

the urgent need for Japan to more effectively address its economic and financial problems and open its markets by eliminating informal barriers to trade and investment, thereby making a more effective contribution to leading the Asian region out of its current financial crisis, insuring against a global recession, and reinforcing regional stability and security; to the Committee on International Relations, and in addition to the Committees on Banking and Financial Services, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

#### ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

- H.R. 96: Mr. SCARBOROUGH.  
 H.R. 306: Mr. KING of New York.  
 H.R. 543: Mr. PETERSON of Minnesota and Mr. LANTOS.  
 H.R. 612: Mr. REGULA, Mrs. MINK of Hawaii, Mr. WEXLER, Mr. HUTCHINSON, and Mr. LIVINGSTON.  
 H.R. 746: Mr. OBERSTAR.  
 H.R. 777: Mr. KENNEDY of Massachusetts.  
 H.R. 815: Ms. SANCHEZ.  
 H.R. 836: Mr. WEXLER, Mr. CHRISTENSEN, Mr. ADAM SMITH of Washington, and Mrs. MORELLA.  
 H.R. 859: Mr. LEWIS of Kentucky.  
 H.R. 864: Mr. GUTIERREZ, Ms. KAPTUR, Mr. MASCARA, Mr. SHERMAN, Mr. LANTOS, Ms. PELOSI, Mr. CUMMINGS, Mr. PASTOR, Ms. MCKINNEY, Mr. SNYDER, and Mrs. MINK of Hawaii.  
 H.R. 872: Mr. CAMP, Mr. FRELINGHUYSEN, Mr. LEWIS of California, and Ms. WOOLSEY.  
 H.R. 880: Mr. SMITH of Michigan.  
 H.R. 922: Mr. CAMP.  
 H.R. 923: Mr. CAMP.  
 H.R. 979: Mrs. MORELLA, Mr. JOHN, Mr. BARRETT of Wisconsin, Mr. PETERSON of Minnesota, Mr. SHERMAN, Mr. PASCRELL, and Mr. PACKARD.  
 H.R. 981: Mr. OLVER, Mr. BECERRA, Mr. DELAHUNT, and Mrs. CAPPS.  
 H.R. 982: Mr. WAXMAN.  
 H.R. 1070: Mr. SNYDER.  
 H.R. 1121: Mr. CHAMBLISS and Mr. REDMOND.  
 H.R. 1231: Mr. KENNEDY of Rhode Island and Mr. SKAGGS.  
 H.R. 1234: Ms. CARSON.  
 H.R. 1322: Mr. NORWOOD, Mr. PETERSON of Pennsylvania, Mr. SESSIONS, Mr. HALL of Texas, Mr. RAHALL, Ms. GRANGER, and Mr. SOLOMON.  
 H.R. 1378: Mr. GOODLATTE.  
 H.R. 1401: Mr. BOEHLERT.  
 H.R. 1500: Ms. SANCHEZ.  
 H.R. 1525: Mr. ANDREWS.  
 H.R. 1555: Mr. McGOVERN, Ms. MILLENDER-MCDONALD, Mr. FAZIO of California, and Mr. WEYGAND.  
 H.R. 1573: Mr. WAXMAN, Mr. FILNER, Mr. UNDERWOOD, and Mr. LAMPSON.  
 H.R. 1586: Mr. NADLER.  
 H.R. 1595: Mr. ENSIGN.  
 H.R. 1689: Mrs. JOHNSON of Connecticut and Mr. FOLEY.  
 H.R. 1737: Mr. ABERCROMBIE.  
 H.R. 1864: Mr. BLUMENAUER.  
 H.R. 2009: Mr. RODRIGUEZ, Ms. NORTON, Mr. LEVIN, Mr. FOX of Pennsylvania, Mr. HORN, Mr. PRICE of North Carolina, Mr. WYNN, Mr. KENNEDY of Massachusetts, Mr. STRICKLAND, Ms. JACKSON-LEE, and Mr. MEEHAN.  
 H.R. 2120: Mr. MORAN of Virginia.  
 H.R. 2124: Mr. DIAZ-BALART and Mr. GOODLING.
- H.R. 2125: Mrs. ROUKEMA.  
 H.R. 2163: Mr. PAUL.  
 H.R. 2223: Mr. GIBBONS.  
 H.R. 2275: Mr. KUCINICH.  
 H.R. 2313: Mr. CAMPBELL.  
 H.R. 2396: Mr. MCRAE, Mr. OLVER, and Ms. STABENOW.  
 H.R. 2400: Mr. ROGERS.  
 H.R. 2424: Mr. GOSS.  
 H.R. 2433: Mr. LUTHER, Ms. LOFGREN, Mr. BARRETT of Wisconsin, and Mr. WAXMAN.  
 H.R. 2497: Mr. CONDIT.  
 H.R. 2538: Mr. COOKSEY, Mr. CALVERT, Mr. PAPPAS, Mr. GINGRICH, Mr. LANTOS, and Mr. THOMAS.  
 H.R. 2549: Ms. NORTON.  
 H.R. 2635: Mr. KUCINICH.  
 H.R. 2652: Mrs. TAUSCHER.  
 H.R. 2670: Ms. PELOSI and Mr. CASTLE.  
 H.R. 2701: Ms. BROWN of Florida, Mr. BORSKI, Mr. TORRES, and Mr. JENKINS.  
 H.R. 2821: Mr. HASTINGS of Washington and Mr. McDERMOTT.  
 H.R. 2828: Mr. KENNEDY of Rhode Island.  
 H.R. 2829: Ms. JACKSON-LEE, Mr. MCINTOSH, Mrs. MORELLA, Mr. PAYNE, Mr. SISISKY, Mr. FORD, and Mr. MOAKLEY.  
 H.R. 2923: Mr. SHERMAN, Mr. STARK, and Mr. LEWIS of California.  
 H.R. 2938: Mr. BONILLA.  
 H.R. 2955: Mr. HINCHEY.  
 H.R. 2962: Mr. BALDACCINI.  
