



**Legislative Bulletin.....June 25, 2002**

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**H.R. 4858 — To Improve Access to Physicians in Medically Underserved Areas (Jerry Moran)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, June 25<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 4858 intends to improve physician access in underserved areas by extending the authority for “J” visas (for educational and cultural exchange programs designed to promote the interchange of persons, knowledge, and skills in the fields of education, arts, and sciences) from 2002 to 2004 and increasing the number of waivers that a state may request from 20 to 30.

**Additional Background:** Certain "J" exchange visitors (including physicians) who participate in programs which are financed in whole or in part, directly or indirectly, by an agency of the U.S. Government or by the exchange visitor's government, or who are nationals or residents of a country which have been designated as requiring the skills of the exchange visitor, must return to their country of nationality or last residence after completing their program in the United States and reside there physically for two years before they may become eligible to apply for an immigrant or temporary worker visa. State departments of health may request a waiver of the residency requirement if the physician is working in a health professional shortage area or medically underserved area.

**Cost to Taxpayers:** No cost estimate is available.

**Does the Bill Create New Federal Programs or Rules?:** The bill extends “J” visa authority and increases the number of state waivers.

**Constitutional Authority:** No committee report citing constitutional authority is available.

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## **H.R. 4679—Lifetime Consequences for Sex Offenders Act (Gekas)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, June 25<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 4679 would give federal judges discretionary authority to provide a maximum term of life of supervised release after imprisonment for sex offenders. A term of supervised release of *any* number of years would be authorized. Currently, the maximum term of supervised release is five years.

The covered offenses are sexual abuse, sexual exploitation of children, transportation for illegal sexual activity (generally), use of interstate facilities to transmit information about a minor, transportation of minors with intent to engage in criminal sexual activity or in a sexual act with a juvenile, coercion and enticement to engage in criminal sexual activity, and sex trafficking of children.

**Cost to Taxpayers:** CBO reports the following cost analysis: “Based on information from the U.S. Sentencing Commission and the Administrative Office of the United States Courts on the number of sex offenders and the costs of supervised release, CBO expects that most of the convicted sex offenders who would receive longer supervised release sentences as a result of implementing the bill would be those who also receive prison sentences longer than 5 years. Therefore, CBO estimates that implementing H.R. 4679 would have a negligible effect on the cost of supervised release over the next 5 years. The cost of providing supervised release could increase after several years if sex offenders are sentenced to longer periods of supervised release.”

**Does the Bill Create New Federal Programs or Rules?:** The bill would extend the authorized time-period for which a sex offender could be supervised after release from prison.

**Constitutional Authority:** The Judiciary Committee, in House Report 107-527, cites constitutional authority in Article I, Section 8, but does not cite a specific clause.

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## H. R. 4623 Child Obscenity and Pornography Prevention Act of 2002 (Smith, Lamar)

**Order of Business:** The bill is scheduled to be considered on Tuesday, June 25, 2002, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 4623 attempts to outlaw computer-generated child pornography, in response to the Supreme Court decision striking down sections of a 1996 federal law. The bill is designed to meet objections raised by the Supreme Court in its April 2002, 6 to 3 ruling *Ashcroft v. Free Speech Coalition*. In that ruling, the Court said that a 1996 child pornography law that made it a crime to display images of sexual activity involving children was too broad and thus violated the First Amendment guarantee of free speech..

The bill, as reported to the House floor, has 11 findings that lay out the case for Congressional involvement in computer-generated child pornography and, among other things, argue to the Court that previous Supreme Court precedent occurred prior to the computer technology available today.

According to the bill findings, criminals are now claiming their child porn images are not real children and are therefore forcing prosecutors to prove beyond a reasonable doubt that images are not computer-generated.

### Provisions Designed to address the Court's Ruling:

#### 1. Definition of Child Pornography:

The effect of the Supreme Court decision on the 1996 law is shown below stricken in red text with the text proposed by H. R. 4623 in bracketed bolded blue text.

(8) 'child pornography' means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where-

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

~~(B) such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;~~

**[(B) such visual depiction is a computer image or computer-generated image that is, or is indistinguishable (as defined in section 1466A) from, that of a minor engaging in sexually explicit conduct; or:]**

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or

~~(D) such visual depiction is advertised, promoted, pre-sented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct; and~~

## 2. Definition of “Sexually Explicit Conduct:

H.R. 4623 also adds a narrower definition of “sexually explicit conduct” which is designed to address concerns raised by the Court

## 3. Affirmative Defense:

H.R. 4623 strikes the affirmative defense in current law which allows a person charged with violating the law to assert that:

- (1) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct;
- (2) each such person was an adult at the time the material was produced; and
- (3) the defendant did not advertise, promote, present, describe, or distribute the material in such a manner as to convey the impression that it is or contains a visual depiction of a minor engaging in sexually explicit conduct.

