

TO AMEND TITLE 18, UNITED STATES CODE, TO MAKE IT ILLEGAL TO OPERATE A MOTOR VEHICLE WITH A DRUG OR ALCOHOL IN THE BODY OF THE DRIVER AT A LAND BORDER PORT OF ENTRY, AND FOR OTHER PURPOSES

OCTOBER 15, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2155]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2155) to amend title 18, United States Code, to make it illegal to operate a motor vehicle with a drug or alcohol in the body of the driver at a land border port of entry, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. MAKING IT ILLEGAL TO OPERATE A MOTOR VEHICLE WITH A DRUG OR ALCOHOL IN THE BODY OF THE DRIVER AT LAND BORDER PORTS OF ENTRY.

Section 13(a) of title 18, United States Code, is amended—

(1) by inserting “(1)” after “(a)”; and

(2) by adding at the end the following:

“(2) Whoever with a drug or alcohol in his or her body operates a motor vehicle at a land border port of entry in a manner that is punishable, because of the presence of the drug or alcohol, if committed within the jurisdiction of the State in which that land border port of entry is located (under the laws of that State in force at the time of the act) shall be guilty of a like offense and subject to a like punishment.

“(3) Any individual who operates a motor vehicle at a land border port of entry is deemed to have given consent to submit to a chemical or other test of the blood, breath, or urine of the driver by an officer or employee of the Immigration and Naturalization Service authorized under section 287(h) of the Immigration and Nationality Act (8 U.S.C. 1357(h)) for the purpose of determining the presence or concentration of a drug or alcohol in such blood, breath, or urine.

“(4) If an individual refuses to submit to such a test after being advised by the officer or employee that the refusal will result in notification under this paragraph, the Attorney General shall give notice of the refusal to—

“(A) the State or foreign state that issued the license permitting the individual to operate a motor vehicle; or

“(B) if the individual has no such license, the State or foreign state in which the individual is a resident.

“(5) The Attorney General shall give notice of a conviction of an individual under this section for operation of a motor vehicle at a land border port of entry with a drug or alcohol in the body of the individual, to—

“(A) the State or foreign state that issued the license permitting the individual to operate a motor vehicle; or

“(B) if the individual has no such license, the State or foreign state in which the individual is a resident.

“(6) For purposes of this subsection, the term ‘land border port of entry’ means any land border port of entry (as defined in section 287(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1357(h)(3))) that was not reserved or acquired as provided in section 7 of this title.”.

SEC. 2. AUTHORIZING OFFICERS AND EMPLOYEES OF THE IMMIGRATION AND NATURALIZATION SERVICE TO CONDUCT TESTS FOR A DRUG OR ALCOHOL.

Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end the following:

“(h)(1) If an officer or employee of the Service authorized under regulations prescribed by the Attorney General is inspecting a driver at a land border port of entry and has reasonable grounds to believe that, because of alcohol in the body of the driver, operation of a motor vehicle by the driver is an offense under section 13 of title 18, United States Code, the officer or employee may require the driver to submit to a test of the breath of the driver to determine the presence or concentration of the alcohol.

“(2) If an officer or employee of the Service authorized under regulations prescribed by the Attorney General arrests a driver under this section for operation of a motor vehicle in violation of section 13 of title 18, United States Code, because of a drug or alcohol in the body of the driver, the officer or employee may require the driver to submit to a chemical or other test to determine the presence or concentration of the drug or alcohol in the blood, breath, or urine of the driver.

“(3) For purposes of this subsection:

“(A) The term ‘driver’ means an individual who is operating a motor vehicle at a land border port of entry.

“(B) The term ‘land border port of entry’ means any immigration checkpoint operated by the Immigration and Naturalization Service at a land border between a State (as that term is used in section 13 of title 18, United States Code) and a foreign state.”.

SEC. 3. REQUIRING NOTICE AT LAND BORDER PORTS OF ENTRY REGARDING OPERATION OF A MOTOR VEHICLE AND DRUGS AND ALCOHOL.

(a) IN GENERAL.—The Immigration and Nationality Act is amended by inserting after section 294 (8 U.S.C. 1363a) the following:

“NOTICE AT LAND BORDER PORTS OF ENTRY REGARDING OPERATION OF A MOTOR
VEHICLE AND DRUGS AND ALCOHOL

“SEC. 295. At each point where motor vehicles regularly enter a land border port of entry (as defined in section 287(h)(3)), the Attorney General shall post a notice that operation of a motor vehicle with a drug or alcohol in the body of the driver at a land border port of entry is an offense under Federal law.”.

(b) CLERICAL AMENDMENT.—The first section of the Immigration and Nationality Act is amended in the table of contents by inserting after the item relating to section 294 the following:

“Sec. 295. Notice at land border ports of entry regarding operation of a motor vehicle and drugs and alcohol.”.

SEC. 4. IMPOUNDMENT OF VEHICLE FOR REFUSAL TO SUBMIT TO TEST FOR DRUG OR ALCOHOL.

Not more than 180 days after the date of the enactment of this Act, the Attorney General shall issue regulations authorizing an officer or employee of the Immigration and Naturalization Service to impound a vehicle operated at a land border port of entry, if—

- (1) the individual who operates the vehicle refuses to submit to a chemical or other test under section 13(a)(3) of title 18, United States Code; and
- (2) the impoundment is not inconsistent with the laws of the State in which the port of entry is located.

