

recreation" means recreation that occurs at an area which has been improved or developed for that purpose—such as camping in constructed campgrounds or developed opportunities for off-highway-vehicle use as well as downhill skiing. Similarly, the term "natural-resource-based recreation" is intended to have the same meaning as when used in the Forest Service manual 2300, Recreation, Wilderness, and Related Resource Management.

It also should be noted that the bill deals only with the 1986 National Forest Ski Areas Act, and would not in any way affect any other law applicable to management of the National Forests or any permits issued under any of those laws.

Ski area permits under the 1986 law do give their holders a priority with respect to commercial use of the lands subject to the permits, but they do not preclude general use of those lands by the public for compatible, non-commercial uses, and the bill would not change that. In fact, the bill does not affect the status, the duration, or any other provision of any permit already issued under the 1986 law, nor does it provide for any new permits. Instead, it makes clear that the Forest Service is authorized—but not required—to allow a current or future holder of a permit under the 1986 law to provide opportunities for additional developed recreational activities, and to place associated facilities, on the lands covered by that permit if the specified requirements are met and if the Forest Service decides it would be appropriate for that to occur.

And it would not affect any existing or future permit related to use of lands that are not subject to ski area permits under the 1986 law or in any way reduce or otherwise modify the extent to which the Forest Service can allow any particular use on any of those lands outside ski areas.

This is a narrowly-targeted bill that I think can be valuable regarding an important aspect of the management of the National Forests and in facilitating the provision of additional opportunities for seasonal and year-round recreational activities on the parts of those lands that are subject to permits under the 1986 law.

Mr. President, I ask unanimous consent that a bill summary be printed in the RECORD.

There being no objection, the material was ordered to be placed in the RECORD, as follows:

#### OUTLINE OF THE BILL

Section 1 sets forth findings regarding the basis for the legislation, and states its purpose. The findings note that it is in the national interest to provide, and encourage Americans to take advantage of, opportunities to engage in outdoor recreational activities that can contribute to their health and well-being; that National Forests, including those areas used for skiing, can provide such opportunities during all four seasons; that increased use of ski areas for that purpose can reduce impacts on other National Forest lands; and that it is in the national interest

to revise the National Forest Ski Area Permit Act. The purpose is to amend that 1986 law so as to reflect that other snowsports, in addition to nordic and alpine skiing, occur at ski areas and to clarify the Forest Service's authority to permit additional appropriate seasonal or year-round recreational uses of lands subject to permits under that law.

Section 2 would amend the National Forest Ski Area Permit Act of 1986 in three ways: (1) by replacing current language that refers only to "nordic and alpine skiing" with broader terminology to reflect that additional ski areas are also used for additional snowsports, such as snowboarding.

(2) by providing specific authority for the Forest Service to authorize the holder of a ski area permit under the 1986 law to provide additional recreational opportunities (and to have associated facilities) on lands covered by that permit. This authority is limited to activities and facilities that the Forest Service determines appropriate, that encourage outdoor recreation, and that harmonize to the natural environment to the extent practicable. The bill makes clear that the activities and facilities will be subject to such terms and conditions as the Forest Service determines appropriate. It also specifies that no activity or facility can be authorized if the agency determines that authorization would result in the primary recreational purpose of lands covered by a permit under the 1986 law would not be skiing or other snowsports.

(3) Finally, the bill would delete from the 1986 law obsolete language related to a deadline for conversion of previously-issued ski-area permits to permits under the 1986 law, while retaining the requirement that regulations be promulgated to implement that law—a requirement that will apply to the law as it would be amended by the bill.

Section 3 specifies that the bill will not affect any authority the Forest Service now has under laws other than the National Forest Ski Area Permit Act of 1986, including authority with respect to recreational activities or facilities.

By Mr. TESTER:

S. 608. A bill to amend the Consumer Product Safety Improvement Act of 2008 to exclude secondary sales, repair services, and certain vehicles from the ban on lead in children's products, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. TESTER. Mr. President, I rise today to introduce the Common Sense in Consumer Product Safety Act of 2009 on behalf of the folks across America who are outdoor enthusiasts and budding sportsman and women. This bill will bring a common sense approach to restrictions we place upon access to children's products.

Last fall, in response to the high lead paint content found in a number of toys and products intended for children, the Congress passed legislation to limit children's access to these dangerous products. Many of these products were imports from China and other places where consumer protection is weak or non-existent. I supported this legislation, as did 78 of my colleagues.