The bill then creates a new affirmative defense on the basis that the alleged offense “did not involve the use of a minor or an attempt or conspiracy to commit an offense under this section.” This affirmative defense may only be used in cases where the alleged offense is computer generated.

## 4. Pandering and Solicitation of Certain Material:

The bill makes it a crime to provide or sell a visual depiction (computer-generated image) with the intent to cause any person to believe the visual depiction is of a minor engaging in sexually explicit conduct. The bill also makes it a crime to receive or purchase a visual depiction that person believes to be a depiction of a minor engaging in sexually explicit conduct.

### Other Provisions:

The bill also creates a new federal crime regarding obscene visual depictions of young pre-pubescent children (12-years old or younger), or depictions that are "indistinguishable from" a pre-pubescent child engaging in sexually explicit conduct. This section also adds a new provision related to obscene visual representations of pre-pubescent sexual abuse, though it allows an affirmative defense for the defendant if he possessed less than three images, acts in good faith to report the matter to law enforcement and takes reasonable steps to destroy the images.

The bill also makes it a federal crime to show a person under 16-years old a visual depiction that is or is indistinguishable from a pre-pubescent child engaging in sexually explicit conduct, any obscene matter, or any child pornography.

The bill further amends current law to make visual depictions of child sexual images illegal if they are made outside the United States but intended for transport to or availability in the U.S.

The bill also increases penalties for repeat offenders.

Finally, the bill makes a variety of changes to the provisions of current law regarding the reporting of child pornography by electronic communications providers, including expanding the reporting requirement to include a mandate that private electronic communication providers report to the Cyber Tip Line at the National Center for Missing and Exploited Children (which then forwards the information to the relevant law enforcement officials) anytime they become aware of anyone attempting to provide, sell, receive, or purchase a visual depiction that is or is intended to be a depiction of a minor engaging in sexually explicit conduct.

**Additional Information:** In 1996, Congress enacted legislation outlawing child porn (as part of a larger omnibus bill, PL104-208). The Supreme Court, in its April 2002, 6 to 3 ruling *Ashcroft v. Free Speech Coalition*, affirmed the 9th Circuit Court ruling and determined that "the prohibitions of §§2256(8)(B) and 2256(8)(D) are overbroad and unconstitutional."

The Supreme Court ruling in *Ashcroft v. Free Speech Coalition* and the Justices opinions can be found here:

The Opinion of the Court (Kennedy): <http://supct.law.cornell.edu/supct/html/00-795.ZO.html>

Concurrence (Thomas): <http://supct.law.cornell.edu/supct/html/00-795.ZC.html>

Dissent (Rehnquist): <http://supct.law.cornell.edu/supct/html/00-795.ZD.html>

Other (O'Connor): <http://supct.law.cornell.edu/supct/html/00-795.ZX.html>

**Cost to Taxpayers:** CBO estimates that implementing H.R. 4623 would not result in any significant cost to the Federal Government. Though H.R. 4623 would establish new Federal crimes, CBO estimates that any increase in costs for law enforcement, court proceedings, or prison operations would not be significant because of the small number of additional cases likely to be affected. Those prosecuted and convicted under H.R. 4623 could be subject to criminal fines and any fines, which CBO estimates would be negligible are deposited in the Crime Victims Fund and later spent.

The bill would impose a private-sector, unfunded mandate by expanding reporting requirements on electronic communication service providers to include additional activities related to child pornography. CBO estimates that this unfunded mandated would not exceed the annual threshold specified in UMRA (\$115 million in 2002, adjusted annually for inflation).

**Constitutional Authority:** A Judiciary Committee Report (Report #107-526) cites Article I, Section 8 of the Constitution (Powers of Congress) but fails to cite a specific clause.

**Does the Bill Create New Federal Programs or Rules?:** Yes. See bill summary for further details.

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## **H.R.4477— Sex Tourism Prohibition Improvement Act of 2002 (Sensenbrenner)**

**Order of Business:** The bill will be considered under suspension of the rules on Tuesday, June 25, 2002.

**Summary:** H.R.4477 amends current law regarding transport of minors to make it illegal for a person to travel to this country or within this country “for the purpose of engaging in any illicit sexual conduct with another person.” H.R.4477 also makes it illegal for a U.S. citizen or alien with permanent U.S. status to travel abroad to engage in illicit sexual conduct with another person. Those convicted under these new crimes, shall be fined or imprisoned not more than 15 years, or both.