SEC. 5. EFFECTIVE DATE.

This Act shall take effect 180 days after the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 2155 would make it illegal to drive a vehicle at a land border port of entry with drugs or alcohol in the body. The bill authorizes the Immigration and Naturalization Service (INS) to perform a drug or alcohol test on suspected impaired drivers, deems such a driver to have given consent to submit to a chemical or other test by an INS officer, and requires the Attorney General to post notice of this offense and to issue regulations authorizing INS employees to impound vehicles of impaired drivers.

BACKGROUND AND NEED FOR THE LEGISLATION

INS inspectors working at the U.S. border ports of entry do not have the authority to take drunk or drugged drivers crossing the border into custody based on their impaired state. Impaired drivers crossing the border is an all too common phenomena. Currently, INS inspectors have to request state or local law enforcement to subsequently stop such drivers after they have left the border and must hope that state or local law enforcement will indeed stop them.

H.R. 2155 gives more control over the dangerous situation to INS inspectors by authorizing the inspectors to take such drivers into custody and to test them for drugs or alcohol. It also requires the Attorney General to issue regulations authorizing inspectors to impound vehicles of drivers who will not submit to tests. With these tools, INS inspectors can prevent future deaths and injuries caused by drunk or drugged drivers who have crossed the border.

HEARINGS

No hearings were held on H.R. 2155.

COMMITTEE CONSIDERATION

On September 25, 2002, the Subcommittee on Immigration, Border Security, and Claims met in open session and ordered favorably

reported the bill H.R. 2155, by a voice vote, a quorum being present. On October 9, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 2155 with amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

1. Ms. Jackson Lee offered an amendment to require the Comptroller General to conduct a study and submit an annual report to Congress concerning INS inspectors exercising their authority to test drivers for drugs or alcohol in their bodies, including the assembling and analysis of the number of times an inspector administered drug or alcohol tests; the race, gender, and national origin of the driver involved; and the results of the test. The amendment was defeated by a rollcall vote of 7 yeas to 17 nays.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr			
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Graham			pass
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. Conyers	X		
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler	X		
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	7	17	1 pass

2. Mr. Watt offered an amendment to require that the Attorney General's regulations authorizing an officer of the INS to impound a vehicle not be inconsistent with the laws of the State in which the port of entry is located. The amendment passed by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 2155 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2155, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 15, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2155, a bill to amend title 18, United States Code, to make it illegal to operate a motor vehicle with a drug or alcohol in the body of the driver at a land border port of entry, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 2155—A bill to amend title 18, United States Code, to make it illegal to operate a motor vehicle with a drug or alcohol in the body of the driver at a land border port of entry, and for other purposes.

CBO estimates that implementing H.R. 2155 would have no significant cost to the Federal Government. Enacting the bill could affect direct spending and revenues, but CBO estimates that any im-

pact on direct spending and revenues would not be significant. H.R. 2155 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

H.R. 2155 would make it a Federal crime to operate a motor vehicle at a United States land border port of entry while under the influence of drugs or alcohol. Because the bill would establish a new Federal crime, the Government would be able to pursue cases that it otherwise would not be able to prosecute. However, we expect H.R. 2155 would apply to a relatively small number of offenders, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 2155 could be subject to criminal fines, the Federal Government might collect additional fines if the legislation is enacted. Collections of such fines are recorded in the budget as revenues, which are deposited in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the relatively small number of cases involved.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 1. Making it Illegal to Operate a Motor Vehicle with a Drug or Alcohol in the Body of the Driver at Land Border Ports of Entry.

Section 1 amends title 18 of the United States Code to make driving at a land border port of entry with drugs or alcohol in the body a Federal offense and deems a driver to have given consent to submit to a drug or alcohol test by an INS officer. If the individual refuses to submit to such a test, section 1 of the bill requires the Attorney General to notify the driver's state of jurisdiction of the driver's refusal to submit to a test. If a driver is convicted of driving at a land border port of entry under the influence of drugs or alcohol, the Attorney General is also required to notify the driver's state of jurisdiction of such conviction.

Sec. 2. Authorizing Officers and Employees of the Immigration and Naturalization Service to Conduct Tests for a Drug or Alcohol.

Section 2 authorizes INS employees inspecting drivers at land border ports of entry to require impaired drivers to submit to a drug or alcohol test if inspectors have reasonable grounds to believe a driver is impaired or if the officer arrests a driver for operating a vehicle while impaired.

Sec. 3. Requiring Notice at Land Border Ports of Entry Regarding Operation of a Motor Vehicle with Drugs and Alcohol.

Section 3 amends the Immigration and Nationality Act to require the Attorney General to post a notice at each land border port of entry that operating a motor vehicle with drugs or alcohol in the body at a land border port of entry is a Federal offense.

Sec. 4. Impoundment of Vehicle for Refusal to Submit to Test for Drug or Alcohol.

