

the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

“(D) BAD FAITH CLAIM.—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys’ fee, not exceeding \$1,000, to be paid by the complainant.

“(4) ACTION IN COURT.—

“(A) IN GENERAL.—If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(C).

“(B) RELIEF.—The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

“(i) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

“(ii) the amount of back pay, with interest; and

“(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney’s fees.

“(5) REVIEW.—

“(A) IN GENERAL.—Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

“(B) NO JUDICIAL REVIEW.—An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

“(6) FAILURE TO COMPLY WITH ORDER.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

“(7) CIVIL ACTION TO REQUIRE COMPLIANCE.—

“(A) IN GENERAL.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount

in controversy or the citizenship of the parties, to enforce such order.

“(B) AWARD.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys’ and expert witness fees) to any party whenever the court determines such award is appropriate.

“(C) EFFECT OF SECTION.—

“(1) OTHER LAWS.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

“(2) RIGHTS OF EMPLOYEES.—Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

“(d) ENFORCEMENT.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

“(e) LIMITATION.—Subsection (a) shall not apply with respect to an employee of an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food who, acting without direction from such entity (or such entity’s agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, rule, regulation, standard, or ban under this Act.”

#### SEC. 403. JURISDICTION; AUTHORITIES.

Nothing in this Act, or an amendment made by this Act, shall be construed to—

(1) alter the jurisdiction between the Secretary of Agriculture and the Secretary of Health and Human Services, under applicable statutes, regulations, or agreements regarding voluntary inspection of non-amenable species under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.);

(2) alter the jurisdiction between the Alcohol and Tobacco Tax and Trade Bureau and the Secretary of Health and Human Services, under applicable statutes and regulations;

(3) limit the authority of the Secretary of Health and Human Services under—

(A) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(B) the Public Health Service Act (42 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act;

(4) alter or limit the authority of the Secretary of Agriculture under the laws administered by such Secretary, including—

(A) the Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

(B) the Poultry Products Inspection Act (21 U.S.C. 451 et seq.);

(C) the Egg Products Inspection Act (21 U.S.C. 1031 et seq.);

(D) the United States Grain Standards Act (7 U.S.C. 71 et seq.);

(E) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.);

(F) the United States Warehouse Act (7 U.S.C. 241 et seq.);

(G) the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.); and

(H) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with the amendments made by the Agricultural Marketing Agreement Act of 1937; or

(5) alter, impede, or affect the authority of the Secretary of Homeland Security under

the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) or any other statute, including any authority related to securing the borders of the United States, managing ports of entry, or agricultural import and entry inspection activities.

#### SEC. 404. COMPLIANCE WITH INTERNATIONAL AGREEMENTS.

Nothing in this Act (or an amendment made by this Act) shall be construed in a manner inconsistent with the agreement establishing the World Trade Organization or any other treaty or international agreement to which the United States is a party.

#### SEC. 405. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

**SA 4891.** Mr. HARKIN (for Mr. REID) proposed an amendment to the bill H.R. 2751, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply, as follows:

Amend the title as to read:

A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.

#### CONSUMER ASSISTANCE TO RECYCLE AND SAVE ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 74, H.R. 2751.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2751) to accelerate motor fuel savings nationwide and provide incentives to registered owners of high polluting automobiles to replace such automobiles with new fuel efficient and less polluting automobiles.

Mr. REID. I ask unanimous consent that the text of S. 510, as passed the Senate and modified with the changes at the desk, be inserted in lieu thereof and agreed to; that the bill, as amended, be read a third time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4890), in the nature of a substitute, was agreed to.

(The amendment is printed in today’s RECORD under “Text of Amendments.”)

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. REID. Is there a question on passage of the bill?

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall the bill pass?

The bill, (H.R. 2751), as amended, was passed.

Mr. REID. I move to reconsider and table the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that the title amendment, which is at the desk, be considered and agreed to, and the motion to reconsider be laid upon the table, and any statements related to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4891) was agreed to, as follows:

Amend the title as to read:

A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.

**MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2010**

Mr. REID. Mr. President, I ask the Chair to lay before the Senate a message from the House with respect to H.R. 3082.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendment of the Senate to the bill (H.R. 3082) entitled "An Act making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes," with an amendment.

MOTION TO CONCUR WITH AMENDMENT NO. 4885

Mr. REID. I move to concur in the House amendment to the Senate amendment to H.R. 3082, with an amendment, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] moves to concur in the House amendment to the Senate amendment to H.R. 3082 with an amendment No. 4885.

Mr. REID. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. REID. I also ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk and ask that it be reported.

The PRESIDING OFFICER. The cloture motion having been presented pursuant to rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the

Standing Rules of the Senate, hereby move to bring to a close debate on the motion to concur in the House amendment to the Senate amendment to H.R. 3082, the Full Continuing Appropriations Act, with an amendment.

Joseph I. Lieberman, John D. Rockefeller, IV, Byron L. Dorgan, John F. Kerry, Richard J. Durbin, Mark L. Pryor, Robert Menendez, Amy Klobuchar, Patty Murray, Kay R. Hagan, Christopher J. Dodd, Daniel K. Inouye, Mark Begich, Al Franken, Robert P. Casey, Jr., Tom Carper.

AMENDMENT NO. 4886 TO AMENDMENT NO. 4885

Mr. REID. Mr. President, I have a second-degree amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4886 to amendment No. 4885.

The amendment is as follows:

At the end, insert the following:

The provisions of this Act shall become effective within 5 days of enactment.

MOTION TO REFER WITH AMENDMENT NO. 4887

Mr. REID. Mr. President, I have a motion to refer the House message to the Senate Appropriations Committee, with instructions to report back forthwith with the following amendment, which I ask the clerk to state.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] moves to refer the House message with respect to H.R. 3082 to the Appropriations Committee, with instructions to report back forthwith with an amendment numbered 4887, as follows:

At the end, insert the following:

The Senate Appropriations Committee is requested to study the impact on any delay in extending government funding for all federal agencies, and that the study should be concluded within 10 days of enactment.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4888

Mr. REID. Mr. President, I have an amendment to my instructions, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4888 to the instructions of the motion to refer H.R. 3082.

The amendment is as follows:

In the amendment, strike "10" and insert "6".

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4889 TO AMENDMENT NO. 4888

Mr. REID. Mr. President, I have a second-degree amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4889 to Amendment No. 4888.

The amendment is as follows:

In the amendment, strike "6" and insert "4".

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

**EXECUTIVE SESSION**

**TREATY WITH RUSSIA ON MEASURES FOR FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS**

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed now to executive session and resume consideration of the START treaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been filed under rule XXII, the clerk will report the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Treaties Calendar No. 7, Treaty Document No. 111-5, the START treaty.

Harry Reid, Joseph I. Lieberman, John D. Rockefeller, IV, Byron L. Dorgan, John F. Kerry, Sheldon Whitehouse, Mark L. Pryor, Jack Reed, Robert Menendez, Mark Begich, Benjamin L. Cardin, Kent Conrad, Bill Nelson, Amy Klobuchar, Patty Murray, Barbara A. Mikulski, Christopher J. Dodd, Richard G. Lugar.

Mr. REID. Mr. President, I ask that the mandatory quorum be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged of the following nominations: PN2352, Darrell James Bell, U.S. Marshal, Montana; PN2348, Edwin Sloane, U.S. Marshal, District of Columbia; that the Senate then proceed en bloc to the nominations; that the nominations be confirmed en bloc, and the motions to reconsider be laid upon the table; that any statements relating to the nominations be printed in the RECORD as if read; that the President be immediately notified of the