CONGRESSIONAL RECORD — SENATE

July 28, 1995

the profitability of canola and rapeseed products in the United States, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MCCONNELL:

S. 1092. A bill to impose sanctions against Burma, and countries assisting Burma, unless Burma observes basic human rights and permits economic sanctions to the Committee on Foreign Relations.

By Mr. REID (for himself and Mr. BRYANT):

S. 1093. A bill to prohibit the application of the Religious Freedom Restoration Act of 1993, or any amendment made by such Act, to an individual who is incarcerated in a Federal, State, or local correctional, detention, or penal facility, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. McCAIN (for himself, Mr. LEVY, Mr. WELLS, Mr. FEINGOLD, Mr. LUTENBERG, Mr. KYL, Mr. MCCONNELL, Mr. GRAMS, Mr. ABRAHAM, Mr. WARNER, Mr. HARKIN, Mr. HARKIN, and Mr. Baucus):

S. Res. 158. A resolution to provide for Senate gift reform; considered and agreed to.

By Mr. BELenko:

S. Con. Res. 22. A concurrent resolution expressing the sense of the Congress that the United States should participate in Expo '98 in Lisbon, Portugal; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE (for himself, Mr. PHYOR, Mr. ROTH, Mr. BAUCUS, Mr. PRESSLER, Mr. BREAUx, Mr. BOND, Mr. SIMPSON, Mr. GRASSLEY, Mr. HATCH, Mr. D'AMATO, Mr. MURkowski, Mr. Nickles, Mr. HELMS, Mr. WARNER, Mr. GREGG, Mr. BENNETT, Mr. LUGAR, Ms. SNowE, Mr. ABRAHAM, Mr. BURNS, Mr. LOTT, Mr. ASHCROFT, Mr. COATS, Mr. INHOPE, Mrs. HUTCHISON, Mr. STEVENS, Mrs. KASSEbaum, Mr. KERREY, Mr. COHEN, Mr. CAMPBELL, and Mr. COVERDELL):

S. 1086. A bill to amend the Internal Revenue Code of 1986 to allow a family-owned business exclusion from the gross estate subject to estate tax, and for other purposes; to the Committee on Finance.

THE AMERICAN FAMILY-OWNED BUSINESS ACT

Mr. DOLE. Mr. President, I rise today to introduce the American Family-Owned Business Act—a bill that will preserve the American family and their jobs across the country.

I am proud that this bill was developed on a bipartisan basis, led on the Democratic side by my colleague from Arkansas, Senator PryOR. We are joined by Senators Roth, BAUCUS, PRESSLER, BREAUx, SIMPSON, BOND, D'AMATO, GINGRICH, and Mr. HELMS, Mr. WARNER, GREGG, BENNETT, LUGAR, SNowE, ABRAHAM, BURNS, LOTT, ASHCROFT, COATS, INHOPE, HUTCHISON, STEVENS, MURkowski, KASSEbaum, KERREY, COHEN, and HATCH.

The current Federal estate tax is just too burdensome on the American family. Time and time again, farmers and other business owners across the country have told us estate tax rates are just too high. They rise quickly from 18 to 55 percent, effectively making the Government a 50-50 partner in a family business.

Even the most sophisticated estate tax planning and the purchase of life insurance will not sufficiently mitigate the effects of these high rates, leaving families no recourse but to sell their businesses to pay the estate tax. This bill will stop these forced sales from happening again.

I agree with many who say that estate tax rates should be reduced across the board, or repealed entirely. And I hope that we do that some day. But today we take an important first step with the American Family-Owned Business Act.

This bill cuts estate tax rates in half and also creates a new exclusion that completely eliminates the estate tax for small businesses.

Under the new exclusion, family-owned businesses can exempt up to $1.5 million of family business assets from their estate. If a family business is valued at more than $1.5 million, the excess is taxed at one-half of the current rates—thus providing a maximum tax rate of 27.5 percent.

My colleagues and I introduce this bill to protect and preserve family enterprises. We know too well the adverse impact of an estate tax-forced sale. The family loses its livelihood, the family business employees lose their jobs, and the community suffers.

We must do all that we can to help family-owned businesses not only survive, but also prosper. They are the job creators in this country. In the 1980's, family businesses accounted for an increase of more than 20 million private-sector jobs.

By relieving families from the burden of the estate tax and letting them keep their business, they can continue to prosper. And when families continue to operate their businesses, we all benefit—the business employees keep their jobs, the Government receives income taxes on business profits, and the families retain their livelihood.

The estate tax is not a Democratic or a Republican problem, or one that affects only rural or urban families. There are farmers, ranchers, or other family businesses in each State that would benefit from this legislation. That is why this bill is supported by dozens of groups, each listed at the conclusion of this statement.

Many of my colleagues have introduced bills to provide estate tax relief in various situations. These bills include important ideas, many of which are reflected in the American Family-Owned Business Act. As we begin the process of providing estate tax relief, we hope to work closely with the sponsors of these other bills, and to work toward common goals. We encourage those Senators who have sponsored their own bills to sign on to this one and work toward a single package of estate tax relief.

As we intend, the American Family-Owned Business Act provides relief for family businesses across the country—from the tree farmer in the Northeast or the rancher in the Southwest, to the farmer in the Midwest or the corner grocery store owner in the South.

This bill provides the critical relief needed for American families' businesses. We urge all our colleagues to support this effort.

Mr. President, I ask unanimous consent that the text of the bill and other material be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

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 "The American Family-Owned Business Act".