Section 4 requires the Attorney General to issue regulations, within 180 days from date of enactment of H.R. 2155, authorizing INS officers to impound a vehicle operated at a land border port of entry if the driver refuses to submit to a drug or alcohol test and if the impoundment is not inconsistent with the laws of the state in which the port of entry is located.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SECTION 13 OF TITLE 18, UNITED STATES CODE

§ 13. Laws of States adopted for areas within Federal jurisdiction

(a)(1) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(2) *Whoever with a drug or alcohol in his or her body operates a motor vehicle at a land border port of entry in a manner that is punishable, because of the presence of the drug or alcohol, if committed within the jurisdiction of the State in which that land border port of entry is located (under the laws of that State in force at the time of the act) shall be guilty of a like offense and subject to a like punishment.*

(3) *Any individual who operates a motor vehicle at a land border port of entry is deemed to have given consent to submit to a chemical or other test of the blood, breath, or urine of the driver by an officer or employee of the Immigration and Naturalization Service authorized under section 287(h) of the Immigration and Nationality Act (8 U.S.C. 1357(h)) for the purpose of determining the pres-*

ence or concentration of a drug or alcohol in such blood, breath, or urine.

(4) *If an individual refuses to submit to such a test after being advised by the officer or employee that the refusal will result in notification under this paragraph, the Attorney General shall give notice of the refusal to—*

(A) the State or foreign state that issued the license permitting the individual to operate a motor vehicle; or

(B) if the individual has no such license, the State or foreign state in which the individual is a resident.

(5) *The Attorney General shall give notice of a conviction of an individual under this section for operation of a motor vehicle at a land border port of entry with a drug or alcohol in the body of the individual, to—*

(A) the State or foreign state that issued the license permitting the individual to operate a motor vehicle; or

(B) if the individual has no such license, the State or foreign state in which the individual is a resident.

(6) *For purposes of this subsection, the term “land border port of entry” means any land border port of entry (as defined in section 287(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1357(h)(3))) that was not reserved or acquired as provided in section 7 of this title.*

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IMMIGRATION AND NATIONALITY ACT

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CHAPTER 9—MISCELLANEOUS

Sec. 281. Nonimmigrant visa fees.

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Sec. 295. *Notice at land border ports of entry regarding operation of a motor vehicle and drugs and alcohol.*

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TITLE II—IMMIGRATION

* * * * *

CHAPTER 9—MISCELLANEOUS

* * * * *

POWERS OF IMMIGRATION OFFICERS AND EMPLOYEES

SEC. 287. (a) * * *

* * * * *

(h)(1) If an officer or employee of the Service authorized under regulations prescribed by the Attorney General is inspecting a driver

at a land border port of entry and has reasonable grounds to believe that, because of alcohol in the body of the driver, operation of a motor vehicle by the driver is an offense under section 13 of title 18, United States Code, the officer or employee may require the driver to submit to a test of the breath of the driver to determine the presence or concentration of the alcohol.

(2) If an officer or employee of the Service authorized under regulations prescribed by the Attorney General arrests a driver under this section for operation of a motor vehicle in violation of section 13 of title 18, United States Code, because of a drug or alcohol in the body of the driver, the officer or employee may require the driver to submit to a chemical or other test to determine the presence or concentration of the drug or alcohol in the blood, breath, or urine of the driver.

(3) For purposes of this subsection:

(A) The term "driver" means an individual who is operating a motor vehicle at a land border port of entry.

(B) The term "land border port of entry" means any immigration checkpoint operated by the Immigration and Naturalization Service at a land border between a State (as that term is used in section 13 of title 18, United States Code) and a foreign state.

* * * * *

NOTICE AT LAND BORDER PORTS OF ENTRY REGARDING OPERATION OF
A MOTOR VEHICLE AND DRUGS AND ALCOHOL

SEC. 295. At each point where motor vehicles regularly enter a land border port of entry (as defined in section 287(h)(3)), the Attorney General shall post a notice that operation of a motor vehicle with a drug or alcohol in the body of the driver at a land border port of entry is an offense under Federal law.

* * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING
WEDNESDAY, OCTOBER 9, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 11:25 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present. The first item on the agenda today is H.R. 2155. The Chair recognizes the gentleman from Pennsylvania, Mr. Gekas, Chairman of the Subcommittee on Immigration, Border Security, and Claims for a motion.

Mr. GEKAS. Mr. Chairman, the Subcommittee on Immigration, Border Security, and Claims reports favorably the bill H.R. 2155 and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, H.R. 2155 will be considered as read and open for amendment at any point.

[The bill, H.R. 2155, follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 2155

To amend title 18, United States Code, to make it illegal to operate a motor vehicle with a drug or alcohol in the body of the driver at a land border port of entry, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2001

Mr. FLAKE (for himself, Mr. SMITH of Texas, and Mr. STUPAK) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to make it illegal to operate a motor vehicle with a drug or alcohol in the body of the driver at a land border port of entry, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. MAKING IT ILLEGAL TO OPERATE A MOTOR VE-**
4 **HICLE WITH A DRUG OR ALCOHOL IN THE**
5 **BODY OF THE DRIVER AT LAND BORDER**
6 **PORTS OF ENTRY.**

7 Section 13(a) of title 18, United States Code, is
8 amended—

1 (1) by inserting “(1)” after “(a)”; and

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

3 “(2) Whoever with a drug or alcohol in his or her
4 body operates a motor vehicle at a land border port of
5 entry in a manner that is punishable, because of the pres-
6 ence of the drug or alcohol, if committed within the juris-
7 diction of the State in which that land border port of entry
8 is located (under the laws of that State in force at the
9 time of the act) shall be guilty of a like offense and subject
10 to a like punishment.