Illicit sexual conduct is defined as 1) a sexual act (under federal sexual abuse definitions, 18 U.S.C.2246) with a person that would be in violation of federal sex abuse laws if the action took place in US territory or 2) any commercial sex act (as defined under federal sex trafficking of children statute, 18 U.S.C. 1591) with a person who is known to be under 18-years old, or who the person engaging in the act “should have known has not attained the age of 18 years.”

According to the Judiciary Committee, current law requires the Government to prove that the defendant traveled “for the purpose” of engaging in the illegal activity. Under H.R. 4477 the Government would only have to prove that the defendant engaged in illicit sexual conduct with a minor while in a foreign country. This legislation also criminalizes the actions of sex tour operators by prohibiting persons from arranging, inducing, procuring, or facilitating the travel of a person knowing that such a person is traveling in interstate or foreign commerce for the purpose of engaging in illicit sexual conduct.

**Cost to Taxpayers:** CBO estimates that implementing H.R. 4477 would not result in any significant cost to the Federal Government. Though H.R. 4477 establishes new Federal crimes, CBO estimates that any increase in costs for law enforcement, court proceedings, or prison operations would not be significant because of the small number of additional cases likely to be affected. Any criminal fines collected from those prosecuted and convicted under H.R. 4477, which CBO estimates will be negligible, will be deposited in the Crime Victims Fund and later spent.

**Does the Bill Create New Federal Programs or Rules:** H.R. 4477 would establish new federal crimes relating to interstate or international travelers (or persons facilitating such travel) who engage in illegal sexual activity.

**Constitutional Authority:** A Judiciary Committee Report (Report #107-525) cites article I, section 8 of the Constitution (Powers of Congress) but fails to cite a specific clause.

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## **H.R. 3180 — New Hampshire-Vermont Interstate School Compact Consent Act (Bass)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, June 25<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 3180 gives the consent of Congress to changes proposed to the New Hampshire-Vermont Interstate School District Compact. The changes to the compact read as follows:

“An interstate district shall authorize the incurring of debts to finance capital projects by a majority vote of the district passed at an annual or special district meeting. Such vote shall be taken by secret ballot after full opportunity for debate, and any such vote shall be subject to reconsideration and further action by the district at the same meeting or at an adjourned session thereof. As an alternative, an interstate district may provide in its articles of agreement that such a vote be conducted by Australian or official balloting under procedures as set forth in the articles of agreement, and that such vote be subject to any method of reconsideration, if any, which the interstate district sets forth in the articles of agreement.”

**Additional Background:** Originally approved by Congress in 1969, the New Hampshire-Vermont Interstate School Compact was established to increase educational opportunities and to promote administrative efficiency by encouraging the formation of interstate school districts across the New Hampshire-Vermont state line. Two interstate school districts currently operate under the Compact: the Rivendell School District and the Dresden School District.

Early in 2001, residents of the Dresden School District approved amendments to the Compact to enable the implementation of all-day Australian Balloting (a form of secret balloting) when voting on whether to incur debt. Both the Vermont and New Hampshire state legislatures adopted the amendments.

**Cost to Taxpayers:** According to CBO, the bill would result in no cost to the federal government.

**Does the Bill Create New Federal Programs or Rules?:** No, the bill gives the consent of Congress to amendments to an interstate compact.

**Constitutional Authority:** The Judiciary Committee cites Article I, Section 10, Clause 3 (compact clause).

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## **H.R. 4070 — Social Security Program Protection Act of 2002 (Shaw)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, June 25<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 4070 makes a variety of changes to the Social Security Act to protect recipients and program integrity.

Social Security beneficiaries who are unable to manage their own financial affairs use representative payees to safeguard their benefits. Under H.R. 4070, the Social Security Administration (SSA) is required to reissue benefits to beneficiaries whose funds were misused by a representative payee. SSA is also required to enhance its oversight of representative payees, using onsite review, and requires representative payees to be both bonded and licensed (current law requires them to be either bonded or licensed). In addition, the bill would hold representative payees liable in instances where benefits are misused and require them to forfeit their fees.

Other changes to the Social Security program in H.R. 4070 include:

- Clarifies that civil monetary penalties can be imposed if a beneficiary fails to notify SSA of changes in circumstance that affect eligibility or benefit amount;
- Fully denies benefits to fugitive felons and individuals fleeing prosecution;
- Requires those who offer Social Security services for a fee to include in solicitations a statement that such services are available from SSA free of charge;
- Imposes a fine of up to \$5000 and imprisonment of up to three years on any individual who “by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration;”
- Caps the assessment imposed by SSA on attorney fees paid out of past-due benefits (rather than directly by the beneficiary) at \$100;
- Clarifies that demonstration projects under the Ticket to Work Incentives Improvement Act of 1999 may continue beyond December 17, 2004, if the project began on or before that date; and
- Reinstates reports sunset in the Federal Reports Elimination and Sunset Act of 1995.