SEC. 2. FAMILY-OWNED BUSINESS EXCLUSION.

(a) In General.—Part III of subchapter A of chapter 11 of the Internal Revenue Code of 1986 (relating to gross estate) is amended by inserting after section 2033 the following new section:

"SEC. 2033A. FAMILY-OWNED BUSINESS EXCLUSION.

"(a) In General.—In the case of an estate of a decedent to which this section applies, the value of the gross estate shall not include the lesser of—

"(1) the adjusted value of the qualified family-owned business interests of the decedent otherwise includible in the estate, or

"(2) the sum of—

"(A) $1,500,000, plus

"(B) 50 percent of the excess (if any) of the adjusted value of such interests over $10,000,000.

"(b) ESTATES TO WHICH SECTION APPLIES.—This section shall apply to an estate if—

"(1) the decedent was (at the date of the decedent's death) a citizen or resident of the United States,

"(2) the excess of—

"(A) the sum of—

"(i) the adjusted value of the qualified family-owned business interests which—

"(I) are included in determining the value of the gross estate (without regard to this section), and

"(II) are acquired by a qualified heir from, or passed to a qualified heir from, the decedent (within the meaning of section 2032A(e)(4), plus

"(ii) the amount of the adjusted taxable gifts of such interests from the decedent to members of the decedent's family taken into account under subsection 2036(d)(1)(B) to the extent such interests are continuously held by such members between the date of the..."
gift and the date of the decedent’s death, over
“(B) any interest in a trade or business the principal place of business of which is not located in the United States,
“(C) any interest in an entity which is a controlled group (as defined in section 267(f)(1)) which had, or
“(D) any interest in a trade or business that is attributable to cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business.

(c) Adjusted Gross Estate.—For purposes of this section, the term ‘adjusted gross estate’ means the value of the gross estate (determined without regard to this section)—
“(1) reduced by any amount deductible under section 2053(a)(4), and
“(2) increased by the excess of—
“(A) the amount taken into account under subsection (b)(2)(B), plus
“(B) the amount described in subclauses (I) and (II) of section 2032(c)(8), reduced by the excess of—
“(i) the amount of other gifts from the decedent to the decedent’s spouse (at the time of the gift) within 10 years of the date of the decedent’s death,
“(ii) the amount of other gifts (not included under clause (i) or (ii)) from the decedent within 3 years of such date, over
“(B) the amount included in the gross estate under section 2035.

(d) Adjusted Value of the Qualified Family-Owned Business Interests.—For purposes of this section, the adjusted value of any qualified family-owned business interest is the value of such interest for purposes of this chapter (determined without regard to this section), reduced by the excess of—
“(1) any amount deductible under section 2053(a)(4), over
“(2) the sum of—
“(A) any indebtedness on any qualified residence of the decedent the interest on which is deductible under section 163(h)(3), plus
“(B) any indebtedness to the extent the taxpayer establishes that the proceeds of such indebtedness were used for the payment of educational and medical expenses of the decedent, the decedent’s spouse, or the decedent’s dependents (within the meaning of section 152), plus
“(C) any indebtedness not described in subparagraph (A) or (B), to the extent such indebtedness does not exceed $10,000.

(e) Qualified Family-Owned Business Interest.—
“(1) In General.—For purposes of this section, the term ‘qualified family-owned business interest’ means—
“(A) an interest as a proprietor in a trade or business carried on as a partnership, or
“(B) an interest in a partnership or a member of the partnership, or stock in a corporation, carrying on a trade or business, if—
“(i) at least—
“(1) 50 percent of such partnership or corporation is owned (directly or indirectly) by the decedent or members of the decedent’s family,
“(II) 70 percent of such partnership or corporation is so owned by 2 families (including the decedent’s family), or
“(III) 90 percent of such partnership or corporation is so owned by 3 families (including the decedent’s family), and
“(ii) at least 30 percent of such partnership or corporation is so owned by each family described in clause (I) or (II) of clause (i).

“(2) Limitation.—Such term shall not include—
“(A) any interest in a trade or business the principal place of business of which is not located in the United States,
“(B) any interest in—
“(i) an entity which, at the time, had, or
“(ii) an entity which is a member of a controlled group (as defined in section 267(f)(1)) which had, or
“(D) any interest in a trade or business that is attributable to cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business.

(f) Adjusted Gross Estate.—For purposes of this section, the term ‘adjusted gross estate’ means the value of the gross estate (determined without regard to this section)—
“(1) reduced by any amount deductible under section 2053(a)(4), and
“(2) increased by the excess of—
“(A) the amount taken into account under subsection (b)(2)(B), plus
“(B) the amount described in subclauses (I) and (II) of section 2032(c)(8), reduced by the excess of—
“(i) the amount of other gifts from the decedent to the decedent’s spouse (at the time of the gift) within 10 years of the date of the decedent’s death,
“(ii) the amount of other gifts (not included under clause (i) or (ii)) from the decedent within 3 years of such date, over
“(B) the amount included in the gross estate under section 2035.

(g) Adjusted Value of the Qualified Family-Owned Business Interests.—For purposes of this section, the adjusted value of any qualified family-owned business interest is the value of such interest for purposes of this chapter (determined without regard to this section), reduced by the excess of—
“(1) any amount deductible under section 2053(a)(4), over
“(2) the sum of—
“(A) any indebtedness on any qualified residence of the decedent the interest on which is deductible under section 163(h)(3), plus
“(B) any indebtedness to the extent the taxpayer establishes that the proceeds of such indebtedness were used for the payment of educational and medical expenses of the decedent, the decedent’s spouse, or the decedent’s dependents (within the meaning of section 152), plus
“(C) any indebtedness not described in subparagraph (A) or (B), to the extent such indebtedness does not exceed $10,000.