11 “(3) Any individual who operates a motor vehicle at
12 a land border port of entry is deemed to have given con-
13 sent to submit to a chemical or other test of the blood,
14 breath, or urine of the driver by an officer or employee
15 of the Immigration and Naturalization Service authorized
16 under section 287(h) of the Immigration and Nationality
17 Act (8 U.S.C. 1357(h)) for the purpose of determining
18 the presence or concentration of a drug or alcohol in such
19 blood, breath, or urine.

20 “(4) If an individual refuses to submit to such a test
21 after being advised by the officer or employee that the re-
22 fusar will result in notification under this paragraph, the
23 Attorney General shall give notice of the refusal to—

1 “(A) the State or foreign state that issued the
2 license permitting the individual to operate a motor
3 vehicle; or

4 “(B) if the individual has no such license, the
5 State or foreign state in which the individual is a
6 resident.

7 “(5) The Attorney General shall give notice of a con-
8 viction of an individual under this section for operation
9 of a motor vehicle at a land border port of entry with a
10 drug or alcohol in the body of the individual, to—

11 “(A) the State or foreign state that issued the
12 license permitting the individual to operate a motor
13 vehicle; or

14 “(B) if the individual has no such license, the
15 State or foreign state in which the individual is a
16 resident.

17 “(6) For purposes of this subsection, the term ‘land
18 border port of entry’ means any land border port of entry
19 (as defined in section 287(h)(3) of the Immigration and
20 Nationality Act (8 U.S.C. 1357(h)(3))) that was not re-
21 served or acquired as provided in section 7 of this title.”.

1 **SEC. 2. AUTHORIZING OFFICERS AND EMPLOYEES OF THE**
2 **IMMIGRATION AND NATURALIZATION SERV-**
3 **ICE TO CONDUCT TESTS FOR A DRUG OR AL-**
4 **COHOL.**

5 Section 287 of the Immigration and Nationality Act
6 (8 U.S.C. 1357) is amended by adding at the end the fol-
7 lowing:

8 “(h)(1) If an officer or employee of the Service au-
9 thorized under regulations prescribed by the Attorney
10 General is inspecting a driver at a land border port of
11 entry and has reasonable grounds to believe that, because
12 of alcohol in the body of the driver, operation of a motor
13 vehicle by the driver is an offense under section 13 of title
14 18, United States Code, the officer or employee may re-
15 quire the driver to submit to a test of the breath of the
16 driver to determine the presence or concentration of the
17 alcohol.

18 “(2) If an officer or employee of the Service author-
19 ized under regulations prescribed by the Attorney General
20 arrests a driver under this section for operation of a motor
21 vehicle in violation of section 13 of title 18, United States
22 Code, because of a drug or alcohol in the body of the driv-
23 er, the officer or employee may require the driver to sub-
24 mit to a chemical or other test to determine the presence
25 or concentration of the drug or alcohol in the blood,
26 breath, or urine of the driver.

1 “(3) For purposes of this subsection:

2 “(A) The term ‘driver’ means an individual who
3 is operating a motor vehicle at a land border port
4 of entry.

5 “(B) The term ‘land border port of entry’
6 means any immigration checkpoint operated by the
7 Immigration and Naturalization Service at a land
8 border between a State (as that term is used in sec-
9 tion 13 of title 18, United States Code) and a for-
10 eign state.”.

11 **SEC. 3. REQUIRING NOTICE AT LAND BORDER PORTS OF**
12 **ENTRY REGARDING OPERATION OF A MOTOR**
13 **VEHICLE AND DRUGS AND ALCOHOL.**

14 (a) IN GENERAL.—The Immigration and Nationality
15 Act is amended by inserting after section 294 (8 U.S.C.
16 1363a) the following:

17 “NOTICE AT LAND BORDER PORTS OF ENTRY REGARDING
18 OPERATION OF A MOTOR VEHICLE AND DRUGS AND
19 ALCOHOL

20 “SEC. 295. At each point where motor vehicles regu-
21 larly enter a land border port of entry (as defined in sec-
22 tion 287(h)(3)), the Attorney General shall post a notice
23 that operation of a motor vehicle with a drug or alcohol
24 in the body of the driver at a land border port of entry
25 is an offense under Federal law.”.

1 (b) CLERICAL AMENDMENT.—The first section of the
2 Immigration and Nationality Act is amended in the table
3 of contents by inserting after the item relating to section
4 294 the following:

“Sec. 295. Notice at land border ports of entry regarding operation of a motor
vehicle and drugs and alcohol.”.

5 **SEC. 4. IMPOUNDMENT OF VEHICLE FOR REFUSAL TO SUB-**
6 **MIT TO TEST FOR DRUG OR ALCOHOL.**

7 Not more than 180 days after the date of the enact-
8 ment of this Act, the Attorney General shall issue regula-
9 tions authorizing an officer or employee of the Immigra-
10 tion and Naturalization Service to impound a vehicle, if
11 the individual who operates the vehicle refuses to submit
12 to a chemical or other test under section 13(a)(3) of title
13 18, United States Code.