 H.R. 3001: Mr. COYNE, Ms. PELOSI, and Ms. DEGETTE.  
 H.R. 3014: Mr. CAMPBELL.  
 H.R. 3048: Mr. CLYBURN, Mr. ROHRABACHER, and Mr. BILBRAY.  
 H.R. 3097: Mr. PETERSON of Pennsylvania.  
 H.R. 3099: Mr. WEYGAND and Mr. RANGEL.  
 H.R. 3131: Mr. GREENWOOD.  
 H.R. 3140: Mr. BARCIA of Michigan, Mr. SKEEN, Mr. TANNER, Mr. LUCAS of Oklahoma, Mr. WATTS of Oklahoma, Mr. ETHERIDGE, Mr. HANSEN, Mr. HASTINGS of Washington, Mr. SMITH of Oregon, and Mr. HOEKSTRA.  
 H.R. 3155: Mr. EVANS.  
 H.R. 3181: Mr. FORD.  
 H.R. 3205: Mr. KILDEE and Mr. RODRIGUEZ.  
 H.R. 3211: Mr. WELDON of Florida, Mr. GOODLING, Mr. CHRISTENSEN, Mr. LARENT, Mr. ABERCROMBIE, and Mr. KLECZKA.  
 H.R. 3217: Mr. HAYWORTH, Mrs. KENNELLY of Connecticut, and Mr. FOLEY.  
 H.R. 3241: Mr. PITTS.  
 H.R. 3242: Mr. CALVERT and Mr. ENGLISH of Pennsylvania.  
 H.R. 3249: Mr. WOLF.  
 H.R. 3255: Ms. FURSE.  
 H.R. 3260: Mr. RAMSTAD, Ms. RIVERS, Mr. OXLEY, Mr. PORTER, and Mr. PETRI.  
 H.R. 3269: Ms. FURSE and Mr. GREEN.  
 H.R. 3275: Mr. SCHIFF.  
 H.R. 3279: Mr. GONZALEZ and Mr. MARTINEZ.  
 H.R. 3295: Mr. MANTON, Mr. SPENCE, Mr. SKELTON, Mr. DEFazio, Mr. TURNER, Mr. HOYER, Mr. SYNDER, Mr. LUTHER, Mr. SISISKY, Mr. TAYLOR of Mississippi, Ms. MCKINNEY, Ms. FURSE, and Mr. WATT of North Carolina.  
 H.R. 3297: Mrs. EMERSON and Mr. CRAPO.  
 H.R. 3314: Mrs. MYRICK.  
 H.R. 3318: Mr. HYDE, Mr. DOOLEY of California, Mr. WATKINS, Mr. YOUNG of Alaska, Mr. KLINK, Mr. ROYCE, Mr. POMEROY, Mr. ENGLISH of Pennsylvania, Mr. COOKSEY, Mr. DAVIS of Virginia, Mr. PASCRELL, Mr. PAXON, Ms. FURSE, and Mr. NADLER.  
 H.R. 3331: Mr. LEWIS of Kentucky, Mr. HOEKSTRA, and Mrs. MYRICK.  
 H.R. 3335: Mr. MCCOLLUM.  
 H.R. 3336: Mr. SCARBOROUGH.  
 H.R. 3351: Mr. PORTMAN.  
 H.R. 3396: Mr. STOKES, Mr. WELDON of Pennsylvania, Mr. GOODLING, Mr. SISISKY, Mr. ROHRABACHER, Mr. MOAKLEY, Mr. HORN, Mr. BACHUS, Mr. SKEEN, Mr. FORD, and Mr. BALDACCINI.  
 H.R. 3400: Mr. McDERMOTT, Mr. SANDERS, and Mrs. CLAYTON.
- H.R. 3433: Mr. RAMSTAD, Mr. ENGLISH of Pennsylvania, Mr. HAYWORTH, Mr. HULSHOF, Mr. RANGEL, Mr. MATSUI, Mr. LEWIS of Georgia, Mr. NEAL of Massachusetts, Mrs. THURMAN, Ms. KAPTUR, Ms. LOFGREN, and Mr. KLINK.  
 H.R. 3440: Mr. DAVIS of Florida.  
 H.R. 3464: Mr. EDWARDS and Mr. MARTINEZ.  
 H.R. 3469: Mr. BARRETT of Wisconsin.  
 H.R. 3502: Mr. GILMAN, Mr. HOYER, Mr. KLECZKA, Mr. BOEHLERT, Mr. BENTSEN, Mr. RAHALL, Mr. ADAM SMITH of Washington, and Mr. ANDREWS.  
 H.R. 3510: Ms. BROWN of Florida, Ms. FURSE, and Mr. SERRANO.  
 H.R. 3514: Mr. KILDEE, Mr. KUCINICH, and Mr. BENTSEN.  
 H.R. 3526: Mr. LEVIN and Mr. FARR of California.  
 H.J. Res. 71: Mr. NORWOOD, Mr. PETERSON of Pennsylvania, Mr. SESSIONS, Mr. HALL of Texas, Mr. RAHALL, Ms. GRANGER, and Mr. SOLOMON.  
 H.J. Res. 78: Mr. ROGAN and Mr. OXLEY.  
 H. Con. Res. 188: Mr. HINCHEY.  
 H. Con. Res. 203: Mr. MORAN of Virginia and Mr. McDade.  
 H. Con. Res. 211: Mr. GOODLING.  
 H. Con. Res. 228: Ms. RIVERS, Mr. MATSUI, Mr. LUTHER, and Mr. DOOLEY of California.  
 H. Con. Res. 229: Mr. BARR of Georgia, Mr. BASS, Mr. BILBRAY, Mr. BLILEY, Mr. FILNER, Mr. HUNTER, Mr. McNULTY, Mr. PITTS, Mr. STEARNS, Mrs. THURMAN, Mr. WATTS of Oklahoma, and Mrs. WOOLSEY.  
 H. Con. Res. 239: Mr. LEACH.  
 H. Res. 83: Mr. BLUMENAUER.  
 H. Res. 363: Mr. CALLAHAN, Ms. PELOSI, Mr. BENTSEN, Mr. CLAY, Ms. FURSE, Mr. BACHUS, Mr. FARR of California, Mr. GUTIERREZ, Mr. SANDERS, Mr. GONZALEZ, and Mr. BILBRAY.  
 H. Res. 387: Mr. MEEHAN, Mr. ACKERMAN, Mr. BARRETT of Wisconsin, Mr. BONIOR, Mr. OLVER, Mr. FILNER, Mr. SERRANO, Mr. SNYDER, Mr. TIERNEY, Mr. McGOVERN, and Mr. MANTON.

#### DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

- H.R. 740: Mr. SHIMKUS.  
 H.R. 981: Mrs. MYRICK.  
 H.R. 1415: Mr. MCINTOSH.

#### AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 2578

OFFERED BY: MR. LAFALCE

AMENDMENT NO. 1: Page 2, after line 22, insert the following:

**SEC. 3. AMENDMENT OF THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996.**

(a) IN GENERAL.—Section 110(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note) is amended to read as follows:

“(a) SYSTEM.—

“(I) IN GENERAL.—Subject to paragraph (2), not later than 2 years after the date of the enactment of this Act, the Attorney General shall develop an automated entry and exit control system that will—

“(A) collect a record of departure for every alien departing the United States and match the record of departure with the record of the alien's arrival in the United States; and

“(B) enable the Attorney General to identify, through on-line searching procedures,

lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General.

(2) EXCEPTION.—The system under paragraph (1) shall not collect a record of arrival or departure—

(A) at a land border or seaport of the United States for any alien;

(B) for any alien for whom the documentary requirements in section 212(a)(7)(B) of the Immigration and Nationality Act have been waived by the Attorney General and the Secretary of State under section 212(d)(4)(B) of the Immigration and Nationality Act.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 110 Stat. 3009-546).

#### SEC. 4. REPORT.

(a) REQUIREMENT.—Not later than two years after the date of enactment of this Act, the Attorney General shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives on the feasibility of developing and implementing an automated entry-exit control system that would collect a record of departure for every alien departing the United States and match the record of departure with the record of the alien's arrival in the United States, including departures and arrivals at the land borders of the United States.

(b) CONTENTS OF REPORT.—Such report shall—

(1) assess the costs and feasibility of various means of operating such an automated entry-exit control system, including exploring—

(A) how, if the automated entry-exit control system were limited to certain aliens arriving at airports, departure records of those aliens could be collected when they depart through a land border or seaport; and

(B) the feasibility of the Attorney General, in consultation with the Secretary of State, negotiating reciprocal agreements with the governments of contiguous countries to collect such information on behalf of the United States and share it in an acceptable automated format;

(2) consider the various means of developing such a system, including the use of pilot projects if appropriate, and assess which means would be most appropriate in which geographical regions;

(3) evaluate how such a system could be implemented without increasing border traffic congestion and border crossing delays and, if any such system would increase border crossing delays, evaluate to what extent such congestion or delays would increase; and

(4) estimate the length of time that would be required for any such system to be developed and implemented.

#### SEC. 5. INCREASED RESOURCES FOR BORDER CONTROL AND ENFORCEMENT.

(a) INCREASED NUMBER OF INSPECTORS AT THE LAND BORDERS.—The Attorney General in each of fiscal years 1998, 1999, and 2000 shall increase by not less than 300 the number of full-time inspectors assigned to active duty at the land borders of the United States by the Immigration and Naturalization Service, above the number of such positions for which funds were made available for the preceding fiscal year. Not less than one-half of the inspectors added under the preceding sentence in each fiscal year shall be assigned to the northern border of the United States.

