement to a benefit may be applied to pending claims because they would affect only prospective relief. Statutes or regulations restricting the right to a benefit may have disfavored retroactive effects to the extent their application to a pending claim would extinguish the claimant's

[[Page 25180]]

right to benefits for periods before the statute or regulation took effect.

D. In determining whether application of a new statute or regulation would produce retroactive effects, there may be a difference in some circumstances between cases that were pending in different procedural postures on the date the new provision took effect. New provisions affecting procedural matters in many cases would not produce retroactive effects as applied to claims that were pending at a procedural stage to which the new provision applies, but may produce disfavored retroactive effects if applied to pending claims in which the stage of proceedings to which the new provision applies has already been completed. However, the procedural posture of the claim is not the sole determinative factor in all cases. Even among cases in the same procedural posture, distinctions may be drawn based on the circumstances of the particular case and considerations of fairness to the specific parties.

E. Even if applying the amendments made by section 3(a) of the VCAA to claims that were pending before VA on November 9, 2000, were construed to have retroactive effects on VA, VA would have the authority to apply 38 CFR 3.159, the regulation implementing these amendments, to such claims. VA has the authority to provide for the retroactive application of its procedural regulations where such regulations are beneficial to claimants and not inconsistent with the governing statutes and VA has expressly provided for their retroactive application. The provisions of Sec. 3.159 are beneficial to claimants and not inconsistent with the VCAA or any other statute, and VA has expressly provided that they will apply to claims that were pending before VA on November 9, 2000. Consequently, VA has authority to apply its regulations implementing the VCAA to claims filed before the date of enactment of the VCAA and still pending before VA as of that date.

F. In VAOPGCPREC 11-2000, we concluded that all of the VCAA's provisions apply to claims that were filed before November 9, 2000, but had not been finally decided as of the date. Because VA's August 2001 final-rule notice amending 38 CFR 3.159 expressly and validly provided that VA's regulations implementing the VCAA will apply to all claims

that were pending before VA as of November 9, 2000, any further reliance on VAOPGCPREC 11-2000 is unnecessary. We hereby withdraw VAOPGCPREC 11-2000.

EFFECTIVE DATE: November 19, 2003.

VAOPGCPREC 8-2003

Question Presented

Must the Department of Veterans Affairs (VA) notify a claimant of the information and evidence necessary to substantiate an issue first raised in a notice of disagreement (NOD) submitted in response to VA's notice of its decision on a claim for which VA has already notified the claimant of the information and evidence necessary to substantiate the claim?

Held

Under 38 U.S.C. 5103(a), the Department of Veterans Affairs (VA), upon receipt of a complete or substantially complete application, must notify the claimant of the information and evidence necessary to substantiate the claim for benefits. Under 38 U.S.C. 7105(d), upon receipt of a notice of disagreement in response to a decision on a claim, the ``agency of original jurisdiction'' must take development or review action it deems proper under applicable regulations and issue a statement of the case if the action does not resolve the disagreement either by grant of the benefits sought or withdrawal of the notice of disagreement. If, in response to notice of its decision on a claim for which VA has already given the section 5103(a) notice, VA receives a notice of disagreement that raises a new issue, section 7105(d) requires VA to take proper action and issue a statement of the case if the disagreement is not resolved, but section 5103(a) does not require VA to provide notice of the information and evidence necessary to substantiate the newly raised issue.

EFFECTIVE DATE: December 22, 2003.

VAOPGCPREC 9-2003

Question Presented

What is the scope of the protection provided by 38 U.S.C. 2305 in

claims for burial benefits under 38 U.S.C. chapter 23?

Held

Section 2305 of title 38, United States Code, preserves rights individuals had under laws in effect on December 31, 1957, based on their status as members of particular units or organizations that fell within the scope of the laws defining classes of individuals potentially eligible for burial benefits under chapter 23 of title 38. Veterans with wartime service prior to January 1, 1958, are not exempted by section 2305 from the amendments to eligibility criteria for nonservice-connected burial and funeral allowance currently codified in 38 U.S.C. 2302(a) made by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, which eliminated wartime service as a basis for eligibility. Burial benefits provided by operation of 38 U.S.C. 2305 are to be paid based on the rates in effect on the date of the veteran's death.