14 **SEC. 5. EFFECTIVE DATE.**

15 This Act shall take effect 180 days after the date of
16 the enactment of this Act.

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Pennsylvania, Mr. Gekas, to strike the last word.

Mr. GEKAS. Mr. Chairman, H.R. 2155 authorizes INS inspectors at the border to take drunk or drugged drivers into custody based on their impaired state. Currently, border inspectors do not have the authority to do so other than as private citizens making citizen arrests. Typically inspectors now have no alternative than to wave impaired drivers through the port of entry with the hope that the driver will not do any harm.

This bill, H.R. 2155, makes it a crime for a person to operate a motor vehicle at a land border port of entry in an impaired manner because of the presence of drugs or alcohol. The bill deems any such driver to have given consent to submit to a chemical test by the INS to determine the presence or concentration of a drug or alcohol in the driver's body. If an individual refuses to submit to such a test after the INS advises the driver that the refusal will result in notification to the driver's State or foreign state of jurisdiction, the bill requires the Attorney General to notify the driver's State or a foreign state of the driver's refusal to submit to the test.

The Attorney General is also required to notify the driver's government of a conviction of the driver for impaired driving.

The bill authorizes INS inspectors at land border ports of entry to perform chemical tests upon drivers if the INS has reasonable grounds to believe that a driver is dangerous because of a drug or alcohol in the driver's body.

The Attorney General is required to post a notice that operation of a motor vehicle with drugs or alcohol in the driver's body at a land border port of entry is a Federal offense.

Finally, the bill requires the Attorney General to issue regulations authorizing INS officers and employees to impound a vehicle if the driver refuses to submit to a chemical or other test.

This bill is a long overdue solution to a dangerous problem at our borders. I urge my colleagues to support the bill.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will be placed in the record at this point.

Chairman SENSENBRENNER. Are there amendments?

Ms. JACKSON LEE. I have an amendment at the desk.

Chairman SENSENBRENNER. The gentlewoman from Texas. The clerk will report the amendment.

[The amendment follows:]

AMENDMENT TO H.R. 2155
OFFERED BY MS. JACKSON-LEE OF TEXAS

Page 4, after line 26, insert the following (and redesignate provisions accordingly):

- 1 “(3)(A) Each year, the Comptroller General of the
 2 United States shall conduct a study concerning the exer-
 3 cise of authorities by officers and employees of the Service
 4 under paragraphs (1) and (2) during the preceding year.
- 5 “(B) The study shall assemble and analyze informa-
 6 tion on the number of times an authority under paragraph
 7 (1) or (2) was exercised, the race, gender, and national
 8 origin of the driver involved, and the results of the exercise
 9 of such authority.
- 10 “(C) Not later than March 31 of each year, the
 11 Comptroller General of the United States shall submit to
 12 the Congress a report containing the results of the study
 13 conducted under this paragraph for the preceding year.

The CLERK. Amendment to H.R. 2155, offered by Ms. Jackson Lee of Texas:

Page 4, after line 26, insert the following (and redesignate provisions accordingly):

Paragraph (3)(A), Each year—

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. Let me thank you and the Members of the Committee. This bill certainly has a good foundation. I am from a border State, and what it simply does is authorizes officers, employees of the INS, to conduct tests for drug or alcohol consumption when they have reasonable

grounds to believe such. This, of course, ensures the safety of all travelers and as well those very fine Border Patrol personnel that are working on our behalf.

I believe the bill can be enhanced by a provision that has been utilized in this Committee many, many times in a bipartisan manner, and that is to ask the Comptroller of the GAO office to provide a study on the number of stops and the particular background of those who are stopped.

This is a format that has been used many, many times to ensure a commitment that this Committee has made over the years. It is to ensure the fairness in the implementation of laws no matter where they are and who they are implemented against.

I would ask my colleagues to consider this legislation—or amendment. I believe that it will strongly enhance the legislation. I commend Mr. Flake and the Chairman for their leadership on this. As a representative from a border State, I think that this provision will ensure the balance and fairness that this Committee always adheres to.

With that, Mr. Conyers.

Mr. CONYERS. I support the amendment, and I—

Ms. JACKSON LEE. I will be happy to yield.

Mr. CONYERS. I support the amendment, and I suspect the Chairman does too.

Ms. JACKSON LEE. I thank the gentleman very much. I yield back my time.

Chairman SENSENBRENNER. The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. Thank you, Mr. Chairman. This bill has been a long time in coming. It closes a dangerous loophole that we currently have. Over the past 2 years, two highway patrolman in California were killed by drunk drivers; kids under the age of 21 who had gone across the border to drink and had come across, were visibly impaired, but were allowed to cross the border anyway and end up killing two officers. A highway construction worker was also killed. These are simply the ones that we know about.

It simply is wrong to allow individuals, when an INS officer is right there, to cross the border visibly impaired and to just send them on. We were told by INS officials that they send them on through with a wing and a prayer and hope that local law enforcement officials will pick them up.