(h) Qualified Family-Owned Business Interest.—
“(1) In General.—For purposes of this section, the term ‘qualified family-owned business interest’ means—
“(A) an interest as a proprietor in a trade or business carried on as a partnership, or
“(B) an interest in a partnership or a member of the partnership, or stock in a corporation, carrying on a trade or business, if—
“(i) at least—
“(1) 50 percent of such partnership or corporation is owned (directly or indirectly) by the decedent or members of the decedent’s family,
“(II) 70 percent of such partnership or corporation is so owned by 2 families (including the decedent’s family), or
“(III) 90 percent of such partnership or corporation is so owned by 3 families (including the decedent’s family), and
“(ii) at least 30 percent of such partnership or corporation is so owned by each family described in clause (I) or (II) of clause (i).

“(2) Limitation.—Such term shall not include—
“(A) any interest in a trade or business the principal place of business of which is not located in the United States,
“(B) any interest in—
“(i) an entity which, at the time, had, or
“(ii) an entity which is a member of a controlled group (as defined in section 267(f)(1)) which had, or
“(D) any interest in a trade or business that is attributable to cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business.
Mr. President, it’s time for change. And the legislation I’ve authored—legislation to provide estate tax relief—is an important measure toward creating the change we need. The Family Business Estate Tax Relief Act—completely bipartisan legislation—will exempt from the estate tax a full $1.5 million of the value of the deceased individual’s interest in a family business. If the business or farm is worth more than $1.5 million, our legislation cuts the additional tax rate in half.

This exemption and rate cut are in addition to the current authorization for up to $600,000 in personal and business assets. In this way, a family could protect a business valued up to $4.2 million. If that business were owned by a husband and wife. To make certain that the tax relief is going to protect family-owned businesses, this legislation requires that surviving members keep the business for up to ten years. It applies only to businesses that are family owned and that are located within the United States.

Mr. President, this legislation is important not only for families, but for our Nation. It restores proper perspective to what this political experiment is all about—encouraging the American Dream. There is nothing more important to that dream than the family, its business, and its farm. I encourage all my colleagues to join us in this bipartisan effort to once again make Uncle Sam a relative that folks will want to see come visit.

By Mr. COHEN:

S. 1088. A bill to provide for enhanced penalties for health care fraud, and for other purposes; to the Committee on Finance.

THE HEALTH CARE FRAUD AND ABUSE PREVENTION ACT OF 1995

Mr. COHEN. Mr. President, earlier this year I introduced S. 245, the Health Care Fraud Prevention Act. This bill, which was cosponsored by a bipartisan group of 21 Senators, was similar to legislation I introduced last year that ultimately was incorporated into a number of the major comprehensive health care reform proposals. Unfortunately, hopes for enactment of my fraud and abuse proposal faded since comprehensive health care reform was not passed by the Congress last year.

Regardless of whether we enact overall health care reform, it is vital that we no longer delay in adopting tough measures to crack down on the fraud and abuse that robs billions of dollars from our health care system each year. Estimates are that we are losing as much as $100 billion each year to health care fraud and abuse, with as much as 30 percent of those losses to the Medicare and Medicaid programs alone. As we embark upon the debate over our health care future, which will control the growth of, Medicare and Medicaid, we must not overlook the very real savings that can be obtained by
closing the doors of these programs to fraud and abuse.

Since I introduced S. 245 in January of this year, I have solicited comments on this legislation from a host of law enforcement agencies, health care provider groups, and experts in criminal law and health care. My purpose in seeking and reviewing comments on my legislation was to ensure that health care fraud legislation be tough on those who intentionally scam or defraud the health care system, but also be fair and workable in practice, and not inadvertently penalize honest health care providers who inadvertently run afoul of complicated health care regulations. I strongly believe that it is necessary, and possible, to strike the appropriate balance of being very tough on health care fraud while not entrapping or unduly burdening health care providers and businesses who are simply trying to follow the rules.

The bill that I am introducing today reflects this delicate balance. It is the product of many months of work by my staff on the Senate Special Committee on Aging to respond to comments by many experts in law enforcement, health care, and the health care provider community. The changes made to S. 245 by this legislation I am introducing today are both comprehensive in nature and extremely workable. For example, this bill alters the existing health care fraud statute to take into account the specific circumstances of health care fraud and abuse. It also establishes a program to identify and remove persons and entities subject to permanent exclusion from Medicare and Medicaid. The bill provides for the establishment of safe harbors and other special fraud alerts to assist in the detection and enforcement of health care fraud and abuse. It also provides for the coordination of health care fraud and abuse with respect to the delivery of and payment for health care in the United States. It further seeks to enhance the investigative and enforcement resources of the Department of Justice, the Department of Health and Human Services, and other relevant agencies. Moreover, the bill provides for the sharing of data with representatives of health plans.

Another major change deals with the exclusion of individuals from Medicare for certain health care fraud violations. Under the proposal I am introducing today, the reach of this exclusion has been refined from my previous legislation to focus on those individuals directly involved in the fraudulent activity who would not be unduly penalized or discouraged from serving on boards of hospitals or other health care organizations. The legislation contains many other refinements to S. 245 that will go far in achieving coordinated, effective, and fair response to health care fraud and abuse.