Today, however, we have learned that this bill has had some unintended consequences. Any product sold that is intended to be used by children up to the age of 12 must be tested and cer-

tified to not contain more than the allowable level of lead.

While the goal is admirable, it is important to inject a little common sense into the process. I want our kids and grandkids to be safe and protected from harmful toys, but we all know that most kids who are past the teething stage do not chew on their toys. It is important to enact responsible safety requirements while at the same time recognizing that overzealous restrictions can interfere with a way of life enjoyed by not just Montanans, but outdoor enthusiasts across America.

As the Vice Chairman of the Congressional Sportsmen's Caucus, I am proud to stand up for Montana's outdoor heritage at every chance. Unfortunately, the new law goes too far and limits younger Montanans' opportunities to be a part of that heritage.

My bill will protect small businesses and allow families better, safer access to the outdoors.

The current law extends to all products intended for the use of children through the age of 12. This includes ATVs, dirt bikes and other vehicles built specifically for the use of older kids and adults; the way the vehicles are built, parts that might include lead are not totally sealed away and therefore they do not pass the standard of inaccessibility required by law. As a result of this requirement, a number of ATV sales and retail establishments have halted the sale of all ATVs for kids. In an abundance of caution, they have also refused to repair any equipment intended for kids use.

I have heard from many Montanans—consumers and retail sales people alike—expressing their concern about the impact of the legislation upon outdoor motor sports. Therefore today, I am introducing this bill to designate an exception for vehicles intended to be used by children between the ages of 7 and 12.

In addition to manufacturers and merchants, thrift stores and other retail establishments are also implicated because of the wide-reaching scope of the legislation. It is possible that even holding a yard sale can lead folks astray from the new law. Therefore, my bill also removes liability for lead paint content in any product that is repaired or is resold by thrift stores, flea markets or at yard sales. The liability in place at the time of primary sale of these products is sufficient and it could cripple the profitability of the secondary merchants if they were to be liable for testing the products they resell or repair.

In this tough economy, second-hand resellers simply can not afford the third-party testing requirement put in place by last fall's bill. At the same time, more and more of Montana's families are finding their budgets tighten and are relying upon thrift and resale stores for toys, children's clothing and other household goods. I want to make sure that laws intended to keep our kids safe end up doing more harm than good.

I think this a very important bill, bringing a dose of common sense to the very important goal of protecting our kids from lead paint and other substances that will harm their health. I urge my colleagues to join me in this effort.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be placed in the RECORD, as follows:

S. 608

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Common Sense in Consumer Product Safety Act of 2009”.

**SEC. 2. EXCLUSION OF SECONDARY SALES, REPAIR SERVICES, AND CERTAIN VEHICLES FROM BAN ON LEAD IN CHILDREN'S PRODUCTS.**

(a) EXCLUSION OF SECONDARY SALES AND REPAIR SERVICES.—Subsection (a) of section 101 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 1278a) is amended by adding at the end the following:

“(3) CONSTRUCTION.—

“(A) SECONDARY SALES.—The sale of a children's product described in paragraph (1) after the first retail sale of that product shall not be considered an introduction or delivery for introduction into interstate commerce under section 4(a) of the Federal Hazardous Substances Act (15 U.S.C. 1263(a)) of such product.

“(B) REPAIR SERVICES.—The repair of a children's product described in paragraph (1) shall not be considered an introduction or delivery for introduction into interstate commerce under such section 4(a) of such product.”.

(b) EXCLUSION OF CERTAIN VEHICLES.—Subsection (b) of such section 101(b) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

“(5) CERTAIN VEHICLES.—A vehicle designed or intended primarily for children 7 years of age or older shall not be considered a children's product for purposes of the prohibition in subsection (a). In determining whether a vehicle is primarily intended for a child 7 years of age or older, the factors specified in section 3(a)(2) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(2)) shall be considered except that such section shall be applied by substituting ‘7 years of age or older’ for ‘12 years of age or younger’ each place that term appears.”.

By Mr. KYL:

S. 610. A bill to amend title 35, United States Code, to provide for patent reform; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be placed in the RECORD, as follows:

S. 610

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Patent Reform Act of 2009”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Right of the first inventor to file.
- Sec. 3. Inventor's oath or declaration.
- Sec. 4. Damages.
- Sec. 5. Post-grant review proceedings.
- Sec. 6. Definition; patent trial and appeal board.
- Sec. 7. Submissions by third parties and other quality enhancements.
- Sec. 8. Venue.
- Sec. 9. Patent and trademark office regulatory authority.
- Sec. 10. Applicant quality submissions.
- Sec. 11. Inequitable conduct.
- Sec. 12. Conversion of deadlines.
- Sec. 13. Check imaging patents.
- Sec. 14. Patent and trademark office funding.
- Sec. 15. Technical amendments.
- Sec. 16. Effective date; rule of construction.