(b) INCREASED NUMBER OF CUSTOMS INSPECTORS AT THE LAND BORDERS.—The Secretary of the Treasury in each of fiscal years 1998, 1999, and 2000 shall increase by not less than

150 the number of full-time inspectors assigned to active duty at the land borders of the United States by the Customs Service, above the number of such positions for which funds were made available for the preceding fiscal year. One-half of the inspectors added under the preceding sentence in each fiscal year shall be assigned to the northern border and one-half to the southern border of the United States.

H.R. 2578

OFFERED BY: MR. POMBO

AMENDMENT NO. 2: Page 2, after line 22, insert the following:

#### SEC. 3. QUALIFICATIONS FOR DESIGNATION AS PILOT PROGRAM COUNTRY.

Section 217(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)) is amended to read as follows:

“(2) QUALIFICATIONS.—Except as provided in subsection (g), a country may not be designated as a pilot program country unless the following requirements are met:

“(A) LOW NONIMMIGRANT VISA REFUSAL RATE.—Either—

“(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during—

“(I) the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and

“(II) either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or

“(ii) such refusal rate for nationals of that country during the previous full fiscal year was less than 3.0 percent.

“(B) MACHINE READABLE PASSPORT PROGRAM.—The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.

“(C) LAW ENFORCEMENT INTERESTS.—The Attorney General determines that the United States law enforcement interests would not be compromised by the designation of the country.”.

Amend the title so as to read: “A bill to amend the Immigration and Nationality Act to modify and extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General.”.

H.R. 2578

OFFERED BY: MR. SMITH OF TEXAS

AMENDMENT NO. 3: Page 2, strike lines 1 through 5 and insert the following:

#### SECTION 1. EXTENSION OF VISA WAIVER PILOT PROGRAM.

Section 217(f) of the Immigration and Nationalization Act is amended by striking “1998.” and inserting “2000.”.

H.R. 2578

OFFERED BY: MR. UNDERWOOD

AMENDMENT NO. 4: Page 2, after line 22, insert the following:

#### SEC. 3. VISA WAIVER PILOT PROGRAM FOR PHILIPPINE NATIONALS VISITING GUAM.

(a) ESTABLISHMENT OF PILOT PROGRAM.—The Attorney General and the Secretary of State shall establish a pilot program (hereinafter in this section referred to as the “pilot program”) under which the requirement of section 212(a)(7)(B)(ii)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(B)(ii)(II)) may be waived by the Attorney General, in consultation with the Secretary of State, and in accordance with this section, in the case of an alien who meets the following requirements:

(1) SEEKING ENTRY INTO GUAM FOR 15 DAYS OR LESS.—The alien is applying for admission during the pilot program period (described in subsection (d)) as a nonimmigrant visitor (described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B))) and solely for entry into and stay on Guam for a period not to exceed 15 days.

(2) NATIONAL OF PHILIPPINES.—The alien is a national of, and presents a passport issued by, the Republic of the Philippines.

(3) FAMILY OBLIGATION.—The alien before the time of such admission completes an immigration form stating that the application for admission is occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

(4) ATTESTING SPONSOR.—The alien before the time of such admission submits an attestation executed by a sponsor of the alien, in which the sponsor attests, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that—

(A) the sponsor is a national of the United States residing on Guam;

(B) the sponsor is a spouse, parent, grandparent, aunt, uncle, brother, sister, son, or daughter of the alien; and

(C) the trip is occasioned by a family obligation described in paragraph (3).

(5) EXECUTES IMMIGRATION FORMS.—The alien before the time of such admission completes such other immigration forms (consistent with this section) as the Attorney General may establish.

(6) NOT A SAFETY THREAT.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(7) NO PREVIOUS VIOLATION.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(8) ROUND-TRIP TICKET.—The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations).

(b) WAIVER OF RIGHTS.—An alien may not be provided a waiver under the pilot program unless the alien has waived any right—

(1) to review or appeal under the Immigration and Nationality Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into Guam; or

(2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

(c) LIMITATION.—The total number of nationals of the Republic of the Philippines who are admitted for entry into Guam pursuant to a waiver under this section may not exceed 100 during any calendar month.

(d) PILOT PROGRAM PERIOD.—

(1) IN GENERAL.—Except as provided in paragraph (2), the pilot program period described in this subsection is the 12-month period beginning on the first day of the implementation of the pilot program.

(2) TERMINATION DUE TO HIGH OVERSTAY RATE.—

(A) IN GENERAL.—The pilot program period shall terminate upon a determination by the Attorney General that the overstay rate (defined in subparagraph (B)) with respect to any calendar month exceeds 20 percent. The termination under the preceding sentence shall take effect on the first day of the first month following the month in which the determination is made.

(B) OVERSTAY RATE.—For purposes of this paragraph, the term “overstay rate” means the percentage which—

(i) the total number of nationals of the Republic of the Philippines who were admitted for entry into Guam pursuant to a waiver under this section during the most recent month for which data are available, and who violated the terms of such admission; bears to

(ii) the total number of nationals of such country who were admitted for entry into Guam pursuant to a waiver under this section during such month.