EFFECTIVE DATE: December 23, 2003.

VAOPGCPREC 1-2004

Question Presented

Does the decision of the United States Court of Appeals for Veterans Claims (CAVC) in Pelegrini v. Principi, No. 01-944, 2004 U.S. App. Vet. Claims LEXIS 11 (Jan. 13, 2004), require that notice provided under 38 U.S.C. 5103(a) contain a request that the claimant provide the Department of Veterans Affairs (VA) with any evidence in his or her possession that pertains to the claim?

Held

Under 38 U.S.C. 5103(a) and 38 CFR 3.159(b)(1), the Department of Veterans Affairs (VA), upon receipt of a complete or substantially complete application, must notify the claimant of the information and evidence necessary to substantiate the claim for benefits and must indicate which portion of that information and evidence the claimant must provide and which portion VA will attempt to obtain for the claimant. In Pelegrini v. Principi, No. 01-944, 2004 U.S. App. Vet. Claims LEXIS 11 (Jan. 13, 2004), the United States Court of Appeals for Veterans Claims (CAVC) stated that section 3.159(b)(1), explicitly, and section 5103(a), implicitly, require that VA request that the claimant

provide any evidence in his or her possession that pertains to the claim. The CAVC's statement that sections 5103(a) and 3.159(b)(1) require VA to include such a request as part of the notice provided to a claimant under those provisions is obiter dictum and is not binding on VA. Further, section 5103(a) does not require VA to seek evidence from a claimant other than that identified by VA as necessary to substantiate the claim.

EFFECTIVE DATE: February 24, 2004.

VAOPGCPREC 2-2004

Question Presented

Whether, pursuant to 38 U.S.C. 5103(a) the Department of Veterans Affairs (VA) is required to provide notice of the information and evidence necessary to substantiate a claim for separate ratings for service-connected tinnitus in each ear.

[[Page 25181]]

Held

Under 38 U.S.C. 5103(a), the Department of Veterans Affairs is not required to provide notice of the information and evidence necessary to substantiate a claim for separate disability ratings for each ear for bilateral service-connected tinnitus because there is no information or evidence that could substantiate the claim, as entitlement to separate ratings is barred by current Diagnostic Code (DC) 6260 and by the previous versions of DC 6260 as interpreted by a precedent opinion of the General Counsel that is binding on all Department officials and employees.

EFFECTIVE DATE: March 9, 2004.

VAOPGCPREC 3-2004

Question Presented

Does a veteran's entitlement under 38 U.S.C. 1151(a) to compensation for a disability ``as if'' service connected satisfy the requirement of 38 U.S.C. 3901(1)(A) that, to be eligible for automobile benefits under chapter 39, a claimant must be entitled to compensation

under chapter 11 for a disability that ``is the result of an injury incurred or disease contracted in or aggravated by active military, naval, or air service''?

Held

Section 1151(a) of title 38, United States Code, authorizes compensation under chapter 11 of title 38 for additional disability caused by Department of Veterans Affairs (VA) hospital care, medical or surgical treatment, or examination, or proximately caused by VA's provision of training and rehabilitation services or by participation in a compensated work therapy program, ``as if'' the disability were service connected. A veteran's entitlement under section 1151(a) to compensation for a disability ``as if'' service connected does not satisfy 38 U.S.C. 3901(1)(A)'s requirement, for eligibility for automobile benefits under chapter 39 of title 38, United States Code, of entitlement to compensation under chapter 11 for a disability that ``is the result of an injury incurred or disease contracted in or aggravated by active military, naval, or air service.''

EFFECTIVE DATE: March 9, 2004.

Dated: April 28, 2004.

By Direction of the Secretary.
Tim S. McClain,
General Counsel.
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