The most important part of this is simply allowing them to put signs up to say that the INS has the authority and the ability to actually stop you if you are visibly impaired. That deterrent value will be significant. If individuals know that they can't go across the border where drinking laws are lax or unenforced, get drunk, come across unimpeded, they will be a lot less likely to do so. So the deterrent value is important.

I am committed to work with Congressman Sheila Jackson Lee on this amendment; however, I simply think that this amendment will kill the bill. This is a very important piece of legislation. We need to get it passed. It will save lives on the border in Arizona, in Texas, in California, and to encumber it with this kind of requirement—there are some problems with this. This is a Comptroller General who will be authorized to do this, but we won't have

a GAO person there at the border to determine, you know, the race of each person coming across.

I would just implore the Members here to understand how important this bill is and how important that it is that it go on unencumbered by amendments like this.

Mr. CONYERS. Would the gentleman yield?

Mr. FLAKE. Yes, I would.

Mr. CONYERS. I thank you. I want to assure you that were this amendment accepted, that it wouldn't go—the bill—it wouldn't endanger the bill at all. I mean, everybody is for this proposition. It is a safety valve which cautions everybody to do the thing right, and I can assure you that there are no forces that come to my mind that would oppose a bill of this importance because of this provision. The gentleman should sleep more soundly in his bed at night knowing that there are no opponents to this provision.

Mr. FLAKE. Reclaiming my time, there is a larger problem here. The amendment requires the GAO to conduct this study, but there is no baseline information which this study—these numbers can be checked against. So essentially you are just collecting this information for the sake of collecting it with no baseline numbers.

Now, if you say you are going to get baseline numbers, that means that everyone who crosses a border port of entry would have to be stopped by an INS official to see what race or gender they were in order to have baseline numbers that these numbers could be checked against.

Mr. CONYERS. Would the gentleman yield? I would just like to assure him that we shouldn't try to be the people that are conducting the report. I mean, the experts will handle this, Mr. Flake. There is no reason for us to think that we are going to impede the flow of traffic or create some unusual sensational problem. It just doesn't work this way. Your fear, I assure the gentleman, is without foundation.

Mr. FLAKE. Reclaiming my time, this amendment also fails to provide procedures for the GAO to collect information. Is GAO going to stand at the border and simply count the number of individuals that come across? What are we to gain from that?

Ms. JACKSON LEE. Would the gentleman yield?

Mr. FLAKE. Yes.

Ms. JACKSON LEE. I want to thank the gentleman for his concerns. I want to refresh the Committee's recollection to know that we have passed these studies on numerous occasions. Particularly, we did it just recently in the visa waiver program with no opposition. This will not burden or impose a negative on the enforcement which the distinguished gentleman is seeking. It simply will provide additional data.

We have always respected the ability of the GAO, the Comptroller General of the United States, to be able to do an independent study, and in fact I think the gentleman requested that the language be changed from the INS Commissioner, which I was glad to do.

So I think this study has been utilized previously, to no detriment to the legislation that we have passed, and I would ask him to consider the potential compromise—.

Chairman SENSENBRENNER. The time of the gentlewoman has expired. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. I rise to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CONYERS. I will yield to Mr. Flake if he wanted to continue his thought.

Mr. FLAKE. I yield back.

Mr. CONYERS. Okay. Now, we are at the end of the session, a few more days, an innocuous amendment to an important bill. What would endanger this bill is that it would go on the suspension calendar and fail to get the one-third votes, Mr. Flake. Therein is the problem, and that is what I and you and the Ranking Subcommittee Member ought to be doing to try to make sure the important bill gets through.

Let us not take this moment to create, seriatim, four different reasons that you don't like the provision. I guess we could be around here all day. You could think of one after another after another.

Hopefully not, the Chairman says. But all I am saying is that the way to endanger this bill is to knock out the amendment and then put it on suspension. You know the procedure.

Mr. FLAKE. If the gentleman will yield, my problem is having an amendment that, as we have just mentioned, is meaningless and simply encumbers the bill. We had a situation where, as I mentioned, there are no baseline numbers which this information can be checked against, and if we are blind that somehow we are going to seek to obtain baseline numbers, then that is a big problem. It would impose a huge cost that is not already there and it would certainly endanger the bill at that point.

So what I am saying is that this is important legislation. Lives are being lost at the border because people are coming across impaired. I think those on the floor of the House of Representatives will take that into account and understand that the important part of this legislation is to allow the INS to have that authority and that these other measures are secondary.

Thank you for yielding.

Mr. CONYERS. Well, we create a base by starting this study. I mean, pace lines don't appear like magic out of the thin air. You have got to start somewhere, sir, and that is what we are doing is starting.

Now, as I counted, that is the fifth reason that you have offered against this amendment. And, you know, you may be—have you considered the position that I have suggested to you, that opposing the amendment could endanger your bill, which I think we all support in the Committee?

Mr. FLAKE. Yes. I am considering that. I am also considering how it might be endangered if we accept the amendment.

Mr. CONYERS. Well, you need two-thirds on the floor under a suspension.

Mr. FLAKE. That is what I understand.

Mr. CONYERS. That means one-third of the Members could kill the bill.

Mr. FLAKE. I understand that.

Mr. CONYERS. Well, don't you want to pass the bill?