**(e) ENFORCEMENT AND REPORTING.—**

**(1) MEMORANDUM OF UNDERSTANDING.—**Prior to the implementation of the pilot program, the Attorney General and the Government of Guam shall enter into a memorandum of understanding setting forth their respective obligations with respect to the program's operation. The memorandum shall contain provisions sufficient to ensure that the requirements of this section are enforced effectively, including provisions ensuring that the arrival and departure control system on Guam—

(A) will collect a record of departure for every alien who was admitted pursuant to a waiver under this section, and match the record of departure with the record of the alien's arrival in Guam; and

(B) will enable the Attorney General to identify aliens who remain on Guam beyond the period authorized by the Attorney General under this section.

**(2) REPORTING ON ALIENS OVERSTAYING PERIOD OF LAWFUL ADMISSION.—**The memorandum under paragraph (1) shall require the Government of Guam to report to the Attorney General in a timely manner (but not less than monthly) any information, in addition to the information described in paragraph (1), that the Government of Guam may acquire with respect to aliens admitted pursuant to a waiver under this section who remain on Guam beyond the period authorized by the Attorney General under this section.

**(f) INCLUSION OF PHILIPPINES IN GUAM-ONLY VISA WAIVER PROGRAM.—**

**(1) PROGRAM REVIEW.—**Upon the termination of the pilot program under subsection (d)(1), the Attorney General shall conduct a review of the success of the program and shall determine whether the overstaying rates (as defined in subsection (d)(2)(B)) for the months comprising the pilot program period were excessive. The Attorney General shall complete the review, and shall issue the determination, not later than 6 months after the termination of the pilot program under subsection (d)(1).

**(2) DETERMINATION OF SUCCESS.—**Upon the issuance of a determination by the Attorney General under paragraph (1) that the overstaying rates, when considered together, were not excessive, the Republic of the Philippines shall be deemed to be a geographic area that meets the eligibility criteria for inclusion in the visa waiver program under section 212(l) of the Immigration and Nationality Act (8 U.S.C. 1182(l)).

**(g) DEFINITIONS.—**Except as otherwise provided in this section, the terms used in this section shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

H.R. 2589

OFFERED BY: MR. SENSENBRENNER

AMENDMENT NO. 1: Page 1, insert before section 1 the following:

**TITLE I—COPYRIGHT TERM EXTENSION**

Strike section 1 and insert the following:

**SEC. 101. SHORT TITLE.**

This title may be referred to as the "Copyright Term Extension Act".

Redesignate sections 2 through 5 as sections 102 through 105, respectively.

In section 105, as so redesignated, strike "this Act" and insert "this title".

Strike section 6 and insert the following:

**SEC. 106. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

Add at the end the following:

**TITLE II—MUSIC LICENSING**

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Fairness in Musical Licensing Act of 1998".

**SEC. 202. EXEMPTION OF CERTAIN MUSIC USES FROM COPYRIGHT PROTECTION.**

**(a) BUSINESS EXEMPTION.—**Section 110(5) of title 17, United States Code, is amended to read as follows:

"(5) communication by electronic device of a transmission embodying a performance or display of a nondramatic musical work by the public reception of a broadcast, cable, satellite, or other transmission, if—

"(A)(i) the rooms or areas within the establishment where the transmission is intended to be received by the general public contains less than 3,500 square feet, excluding any space used for customer parking; or

"(ii) the rooms or areas within the establishment where the transmission is intended to be received by the general public contains 3,500 square feet or more, excluding any space used for customer parking, if—

"(I) in the case of performance by audio means only, the performance is transmitted by means of a total of not more than 6 speakers (excluding any speakers in the device receiving the communication), of which not more than 4 speakers are located in any 1 room or area; or

"(II) in the case of a performance or display by visual or audiovisual means, any visual portion of the performance or display is communicated by means of not more than 2 audio visual devices, if no such audio visual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is transmitted by means of a total of not more than 6 speakers (excluding any speakers in the device receiving the communication), of which not more than 4 speakers are located in any 1 room or area;

"(B) no direct charge is made to see or hear the transmission;

"(C) the transmission is not further transmitted to the public beyond the establishment where it is received; and

"(D) the transmission is licensed.".

**(b) EXEMPTION RELATING TO PROMOTION.—**Section 110(7) of title 17, United States Code, is amended—

(1) by striking "a vending" and inserting "an";

(2) by striking "sole";

(3) by inserting "or of the audio, video, or other devices utilized in the performance," after "phonorecords of the work,';" and

(4) by striking "and is within the immediate area where the sale is occurring".

**SEC. 203. BINDING ARBITRATION OF RATE DISPUTES INVOLVING PERFORMING RIGHTS SOCIETIES.**

**(a) IN GENERAL.—**Section 504 of title 17, United States Code, is amended by adding at the end the following new subsection:

"(d) PERFORMING RIGHTS SOCIETIES; BINDING ARBITRATION.—

"(1) ARBITRATION OF DISPUTES PRIOR TO COURT ACTION.—

"(A) ARBITRATION.—(i) If a general music user and a performing rights society are unable to agree on the appropriate rate or fee to be paid for the user's past or future performance of musical works in the repertoire of the performing rights society, the general music user shall, in lieu of any other dis-

pute-resolution mechanism established by any judgment or decree governing the operation of the performing rights society, be entitled to binding arbitration of such dispute pursuant to the rules of the American Arbitration Association. The music user may initiate such arbitration.