**Cost to Taxpayers:** Preliminary review by the Congressional Budget Office estimates savings of \$165 million over five years.

**Does the Bill Create New Federal Programs or Rules?:** The bill makes clarifying and technical changes to the Social Security Act.

**Constitutional Authority:** No committee report citing constitutional authority is available.

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**H.Con.Res. 424—Commending the patriotic contributions of roofing professionals involved in the rebuilding of the Pentagon (*Velazquez*)**

**Order of Business:** The resolution is scheduled to be considered on Tuesday, June 25<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.Con.Res. 424 resolves that “the House of Representatives commends the patriotic contributions [the] roofing professionals have made to the rebuilding of the Pentagon, damaged by a terrorism attack on September 11, 2001.”

**Additional Background:** According to the resolution, the fire from the September 11<sup>th</sup> attack destroyed more than an acre of slate roofing over the Pentagon in addition to the section of the structure that was damaged. Roofing professionals, mostly small businesses, from across the United States banded together to **volunteer** their time, labor, and materials worth about a half-million dollars to rebuild this section of roof (at no cost to the government).

**Cost to Taxpayers:** The resolution would authorize no expenditure.

**Does the Bill Create New Federal Programs or Rules?:** No.

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**H.R. 3034—Frank Sinatra Post Office Building Designation Act (*Menendez*)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, June 25<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 3034 would redesignate the Hoboken (New Jersey) Main Post Office as the “Frank Sinatra Post Office Building,” after the world-famous singer who was born in Hoboken in 1915 and died there in 1998.

**Cost to Taxpayers:** As with most federal building designations, this bill would authorize insignificant expenditures (costs of changing signs, etc.)

**Does the Bill Create New Federal Programs or Rules?:** The bill would rename a post office.

**Constitutional Authority:** Though a committee report citing constitutional authority is unavailable, Article I, Section 8, Clause 7 grants Congress the power to “establish Post Offices and post Roads.”

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## **H.R. 3764 — Securities and Exchange Commission Authorization Act of 2002 (Oxley)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, June 25<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 3764 reauthorizes the Securities and Exchange Commission (SEC) for fiscal year 2003 at a level of **\$776 million, 66.2 percent above the President’s fiscal year 2003 request** (the President requested \$466.9 million for the SEC, a 6.6 percent increase over the fiscal year 2002 appropriation of \$437.9 million).

Of that amount, \$134 million is for the Division of Corporate Finance and Office of Chief Accountant, \$326 million for the Division of Enforcement, and \$76 million to implement the pay comparability section of the Investor and Capital Markets Fee Relief Act (this section called for pay parity between employees of the SEC and the employees of the Federal bank regulatory agencies).

The bill goes on to express the sense of Congress that the SEC “should conduct a thorough annual review of the annual financial statements” of the 500 largest market participants.

**Cost to Taxpayers:** CBO estimates that implementing H.R. 3764 would cost \$607 million in 2003 and an additional \$162 million in 2004. Assuming the continued collection of the regulatory fees assessed by the SEC, however, net SEC spending would be negative in 2003, as is the case in 2002.

**Does the Bill Create New Federal Programs or Rules?:** The bill authorizes funding for the Securities and Exchange Commission.

**Constitutional Authority:** The Financial Services Committee, in House Report 107-415, cites Article I, Section 8, Clause 1 (general welfare of the United States) and Clause 3 (power to regulate interstate commerce).

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## **H.R. 4846—Silver Eagle Coin Continuation Act (Lucas of Oklahoma)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, June 25<sup>th</sup>, under a motion to suspend the rules and pass the bill.

**Summary:** H.R. 4846 would remove the limitation on the sources from which the federal government could obtain silver to produce the \$1 Silver Eagle coin. Currently, the Silver Eagle coin program is required to get its silver from the defense reserves. Those reserves ran out this month. If Congress does not change the language allowing the program to get its silver from other sources, the program will end.

The bill would also make technical reorganizations, restatements, consolidations, and clarifications to Title 31, Section 5136 of the United States Code, relating to the United States Mint Public Enterprise Fund (which is where the revenues from all Mint operations and programs—including coin sales—are deposited and from where expenses for such operations and programs are drawn).

Some new reports and audits regarding the Fund would be required.

**Cost to Taxpayers:** Though a CBO cost estimate is unavailable at this time, nothing in the bill suggests anything more than a negligible cost to the federal government (related to the reports and audits).

**Does the Bill Create New Federal Programs or Rules?:** The bill would require some new financial reports. Otherwise, it contains only technical and clarifying changes to existing law.

**Constitutional Authority:** Though no committee report citing constitutional authority is available, Article I, Section 8, Clause 5 grants Congress the power “to coin Money [and] regulate the Value thereof.”

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