**SEC. 2. RIGHT OF THE FIRST INVENTOR TO FILE.**

(a) DEFINITIONS.—Section 100 of title 35, United States Code, is amended by adding at the end the following:

“(f) The term ‘inventor’ means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.

“(g) The terms ‘joint inventor’ and ‘co-inventor’ mean any 1 of the individuals who invented or discovered the subject matter of a joint invention.

“(h) The ‘effective filing date of a claimed invention’ is—

“(1) the filing date of the patent or the application for patent containing the claim to the invention; or

“(2) if the patent or application for patent is entitled to a right of priority of any other application under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date in the United States under section 120, 121, or 365(c), the filing date of the earliest such application in which the claimed invention is disclosed in the manner provided by the first paragraph of section 112.

“(i) The term ‘claimed invention’ means the subject matter defined by a claim in a patent or an application for a patent.”.

(b) CONDITIONS FOR PATENTABILITY.—

(1) IN GENERAL.—Section 102 of title 35, United States Code, is amended to read as follows:

**“§ 102. Conditions for patentability; novelty**

“(a) NOVELTY; PRIOR ART.—A patent for a claimed invention may not be obtained if—

“(1) the claimed invention was patented, described in a printed publication, or otherwise made available to the public (other than through testing undertaken to reduce the invention to practice)—

“(A) more than 1 year before the effective filing date of the claimed invention; or

“(B) 1 year or less before the effective filing date of the claimed invention, other than through disclosures made by the inventor or a joint inventor or by others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

“(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

“(b) EXCEPTIONS.—

“(1) PRIOR INVENTOR DISCLOSURE EXCEPTION.—Subject matter that would otherwise qualify as prior art based upon a disclosure under subparagraph (B) of subsection (a)(1) shall not be prior art to a claimed invention under that subparagraph if the subject mat-

ter had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or others who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

“(2) DERIVATION, PRIOR DISCLOSURE, AND COMMON ASSIGNMENT EXCEPTIONS.—Subject matter that would otherwise qualify as prior art only under subsection (a)(2), after taking into account the exception under paragraph (1), shall not be prior art to a claimed invention if—

“(A) the subject matter was obtained directly or indirectly from the inventor or a joint inventor;

“(B) the subject matter had been publicly disclosed by the inventor or a joint inventor or others who obtained the subject matter disclosed, directly or indirectly, from the inventor or a joint inventor before the effective filing date of the application or patent set forth under subsection (a)(2); or

“(C) the subject matter and the claimed invention, not later than the effective filing date of the claimed invention, were owned by the same person or subject to an obligation of assignment to the same person.

“(3) JOINT RESEARCH AGREEMENT EXCEPTION.—

“(A) IN GENERAL.—Subject matter and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person in applying the provisions of paragraph (2) if—

“(i) the subject matter and the claimed invention were made by or on behalf of 1 or more parties to a joint research agreement that was in effect on or before the effective filing date of the claimed invention;

“(ii) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

“(iii) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

“(B) For purposes of subparagraph (A), the term ‘joint research agreement’ means a written contract, grant, or cooperative agreement entered into by 2 or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

“(4) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVELY FILED.—A patent or application for patent is effectively filed under subsection (a)(2) with respect to any subject matter described in the patent or application—

“(A) as of the filing date of the patent or the application for patent; or

“(B) if the patent or application for patent is entitled to claim a right of priority under section 119, 365(a), or 365(b) or to claim the benefit of an earlier filing date under section 120, 121, or 365(c), based upon 1 or more prior filed applications for patent, as of the filing date of the earliest such application that describes the subject matter.”.

(2) CONFORMING AMENDMENT.—The item relating to section 102 in the table of sections for chapter 10 of title 35, United States Code, is amended to read as follows:

“102. Conditions for patentability; novelty.”.

(c) CONDITIONS FOR PATENTABILITY; NON-OBVIOUS SUBJECT MATTER.—Section 103 of title 35, United States Code, is amended to read as follows:

**“§ 103. Conditions for patentability; non-obvious subject matter**

“A patent for a claimed invention may not be obtained though the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would