"(ii) The arbitrator in such binding arbitration shall determine a fair and reasonable rate or fee for the general music user's past and future performance of musical works in such society's repertoire and shall determine whether the user's past performances of such musical works, if any, infringed the copyrights of works in the society's repertoire. If the arbitrator determines that the general music user's past performances of such musical works infringed the copyrights of works in the society's repertoire, the arbitrator shall impose a penalty for such infringement. Such penalty shall not exceed the arbitrator's determination of the fair and reasonable license fee for the performances at issue.

"(B) DEFINITIONS.—(i) For purposes of this paragraph, a 'general music user' is any person who performs musical works publicly but is not engaged in the transmission of musical works to the general public or to subscribers through broadcast, cable, satellite, or other transmission.

"(ii) For purposes of this paragraph, transmissions within a single commercial establishment or within establishments under common ownership or control are not transmissions to the general public.

"(iii) For purposes of clause (ii), an 'establishment' is a retail business, restaurant, bar, inn, tavern, or any other place of business in which the public may assemble.

"(C) ENFORCEMENT OF ARBITRATOR'S DETERMINATIONS.—An arbitrator's determination under this paragraph is binding on the parties and may be enforced pursuant to sections 9 through 13 of title 9.

"(2) COURT-ANNEXED ARBITRATION.—(A) In any civil action brought against a general music user, as defined in paragraph (1) for infringement of the right granted in section 106(4) involving a musical work that is in the repertoire of a performing rights society, if the general music user admits the prior public performance of one or more works in the repertoire of the performing rights society but contests the rate or the amount of the license fee demanded by such society for such performance, the dispute shall, if requested by the general music user, be submitted to arbitration under section 652(e) of title 28. In such arbitration proceeding, the arbitrator shall determine the appropriate rate and amount owed by the music user to the performing rights society for all past public performances of musical works in the society's repertoire. The amount of the license fee shall not exceed two times the amount of the blanket license fee that would be applied by the society to the music user for the year or years in which the performances occurred. In addition, the arbitrator shall, if requested by the music user, determine a fair and reasonable rate or license fee for the music user's future public performances of the musical works in such society's repertoire.

"(B) As used in this paragraph, the term 'blanket license' means a license provided by a performing rights society that authorizes the unlimited performance of musical works in the society's repertoire, for a fee that does not vary with the quantity or type of performances of musical works in the society's repertoire.

"(3) TERM OF LICENSE FEE DETERMINATION.—In any arbitration proceeding initiated under this subsection, the arbitrator's determination of a fair and reasonable rate or license fee for the performance of the music in the repertoire of the performing rights society

concerned shall apply for a period of not less than 3 years nor more than 5 years after the date of the arbitrator's determination.”.

(b) ACTIONS THAT SHALL BE REFERRED TO ARBITRATION.—Section 652 of title 28, United States Code, is amended by adding at the end the following:

“(e) ACTIONS THAT SHALL BE REFERRED TO ARBITRATION.—In any civil action against a general music user for infringement of the right granted in section 106(4) of title 17 involving a musical work that is in the repertoire of a performing rights society, if the general music user admits the public performance of any musical work in the repertoire of the performing rights society but contests the rate or the amount of the license fee demanded by the society for such performance, the district court shall, if requested by the general music user, refer the dispute to arbitration, which shall be conducted in accordance with section 504(d)(2) of title 17. Each district court shall establish procedures by local rule authorizing the use of arbitration under this subsection. The definitions set forth in title 17 apply to the terms used in this subsection.”.

#### **SEC. 204. VICARIOUS LIABILITY PROHIBITED.**

Section 501 of title 17, United States Code, is amended by adding at the end the following:

“(f) A landlord, an organizer or sponsor of a convention, exposition, or meeting, a facility owner, or any other person making space available to another party by contract, shall not be liable under any theory of vicarious or contributory infringement with respect to an infringing public performance of a copyrighted work by a tenant, lessee, subtenant, sublessee, licensee, exhibitor, or other user of such space on the ground that—

“(1) a contract for such space provides the landlord, organizer or sponsor, facility owner, or other person a right or ability to control such space and compensation for the use of such space; or

“(2) the landlord, organizer or sponsor, facility owner, or other person has or had at the time of the infringing performance actual control over some aspects of the use of such space, if the contract for the use of such space prohibits infringing public performances and the landlord, organizer or sponsor, facility owner, or other person does not exercise control over the selection of works performed.”.

#### **SEC. 205. CONFORMING AMENDMENTS.**

Section 101 of title 17, United States Code, is amended by inserting after the undesignated paragraph relating to the definition of “perform” the following:

“A ‘performing rights society’ is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors, and Publishers, Broadcast Music, Inc., and SESAC, Inc. The ‘repertoire’ of a performing rights society consists of those works for which the society provides licenses on behalf of the owners of copyright in the works.”.