Mr. President, the costs of health care fraud and abuse to our health care system are estimated to be as much as 10 percent of U.S. health care spending is lost to fraud and abuse each year. For Medicare and Medicaid, the Federal Government pays as much as $27 billion each year in fraudulent and abusive claims. Enactment of this legislation therefore has the potential to save the taxpayers and American public millions, if not billions of dollars each year.

I would like to thank all those individuals from law enforcement and the health care industry who have come forth with pragmatic and creative solutions to a growing and pernicious problem, and I ask unanimous consent that a section-by-section analysis of the changes have been made to S. 245 and a copy of my legislation be included in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

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 “Health Care Fraud and Abuse Prevention Act of 1996”.

(b) Table of Contents.—The table of contents of this Act shall be as follows:

Title I—FRAUD AND ABUSE CONTROL PROGRAM

Sec. 101. Fraud and abuse control program.

Sec. 102. Application of certain health anti-fraud and abuse sanctions to all federal health care programs.

Sec. 103. Health care fraud and abuse guidelines.

Title II—REVISED CURRENT SANCTIONS FOR FRAUD AND ABUSE

Sec. 201. Mandatory exclusion from participation in Medicare and State health care programs.

Sec. 202. Establishment of minimum period of exclusion for certain individuals and entities subject to permissible exclusion from Medicare and State health care programs.

Sec. 203. Permissive exclusion of individuals with ownership or control interest in sanctioned entities.

Sec. 204. Sanctions against practitioners and persons for failure to comply with statutory obligations.

Sec. 205. Intermediate sanctions for Medicare health maintenance organizations.

Sec. 206. Effective date.

Title III—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Sec. 301. Establishment of the health care fraud and abuse data collection program.

Title IV—CIVIL MONETARY PENALTIES

Sec. 401. Social Security Act civil monetary penalties.

Title V—AMENDMENTS TO CRIMINAL LAW

Sec. 501. Health care fraud.

Sec. 502. Forfeitures for Federal health care offenses.

Sec. 503. Injunctive relief relating to Federal health care offenses.

Sec. 504. Grand jury disclosure.

Sec. 505. False Statements.

Sec. 506. Obstruction of criminal investigations of Federal health care offenses.

Sec. 507. Theft or embezzlement.

Sec. 508. Laundering of monetary instruments.

Sec. 509. Authorized investigative demand procedures.

Title VI—STATE HEALTH CARE FRAUD CONTROL UNITS

Sec. 601. State health care fraud control units.

Title VII—MEDICARE BILLING ABUSE PREVENTION

Sec. 701. Implementation of General Accounting Office recommendations regarding Medicare claims processing.

Sec. 702. Minimum software requirements.

Sec. 703. Disclosure.

Sec. 704. Review and modification of regulations.

Sec. 705. Definitions.

Title VIII—CIVIL MONETARY PENALTIES

Sec. 801. Civil monetary penalties.

Title IX—REVISIONS TO CURRENT SANCTIONS FOR FRAUD AND ABUSE

Sec. 901. Mandatory exclusion from participation in Medicare and State health care programs.

Sec. 902. Establishment of minimum period of exclusion for certain individuals and entities subject to permissible exclusion from Medicare and State health care programs.

Sec. 903. Permissive exclusion of individuals with ownership or control interest in sanctioned entities.

Sec. 904. Sanctions against practitioners and persons for failure to comply with statutory obligations.

Sec. 905. Intermediate sanctions for Medicare health maintenance organizations.

Sec. 906. Effective date.

Senator Ackerman. Mr. President, the costs of health care fraud and abuse to our health care system are estimated to be as much as 10 percent of U.S. health care spending is lost to fraud and abuse each year. For Medicare and Medicaid, the Federal Government pays as much as $27 billion each year in fraudulent and abusive claims. Enactment of this legislation therefore has the potential to save the taxpayers and American public millions, if not billions of dollars each year.
and audits of allegations of health care fraud and abuse and otherwise carry out the program established under paragraph (1) in a fiscal year.

(6) PERMISSING ACCESS TO DOCUMENTATION.—The Inspector General of the Department of Health and Human Services is authorized to exercise such authority described in paragraph (5) in subsection (a) and subsection (b) of section 6 of the Inspector General Act of 1976 (5 U.S.C. App.) as necessary with respect to the activities under the fraud and abuse control program established under this subsection.

(7) AUTHORITY OF INSPECTOR GENERAL.—Nothing in this Act shall be construed to diminish the authority of any Inspector General, as defined in section 3(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.).

(b) HEALTH CARE FRAUD AND ABUSE CONTROL.

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is hereby established the Health Care Fraud and Abuse Control. There are hereby appropriated to the Health Care Fraud and Abuse Control—

(i) such gifts and bequests as may be made as provided in subparagraph (B);

(ii) such amounts as may be deposited in the Health Care Fraud and Abuse Control as provided in sections 501(b) and 502(b), and title XI of the Social Security Act; and

(iii) such amounts as are transferred to the Health Care Fraud and Abuse Control under subparagraph (C).

(B) AUTHORIZATION TO ACCEPT GIFTS.—The Health Care Fraud and Abuse Control is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Health Care Fraud and Abuse Control, for the benefit of the Health Care Fraud and Abuse Control or any activity financed through the Health Care Fraud and Abuse Control.