Mr. FLAKE. I do, very much; but I want to pass a bill that actually gets to the problem, and it doesn't contain measures that are

secondary. That is the important thing. And I am told that this will encumber the bill even further and make it less likely that it will pass on suspension if we include—.

Mr. CONYERS. Okay, let me try—this is my last shot, Mr. Flake. Do you know any Senator can kill any bill?

Mr. FLAKE. Yes.

Mr. CONYERS. What I am trying to guarantee you is the fact that that would not happen even if—despite my wisdom about how little likelihood you would have in obtaining two-thirds of the vote. I will assure you that nobody would do that on the other side. Does that make you feel more comfortable?

Sure it does. Okay. I yield back my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentlewoman from Texas, Ms. Jackson Lee.

Those in favor will say aye.

Opposed, no.

The noes appear to have it.

Mr. CONYERS. A recorded vote.

Chairman SENSENBRENNER. rollcall is requested. Those in favor of agreeing to the Jackson Lee amendment will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde.

[No response.]

The CLERK. Mr. Gekas.

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no.

Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly.

[No response.]

The CLERK. Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Barr.

[No response.]

The CLERK. Mr. Jenkins.

[No response.]

The CLERK. Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Mr. Graham.

Mr. GRAHAM. Pass.

The CLERK. Mr. Graham, pass.

Mr. Bachus.

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no.

Mr. Hostettler.

Mr. HOSTETTLER. No.
 The CLERK. Mr. Hostettler, no.
 Mr. Green.
 Mr. GREEN. No.
 The CLERK. Mr. Green, no.
 Mr. Keller.
 Mr. KELLER. No.
 The CLERK. Mr. Keller, no.
 Mr. Issa.
 Mr. ISSA. No.
 The CLERK. Mr. Issa, no.
 Ms. Hart.
 Ms. HART. No.
 The CLERK. Ms. Hart, no.
 Mr. Flake.
 Mr. FLAKE. No.
 The CLERK. Mr. Flake, no.
 Mr. Pence.
 [No response.]
 The CLERK. Mr. Forbes.
 Mr. FORBES. No.
 The CLERK. Mr. Forbes, no.
 Mr. Conyers.
 Mr. CONYERS. Aye.
 The CLERK. Mr. Conyers, aye.
 Mr. Frank.
 [No response.]
 The CLERK. Mr. Berman.
 [No response.]
 The CLERK. Mr. Boucher.
 [No response.]
 The CLERK. Mr. Nadler.
 [No response.]
 The CLERK. Mr. Scott.
 [No response.]
 The CLERK. Mr. Watt.
 Mr. WATT. Aye.
 The CLERK. Mr. Watt, aye.
 Ms. Lofgren.
 [No response.]
 The CLERK. Ms. Jackson Lee.
 Ms. JACKSON LEE. Aye.
 The CLERK. Ms. Jackson Lee, aye.
 Ms. Waters.
 Ms. WATERS. Aye.
 The CLERK. Ms. Waters, aye.
 Mr. Meehan.
 Mr. MEEHAN. Aye.
 The CLERK. Mr. Meehan, aye.
 Mr. Delahunt.
 [No response.]
 The CLERK. Mr. Wexler.
 Mr. WEXLER. Aye.
 The CLERK. Mr. Wexler, aye.
 Ms. Baldwin.

[No response.]

The CLERK. Mr. Weiner.

[No response.]

The CLERK. Mr. Schiff.

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye.

Mr. Chairman.

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Members in the Chamber wish to cast or change their votes?

The gentleman from Tennessee, Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Pence.

Mr. PENCE. No.

The CLERK. Mr. Pence, no.

Chairman SENSENBRENNER. If there are no further Members who wish to cast or change their vote, the clerk will report.

The CLERK. Mr. Chairman, there are 17 ayes—I am sorry—7 ayes and 17 nays and 1 pass.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments? The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

[The amendment follows:]

**AMENDMENT TO H.R. 2155
OFFERED BY MR. WATT**

On page 6, Sec. 4, line 10, insert the following after “vehicle”:

“not inconsistent with the laws of the state into which the operator seeks entry”

The CLERK. Amendment to H.R. 2155 offered by Mr. Watt. On page 6, section 4, line 10, insert the following after “vehicle”: Paren, “not inconsistent with the laws of the State into which the operator seeks entry.”

Chairman SENSENBRENNER. The gentleman from North Carolina is recognized for 5 minutes. Will the gentleman yield?

Mr. WATT. Yes, I will.

Chairman SENSENBRENNER. I believe that this is a constructive amendment because it makes clear that there is not a Federal law relative to driving while impaired, and it is the State law that the entrant into the United States is entering into. So I would hope that this amendment would be adopted.

Mr. WATT. I couldn't have said it more eloquently myself, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. The question is on agree—yes, the gentleman from Arizona.

Mr. FLAKE. No. I will just say I am fine with that as well.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from North Carolina, Mr. Watt.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it and the amendment is agreed to.

Are there further amendments?

Mr. FLAKE. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FLAKE. I just wanted to point out, it has just been pointed out to me that a GAO study does not require a statute. And so those who feel that a GAO study is warranted are more than able to make that request at any time, without statute. So if that is truly the concern, I would hope that that would not impair the bill from moving forward, the defeat of the Jackson Lee amendment.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. FLAKE. Yes.