#### **SEC. 206. CONSTRUCTION OF TITLE.**

Except as provided in section 504(d)(1) of title 17, United States Code, as added by section 203(a) of this Act, nothing in this title shall be construed to relieve any performing rights society (as defined in section 101 of title 17, United States Code) of any obligation under any consent decree, State statute, or other court order governing its operation, as such statute, decree, or order is in effect on the date of the enactment of this Act, as it may be amended after such date, or as it may be enacted, issued, or agreed to after such date.

#### **SEC. 207. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect on the date of the enactment of this Act, and shall apply to actions filed on or after such date.

H.R. 2589

OFFERED BY: MR. COBLE

AMENDMENT NO. 2: Page 4, line 9, strike “of 1997”.

Page 4, line 24, strike “of 1997”.

Page 5, line 12, strike “of 1997”.

Page 6, line 4, strike “of 1997”.

Page 6, strike line 17 and all that follows through page 7, line 4 and insert the following:

“(D) In the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, personal representative, or trustee shall own the author's entire termination interest.”.

Insert the following after section 5 and redesignate the succeeding section accordingly:

#### **SEC. 6. ASSUMPTION OF CONTRACTUAL OBLIGATIONS RELATED TO TRANSFERS OF RIGHTS IN MOTION PICTURES.**

(a) IN GENERAL.—Part VI of title 28, United States Code, is amended by adding at the end the following new chapter:

#### **“CHAPTER 180—ASSUMPTION OF CERTAIN CONTRACTUAL OBLIGATIONS**

“Sec.

“4001. Assumption of contractual obligations related to transfers of rights in motion pictures.

#### **“§ 4001. Assumption of contractual obligations related to transfers of rights in motion pictures**

“(a) ASSUMPTION OF OBLIGATIONS.—In the case of a transfer of copyright ownership in a motion picture (as defined in section 101 of title 17) that is produced subject to 1 or more collective bargaining agreements negotiated under the laws of the United States, if the transfer is executed on or after the effective date of this Act and is not limited to public performance rights, the transfer instrument shall be deemed to incorporate the assumption agreements applicable to the copyright ownership being transferred that are required by the applicable collective bargaining agreement, and the transferee shall be subject to the obligations under each such assumption agreement to make residual payments and provide related notices, accruing after the effective date of the transfer and applicable to the exploitation of the rights transferred, and any remedies under each such assumption agreement for breach of those obligations, as those obligations and remedies are set forth in the applicable collective bargaining agreement, if—

“(1) the transferee knows or has reason to know at the time of the transfer that such collective bargaining agreement was or will be applicable to the motion picture; or

“(2) in the event of a court order confirming an arbitration award against the transferor under the collective bargaining agreement, the transferor does not have the financial ability to satisfy the award within 90 days after the order is issued.

“(b) FAILURE TO NOTIFY.—If the transferor under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution of the transfer instrument, and subsection (a) is made applicable to the transferee solely by virtue of subsection (a)(2), the transferor shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

“(c) DETERMINATION OF DISPUTES AND CLAIMS.—Any dispute concerning the application of subsection (a) and any claim made

under subsection (b) shall be determined by an action in United States district court, and the court in its discretion may allow the recovery of full costs by or against any party and may also award a reasonable attorney's fee to the prevailing party as part of the costs.”.

(b) CONFORMING AMENDMENT.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

#### **“180. Assumption of Certain Contractual Obligations ..... 4001”.**

H.R. 2589

OFFERED BY: MR. MCCOLLUM

*(To the Amendment Offered by: Mr. Sensenbrenner)*

AMENDMENT NO. 3: In lieu of the matter proposed to be inserted as title II, insert the following:

#### **TITLE II—MUSIC LICENSING EXEMPTION FOR FOOD SERVICE OR DRINKING ESTABLISHMENTS**

#### **SEC. 201. SHORT TITLE.**

This title may be cited as the “Fairness In Music Licensing Act of 1998.”

#### **SEC. 202. EXEMPTION.**

Section 110(5) of title 17, United States Code is amended—

(1) by striking “(5)” and inserting “(5)(A) except as provided in subparagraph (B).”; and

(2) by adding at the end the following:

“(B) communication by a food service or drinking establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a radio or television broadcast station licensed by the Federal Communications Commission, or, if an audiovisual transmission, by a cable system or satellite carrier, if—

“(i) either the establishment in which the communication occurs has less than 3500 gross square feet of space (excluding space used for customer parking), or the establishment in which the communication occurs has 3500 gross square feet of space or more (excluding space used for customer parking) and—

“(I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

“(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than one audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

“(ii) no direct charge is made to see or hear the transmission or retransmission;

“(iii) the transmission or retransmission is not further transmitted beyond the food service or drinking establishment where it is received; and

“(iv) the transmission or retransmission is licensed by the copyright owner of the work so publicly performed or displayed;”; and

(3) by adding after paragraph (10) the following:

“The exemptions provided under paragraph (5) shall not be taken into account in any administrative, judicial, or other governmental

proceeding to set or adjust the royalties payable to copyright owners for the public performance or display of their works. Royalties payable to copyright owners for any public performance or display of their works other than such performances or displays as are exempted under paragraph (5) shall not be diminished in any respect as a result of such exemption".