(C) TRANSFER OF AMOUNTS.—The Secretary of the Treasury shall transfer to the Health Care Fraud and Abuse Control, under rules similar to the rules in section 9601 of the Internal Revenue Code of 1986, an amount equal to the sum of the following:

(i) Criminal fines imposed in cases involving a Federal health care offense as defined in section 371 of title 18, United States Code.

(ii) Administrative penalties and assessments imposed under titles XI, XVIII, and XIX of the Social Security Act except as otherwise provided by law.

(iii) Amounts resulting from the forfeiture of property by reason of a Federal health care offense or otherwise.

(iv) Penalties and damages imposed under the False Claims Act (31 U.S.C. 3729 et seq.), in cases involving claims related to the provision of health care items and services (other than funds awarded to a relator or for restitution).

(2) GENERAL USE OF FUNDS.—

(A) FELONIES SPECIFIED.—Funds specified in the Health Care Fraud and Abuse Control shall be available, as provided in appropriation Acts, to cover the costs (including equipment, salaries and benefits, and travel and training) of the administration and operation of the health care fraud and abuse control program established under subsection (a), including the costs of—

(i) prosecuting health care matters (through criminal, civil, and administrative proceedings);

(ii) investigations;

(iii) financial and performance audits of health care programs and operations;

(iv) inspections and other evaluations; and

(v) provider and consumer education regarding compliance with the provisions of this title.

(B) FUNDS USED TO SUPPLEMENT AGENCY APPOINTMENTS.—It is intended that disbursements made from the Health Care Fraud and Abuse Control to any Federal agency be used to supplement (notwithstanding any other provision of such agency’s appropriated operating budget).

(3) ADDITIONAL USE OF FUNDS BY INSPECTOR GENERAL.

(A) REIMBURSEMENTS FOR INVESTIGATIONS.—Amounts in the Health Care Fraud and Abuse Control shall be available, as provided in appropriation Acts, to the Inspectors General of the Departments of Health and Human Services, Defense, Labor, and Veterans Affairs, of the Office of Personnel Management, and of the Railroad Retirement Board for the purpose of conducting investigations when such restitution is ordered by a court, voluntarily agreed to by the payee, or otherwise.

(B) CREDITING.—Funds received by any such Inspector General as reimbursement for the costs of conducting investigations shall be deposited to the credit of the appropriation from which initially paid, or to appropriated funds for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of the deposit of such funds.

(4) ADDITIONAL USE OF FUNDS BY STATE MEDICAID FRAUD CONTROL UNITS FOR INVESTIGATIONS.—The Health Care Fraud and Abuse Control shall be available, as provided in appropriation Acts, to the various State Medicaid fraud control units to reimburse such units upon request to the Secretary for the costs of the activities authorized under section 1903(q) of the Social Security Act (42 U.S.C. 1396n(q)).

(C) CREDITING.—The funds available to the Attorney General shall remain available for obligation for 1 year from the date of deposit to the credit of the appropriation from which initially paid, or to appropriated funds for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of the deposit of such funds.

(5) ANNUAL REPORT.—

The Inspector General of the Department of Health and Human Services shall transfer to the Health Care Fraud and Abuse Control for the benefit of the Health Care Fraud and Abuse Control, for the purpose of providing the report required by this subsection,

(A) an audit report on the activities of the Health Care Fraud and Abuse Control or any activity financed through the Health Care Fraud and Abuse Control;

(B) a report on the costs associated with the activities of the Health Care Fraud and Abuse Control;

(C) a report to the Congress on the activities of the Health Care Fraud and Abuse Control during each fiscal year.

(6) ENFORCEMENT.—

(A) GENERAL AUTHORITY.—The Health and Human Services is authorized to conduct investigations, when such restitution is ordered by a court, voluntarily agreed to by the payee, or otherwise, and includes—

(i) a policy of health insurance;

(ii) a contract of a service benefit organization;

(iii) a membership agreement with a health plan; and

(iv) an employee welfare benefit plan or a health care program and not less than annually thereafter, the Office of Average Annual Revenue which is generated and disbursed by the Health Care Fraud and Abuse Control.

(7) ESTABLISHMENT.

(1) FEDERAL HEALTH CARE PROGRAMS

(A) IN GENERAL.—There is established under subsection (a), including the administration and operation of the health care program and not less than annually thereafter, the Office of Average Annual Revenue which is generated and disbursed by the Health Care Fraud and Abuse Control.

(2) ANNUAL REPORT.—Not later than January 1, 1996, the Secretary of Health and Human Services shall submit jointly an annual report to Congress on the amount of revenue which is generated and disbursed by the Health Care Fraud and Abuse Control in each fiscal year.

(3) HEALTH PLAN DEFINED.—For purposes of this section, the term “health plan” means a plan or program that provides health benefits, whether directly, through insurance, or otherwise, and includes—

(A) a policy of health insurance;

(B) a contract of a service benefit organization;

(C) a membership agreement with a health plan; and

(D) an employee welfare benefit plan or a health care program.

(4) ANNUAL REIMBURSEMENT TO MEDICAID FRAUD CONTROL UNITS.—Not later than January 1, 1996, and not less than annually thereafter, the Secretary shall submit jointly an annual report to Congress on the amount of revenue which is generated and disbursed by the Health Care Fraud and Abuse Control in each fiscal year.

(8) REPORT.—The amendments made by this section shall take effect on January 1, 1996.

SEC. 103. HEALTH CARE FRAUD AND ABUSE GUIDELINES.