Ms. JACKSON LEE. I wish the gentleman had cooperated with another Member, who as you well know, worked with you through the process of the Subcommittee. The amendment stands as a request. I would be happy for you to ask for a reconsideration for the amendment to pass, and I would be happy for you to—I would be happy to suggest that we only narrow it to four or five areas so that we can have a pilot program and have this amendment reformed to that extent. And then I would be glad to be supportive of this legislation.

At this point—

Chairman SENSENBRENNER. The Chairman will suggest that there is time between the Committee and the floor to deal with that.

Mr. FLAKE. I am glad to work with the gentlelady on that.

Mr. CONYERS. Would the gentleman yield?

Mr. FLAKE. Yes.

Mr. CONYERS. Would he be agreeable if the Chair of the Committee, the Ranking Member, the Subcommittee chair and the Ranking Subcommittee person join together to make such a request to GAO?

Ms. JACKSON LEE. Pardon me?

Chairman SENSENBRENNER. The Chair will be happy to sign the request to the GAO.

Ms. JACKSON LEE. Excuse me. Is it possible—I appreciate the distinguished Ranking Member, but it is also possible to include in that discussion the possibility of accepting language that narrows it to four or five areas and have that language inside so it be a pilot. It wouldn't be everywhere. And then we would have an opportunity to have—

Chairman SENSENBRENNER. If the gentleman from Arizona will yield, I don't think this is the place to negotiate out the text of letters to the GAO. If there are going to be letters sent to the GAO, we can deal with that later.

Ms. JACKSON LEE. No. I was talking about language in the amendment—in the bill.

Mr. FLAKE. I would be glad to work with the gentlelady and distinguished minority leader on this, and yield back.

Ms. JACKSON LEE. Thank you.

Chairman SENSENBRENNER. Are there further amendments? If not, the Chair notes the presence of a reporting quorum. The question occurs on the motion to report the bill H.R. 2155 favorably, as amended.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is agreed to. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendment adopted here today.

Without objection, the Chair is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by House rules in which to submit additional dissenting, supplemental, or minority views.

DISSENTING VIEWS

We are concerned that this well intentioned legislation merely recodifies powers that border inspectors currently have, unnecessarily adds to the already burdensome job of border inspectors, and has the potential to be improperly used to target persons on the basis of race or national origin.

Border inspectors already have the authority to arrest persons under the influence of drugs or alcohol at the border. 18 U.S.C. section 13 (the Assimilative Crimes Act) currently incorporates State criminal law into Federal law, for issues where there is no applicable Federal criminal law, in places in Federal jurisdiction such as military bases and, no doubt, ports of entry. Therefore, a criminal offense such as DUI under State law is already a Federal criminal offense in a Federal area (areas not in State jurisdictions).

Further, this law would extend the authority of border inspectors beyond State law by incorporating non-criminal sanctions (e.g., suspension of licenses for failure to agree to a drug test) into Federal law. It also would extend the admittedly broad authority the INS currently has at the border to conduct searches, to blood, breath or urine testing. At a time when their workload is heavy and the lines and waits for border traffic are already causing huge burdens to border economies, this legislation will impose new duties, unrelated to terrorism, on immigration inspectors at the border. Essentially, H.R. 2155 is enlisting INS officers to enforce State law.

Finally, in our view, it is critical to include in the legislation provisions to monitor whether law enforcement uses their new authority in a discriminatory, and thus illegal, manner. During both the Subcommittee markup and the full Committee markup of this legislation, after being assured that the Majority would work with the Minority on concerns with the legislation, we offered an amendment that would require the General Accounting Office to conduct an annual study concerning the exercise of the new authorities by officers and employees of the INS. The study would assemble and analyze the number of times the officers exercised this authority, the race, gender, and national origin of the driver involved, and the results of the exercise of this new authority. The amendment further directed the General Accounting Office to submit a report to Congress no later than March 31 of each year.

It is important to include this amendment as part of the bill because the legislation raises the potential for abuse of authority to stop and detain individuals at the border. The amendment would ensure that the new authorities granted the officers and employees of the INS to test for the use of alcohol and drugs by a driver at the border is carried out in a efficient, fair, and equitable manner without targeting any group of people. Most importantly, through the collection of data, the amendment by its very nature would curb any tendency toward abuse. Unfortunately, the Majority re-

fused to accept the amendment arguing that the measure would place an extreme burden on the officers carrying out the provisions of the amendment. No such burden in fact would occur since the study would be conducted by the GAO after the border inspectors actions were completed.

The majority's refusal to include the amendment also was surprising in light of the fact that the majority and the minority have worked together in the past to prevent the heinous practice of racial profiling from raising its head. During consideration of H.R. 3767, the Permanent Visa Waiver Program Act (P.L. 106-396), bipartisan action was taken to include language in section 206 and 207 of the bill to ensure that race, gender or disability would not be considered as criteria for the calculation of visa refusal rates. The measure further enacted reporting requirements on the Secretary of State to ensure that this provision was followed.

We therefore oppose this legislation.

JOHN CONYERS, JR.
SHEILA JACKSON LEE.