**SEC. 203. LICENSING BY PERFORMING RIGHTS SOCIETIES.**

(a) IN GENERAL.—Chapter 5 of title 17, United States Code, is amended by adding at the end the following:

**“§512. determinations of reasonable license fee for individual proprietors**

“In the case of any performing rights society subject to a consent decree which provides for the determination of reasonable license fees to be charged by the performing rights society, notwithstanding the provisions of that consent decree, an individual proprietor who owns or operates fewer than 3 food service or drinking establishments in which nondramatic musical works are performed publicly and who claims that any license agreement offered by that performing rights society to the industry of which the individual proprietor is a member is unreasonable in its license fee as to that individual proprietor, shall be entitled to determination of a reasonable license fee as follows:

“(1) The individual proprietor may commence such proceeding for determination of a reasonable license fee by filing an application in the applicable district court under paragraph (2) that a rate disagreement exists and by serving a copy of the application on the performing rights society. Such proceeding shall commence in the applicable district court within 90 days after the service of such copy, except that such 90-day requirement shall be subject to the administrative requirements of the court.

“(2) The proceeding under paragraph (1) shall be held, at the individual proprietor's election, in the judicial district of the district court with jurisdiction over the applicable consent decree or in that place of holding court of a district court that is the seat of the Federal circuit (other than the Court of Appeals for the Federal Circuit) in which the proprietor's establishment is located.

“(3) Such proceeding shall be held before the judge of the court with jurisdiction over the consent decree governing the performing rights society. At the discretion of the court, the proceeding shall be held before a special master or magistrate judge appointed by such judge. Should that consent decree provide for the appointment of an advisor or advisors to the court for any purpose, any such advisor shall be the special master so named by the court.

“(4) In any such proceeding, the industry rate, or, in the absence of an industry rate, the most recent license fee agreed to by the parties or determined by the court, shall be presumed to have been reasonable at the time it was agreed to or determined by the court. The burden of proof shall be on the individual proprietor to establish the reasonableness of any other fee it requests.

“(5) Pending the completion of such proceeding, the individual proprietor shall have the right to perform publicly the copyrighted musical compositions in the repertoire of the performing rights society, and shall pay an interim license fee, subject to retroactive adjustment when a final fee has been determined, in an amount equal to the industry rate, or, in the absence of an industry rate, the amount of the most recent license fee agreed to by the parties. Failure to pay such interim license fee shall result in immediate dismissal of the proceeding, and the individual proprietor shall then be deemed to have had no right to perform the copyrighted musical compositions in the repertoire of the performing rights society under this section from the date it submitted its notice commencing the proceeding.

“(6) Any decision rendered in such proceeding by a special master or magistrate judge named under paragraph (3) shall be reviewed by the presiding judge. Such proceeding, including such review, shall be concluded within 6 months after its commencement.

“(7) Any such final determination shall be binding only as to the individual proprietor commencing the proceeding, and shall not be applicable to any other proprietor or any other performing rights society, and the performing rights society shall be relieved of any obligation of nondiscrimination among similarly situated music users that may be imposed by the consent decree governing its operations.

“(8) For purposes of this section, the term ‘industry rate’ means the license fee a performing rights society has agreed to with, or which has been determined by the court for, a significant segment of the music user industry to which the individual proprietor belongs.”

**(b) TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 5 of title 17, United States Code, is amended by adding after the item relating to section 511 the following:

“512. Determinations of reasonable license fee for individual proprietors.”

**SEC. 204. DEFINITIONS.**

Section 101 of title 17, United States Code, is amended—

(1) by inserting after the definition of “display” the following:

“A ‘food service or drinking establishment’ is a restaurant, inn, bar, tavern, or any other

similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space is used for that purpose, and in which nondramatic musical works are performed publicly.”;

(2) by inserting after the definition of “fixed” the following:

“The ‘gross square feet of space’ of a food service or drinking establishment means the entire interior space of that establishment and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.”;

(3) by inserting after the definition of “perform” the following:

“A ‘performing rights society’ is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.”; and

(4) by inserting after the definition of “pictorial, graphic and sculptural works” the following:

“A ‘proprietor’ is an individual, corporation, partnership, or other entity, as the case may be, that owns a food service or drinking establishment. No owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, Internet service provider, online service provider, telecommunications company, or any other such audio-visual service or programmer now known or as may be developed in the future, commercial subscription music service, or owner or operator of any other transmission service, or owner of any other establishment in which the service to the public of food or drink is not the primary purpose, shall under any circumstances be deemed to be a proprietor.”

**SEC. 205. CONSTRUCTION OF TITLE.**

Except as otherwise provided in this title, nothing in this title shall be construed to relieve any performing rights society of any obligation under any State or local statute, ordinance, or law, or consent decree or other court order governing its operation, as such statute, ordinance, law, decree, or order is in effect on the date of the enactment of this title, as it may be amended after such date, or as it may be issued or agreed to after such date.

**SEC. 206. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect 90 days after the date of the enactment of this title.