(a) SOLICITATION AND PUBLICATION OF MODIFICATIONS TO EXISTING SAFE HARBORS AND NEW SAFE HARBORS.—

(1) IN GENERAL.—

(A) SOLICITATION OF PROPOSALS FOR SAFE HARBORS.—Not later than January 1, 1996, and not less than annually thereafter, the Secretary shall publish in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for—

(i) modifications to existing safe harbors that are consistent with the Medicaid and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. 1320a–7b note); and

(ii) additional safe harbors specifying payment practices that shall not be treated as a criminal offense under section 1128(b) of the Social Security Act (42 U.S.C. 1320a–7b(b)) and shall not serve as the basis for an exclusion under section 1128(b) of such Act (42 U.S.C. 1320a–7b(7));

(B) PUBLICATION OF PROPOSED MODIFICATIONS AND PROPOSED ADDITIONAL SAFE HARBORS.—After considering the proposals described in clauses (i) and (ii) of subparagraph (A), the Secretary, in consultation with the Attorney General, shall publish in the Federal Register proposed modifications to existing safe harbors and proposed additional safe harbors, if appropriate, with a 60-day comment period. After considering any public comments received during this period, the Secretary shall issue final rules modifying the existing safe harbors and establishing new safe harbors, as appropriate.

(C) REPORT.—The Inspector General of the Department of Health and Human Services (in this section referred to as the “Inspector
(1) whether and to what extent the request identifies an ambiguity within the language of the statute, the existing safe harbors, or previous interpretive rulings; and
(2) whether the subject of the requested interpretive ruling can be adequately addressed by interpretation of the language of the statute, the existing safe harbor rules, or previous interpretive rulings, or whether the request would require a substantive ruling (as defined in section 552 of title 5, United States Code) not authorized under this subsection.

(B) NO RULINGS ON FACTUAL ISSUES.—The Inspector General shall not give an interpretive ruling on, include the intent of the parties or the fair market value of particular leased space or equipment.

(c) SPECIAL FRAUD ALERTS.
(1) IN GENERAL.
(A) REQUEST FOR SPECIAL FRAUD ALERTS.—Any person may present, at any time, a request described in subparagraph (A), the Inspector General may consider whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider:
(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2); and
(B) the volume and frequency of the conduct that would be identified in the special fraud alert.

The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of:
(i) whether to order a health care item or service; or
(ii) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

(2) CRITERIA FOR SPECIAL FRAUD ALERTS.
In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider:
(A) the extent of any fraud or abuse that may result from the request; and
(B) the volume and frequency of the conduct that would be identified in the special fraud alert.

SEC. 201. MANDATORY EXCLUSION FROM PARTICIPATION IN FEDERAL HEALTH CARE PROGRAMS.
(a) INDIVIDUAL CONVICTED OF FELONY RELATING TO HEALTH CARE FRAUD.
(1) IN GENERAL.—Section 1128(b)(3) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)) is amended by—
(A) in the heading, by striking “CONVICTED” and inserting “MISDEMEANOR CONVICTED”; and
(B) by striking “criminal offense of a misdemeanor consisting of a misdeemeanor” and inserting “criminal offense of a misdemeanor”.

(b) INDIVIDUAL CONVICTED OF FELONY RELATING TO CONTROLLED SUBSTANCE.
(1) IN GENERAL.—Section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7a), as amended by subsection (a), is amended by adding at the end the following new paragraph:
“(A) a conviction of a criminal offense consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—
(1) in connection with the delivery of a health care item or service, or
(2) with respect to any act or omission in a health care program (other than those specified in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency; or
(3) of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than those specified in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency.

(b) INDIVIDUAL CONVICTED OF FELONY RELATING TO CONTROLLED SUBSTANCE.—Any individual or entity that has been convicted after the date of enactment of the Health Care Fraud and Abuse Prevention Act of 1995, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(c) CONFORMING AMENDMENTS.—Section 1128(b)(3) of such Act (42 U.S.C. 1320a–7b(b)(3)) is amended by—
(A) in the heading, by striking “CONVICTED” and inserting “MISDEMEANOR CONVICTED”;
(B) by striking “criminal offense of a misdemeanor consisting of a misdemeanor” and inserting “criminal offense of a misdemeanor”;
(C) in subsection (a), by inserting “or” at the end of subsection (a)(2); and
(D) in subsection (b), by inserting “or” at the end of subsection (b)(2).

SEC. 202. ESTABLISHMENT OF MINIMUM PERIOD OF EXCLUSION FOR CERTAIN INDIVIDUALS AND ENTITIES SUBJECT TO PERMISSIVE EXCLUSION FROM MEDICARE AND STATE HEALTH CARE PROGRAMS.
Section 1128(c)(3) of the Social Security Act (42 U.S.C. 1320a–7c(c)(3)) is amended by adding at the end the following new paragraphs:

(D) In the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b)—
(1) the period of exclusion shall be not less than 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.
(2) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5), the period of the exclusion shall not be less than the period during which the individual’s or entity’s license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.
(3) In the case of an exclusion of an individual or entity under subsection (b)(6), the period of the exclusion shall be not less than 1 year.

SEC. 203. PERMISSIVE EXCLUSION OF INDIVIDUALS WITH OWNERSHIP OR CONTROL INTEREST IN SANCTIONED ENTITIES.
Section 1128(b) of the Social Security Act (42 U.S.C. 1320a–7b) is amended by—
(A) in subsection (a), by inserting “or” at the end of subsection (a)(3)
(15) INDIVIDUALS CONTROLLING A SANCTIONED ENTITY.—Any individual who has a direct or indirect ownership or control interest of 5 percent or more, or an ownership or control interest (as defined in section 1012(a)(3))
in, or who is an officer or managing employee (as defined in section 1126(b) of an entity—

(a) that has been convicted of any offense described in paragraph (a) or (b) of subsection (1), (2), or (3) of this subsection; or

(b) that has been excluded from participation in a program under title XVIII or under any other program before the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the deficiency that is the basis of the determination has been corrected and will not recur.

(3) PROCEDURES FOR IMPOSING SANCTIONS.—

Section 1876(i) of such Act (42 U.S.C. 1395mm(i)) is amended by adding at the end the following new subsection:

(9) The Secretary may terminate a contract with an eligible organization under this section or may impose the intermediate sanctions described in paragraph (6) on the organization in accordance with internal investigation and compliance procedures established by the Secretary under which—

(A) the Secretary provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the determination under paragraph (1) and the determination fails to correct any and all of the deficiencies described in paragraph (6) or (7) (C) which is applicable to the contract and

(B) in deciding whether to impose sanctions, the Secretary may consider aggraving factors such as whether an entity has a history of deficiencies or has not taken action to correct deficiencies that the Secretary has brought to the attention of the entity.

(10) The Secretary may prescribe

(2) CONFORMING AMENDMENTS.—Section 1156(b)(1) of such Act (42 U.S.C. 1320c-5(b)(1)) is amended by striking “shall remain” and inserting “shall subject to the minimum period specified in the second sentence of paragraph (1)” remaining.

(1) IN GENERAL.—The second sentence of section 1156(b)(1) of the Social Security Act (42 U.S.C. 1320c-5(b)(1)) is amended by striking “shall remain” and inserting “shall subject to the minimum period specified in the second sentence of paragraph (1)” remaining.

(2) REPEAL OF “UNWILLING OR UNABLE” CONDITION FOR IMPOSITION OF SANCTION.—Section 1156 of the Social Security Act (42 U.S.C. 1320c-5(b)(1)) is amended by striking “or unable”.

(1) IN GENERAL.—Section 1876(i)(1) of the Social Security Act (42 U.S.C. 1395mm(i)(1)) is amended by striking “Secretary may apply the following intermediate sanctions:” and inserting “(A) the Secretary first provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or termination under this section.”

(2) CONFORMING AMENDMENTS.—Section 1876(i)(6)(B) of such Act (42 U.S.C. 1395mm(i)(6)(B)) is amended by striking the second sentence.

(2) AGREEMENTS WITH PEER REVIEW ORGANIZATIONS.—

(1) REQUIREMENT FOR WRITTEN AGREEMENT.—Section 1876(i)(7)(A) of the Social Security Act (42 U.S.C. 1395mm(i)(7)(A)) is amended by striking “an agreement” and inserting “a written agreement.”

(2) DEVELOPMENT OF MODEL AGREEMENT.—Not later than July 1, 1996, the Secretary shall develop a model of the agreement that an eligible organization with a risk-sharing contract under section 1876(q) of the Social Security Act (42 U.S.C. 1395mm(q)) may enter into with an entity providing peer review services with respect to services provided by the organization under section 1876(q)(7)(A) of such Act.

(3) REPORT TO CONGRESS.—Not later than July 1, 1996, the Comptroller General shall submit a report to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance and the Special Committee on Aging of the Senate on the study conducted under subparagraph (A).

(a) GENERAL PURPOSE.—Not later than January 1, 1996, the Secretary (in this title referred to as the “Secretary”) shall establish an actuarial model with regard to national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b), with access as set forth in subsection (c).

(b) REPORTING OF INFORMATION.—

(1) IN GENERAL.—Each government agency and health plan shall report any final adverse actions (not including settlements in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner.

(2) INFORMATION TO BE REPORTED.—The information to be reported under paragraph (1) includes:

(A) the name and TIN (as defined in section 7701(a)(41)) of any health care provider, supplier, or practitioner who is the subject of a final adverse action.

(B) the name (as known to the Secretary) of any health care entity with which a health care provider, supplier, or practitioner is affiliated or associated.

(c) NATURE OF FINAL ADVERSE ACTION.—The nature of the final adverse action and whether such action is on appeal.

(d) A description of the acts or omissions and injuries upon which the final adverse action was based, and such other information as the Secretary determines by regulation is required for appropriate interpretation of information reported under this section.

(e) PROVIDER ORGANIZATION.—If the information is required, the Secretary shall include procedures to assure that the privacy of individuals receiving health care services is appropriately protected.

(f) TIMING AND FORM OF REPORTING.—The information required to be reported under the subsection shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date specified by the Secretary.

(g) TO WHOM REPORTED.—The information required to be reported under this subsection shall be reported to the Secretary.

(h) DISCLOSURE AND CORRECTION OF INFORMATION.—

(1) DISCLOSURE.—With respect to the information about final adverse actions (not including settlements in which no findings of liability have been made) reported to the Secretary under this section respecting a health care provider, supplier, or practitioner, the Secretary shall, by regulation, provide for—

(A) disclosure of the information, upon request by the health care provider, supplier, or licensed practitioner, and

(B) procedures in the case of disputed accuracy of the information.

(i) REPORT TO CONGRESS.—Not later than January 1, 1996, the Comptroller General shall submit a report to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance and the Special Committee on Aging of the Senate on the study conducted under subparagraph (A).

(2) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 1996.
the disclosure of information in this database (other than with respect to requests by Federal agencies). The amount of such a fee may not exceed the costs of processing the request for disclosure and of providing such information. Such fees shall be available to the Secretary or, in the Secretary's discretion, to the agency designated under this section to operate such system.

(e) Protection From Liability for Reporting.—No person or entity, including the agency designated by the Secretary in subsection (b)(5), shall be held liable in any civil action with respect to any report made as required by this section, without knowledge of the identity of the information contained in the report.

(f) Definitions and Special Rules.—For purposes of this section:

(1)(A) the term ‘‘final adverse action’’ includes—

(i) Civil judgments against a health care provider in Federal or State court related to the delivery of a health care item or service.

(ii) Federal or State criminal convictions related to the delivery of a health care item or service.

(iii) Actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners, including—

(I) formal or official actions, such as revocation or suspension of a license (and the length of such suspension), reprimand, censure or probation.

(ii) Any other loss of license of the provider, supplier, or practitioner, by operation of law, or

(iii) Any other negative action or finding by such Federal or State agency that is publicly available.

(iv) Exclusion from participation in Federal or State health care programs.

(v) Any other adjudicated actions or decisions at the Secretary shall establish by regulation.

(B) The term does not include any action with respect to a malpractice claim.

(2) The terms ‘‘licensed health care practitioner’’, ‘‘licensed practitioner’’, and ‘‘practitioner’’ mean, with respect to a State, an individual who is licensed or otherwise authorized to provide health care services (or any individual who, without authority holds himself or herself out to be so licensed or authorized).

(B) ‘‘Health care provider’’ means a provider of services as defined in section 1861(u) of the Social Security Act, and any entity, including a health maintenance organization or similar entity, practicing as such, or any other entity listed by the Secretary in regulation, that provides health care services.

(4) The term ‘‘supplier’’ means a supplier of health care services (or any individual who, without authority holds himself or herself out to be so licensed or authorized).

(5) The term ‘‘Government agency’’ shall include—

(A) the Department of Justice.

(B) The Department of Health and Human Services.

(C) any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the Department of Defense and the Veterans Administration.

(D) State law enforcement agencies.

(E) State medical fraud and abuse units.

(F) Federal or State agencies responsible for the certification of health care providers and licensed health care practitioners.

(6) The term ‘‘health plan’’ has the meaning given in section 1118.

(7) For purposes of paragraph (2), the existence of a conviction shall be determined under paragraph (4) of section 1128(j) of the Social Security Act.

(g) Conforming Amendment.—Section 1921(d) of the Social Security Act is amended by inserting ‘‘Health Care Fraud and Abuse Prevention Act of 1996’’ after section 422 of the Health Care Quality Improvement Act of 1986.

Title IV—Civil Monetary Penalties

Sec. 401. Definition of Civil Monetary Penalty.

(4) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under title XVIII or a State health care program in accordance with this subsection or under section 1128 and who, at the time of a violation of this subsection, retains a direct or indirect ownership or control interest of 5 percent or more, on a direct or indirect basis, in an entity that is participating in a program under title XVIII or a State health care program;

(c) Modifications of Amounts of Penalties and Assessments.—Section 1128B(a) of the Social Security Act (42 U.S.C. 1320a-7a(a)), as amended by subsection (b), is amended in the matter following paragraph (4)—

(1) by striking ‘‘$2,000’’ and inserting ‘‘$10,000’’;

(2) by inserting ‘‘; or’’ at the end of paragraph (2) and inserting a semicolon;

(3) by striking ‘‘two times the amount’’ and inserting ‘‘three times the amount’’;

(d) Claim for Item or Service Based on Incorrect Coding or Medically Unnecessary Services.—Section 1128B(a)(1) of the Social Security Act (42 U.S.C. 1320a-7a(a)(1)) is amended—

(1) in subparagraph (A) by striking ‘‘claimed,’’ inserting ‘‘offered, or,’’ and inserting ‘‘false or misleading information was given’’;

(2) in subparagraph (B) by striking ‘‘false or misleading information was given’’ and inserting ‘‘offered, or,’’; and

(3) by striking ‘‘twice the amount’’ and inserting ‘‘three times the amount’’;

(2) by inserting ‘‘; or’’ at the end of paragraph (2) and inserting ‘‘false or misleading information was given’’;

(3) by striking ‘‘two times the amount’’ and inserting ‘‘three times the amount’’;

(d) Claim for Item or Service Based on Incorrect Coding or Medically Unnecessary Services.—Section 1128B(a)(1) of the Social Security Act (42 U.S.C. 1320a-7a(a)(1)) is amended—

(1) in subparagraph (A) by striking ‘‘claimed,’’ inserting ‘‘offered, or,’’ and inserting ‘‘false or misleading information was given’’;

(2) in subparagraph (B) by striking ‘‘false or misleading information was given’’ and inserting ‘‘offered, or,’’; and

(3) by striking ‘‘twice the amount’’ and inserting ‘‘three times the amount’’;

(2) by inserting ‘‘; or’’ at the end of paragraph (2) and inserting ‘‘false or misleading information was given’’;

(3) by striking ‘‘two times the amount’’ and inserting ‘‘three times the amount’’;

(2) by inserting ‘‘; or’’ at the end of paragraph (2) and inserting ‘‘false or misleading information was given’’;

(3) by striking ‘‘two times the amount’’ and inserting ‘‘three times the amount’’;

(2) by inserting ‘‘; or’’ at the end of paragraph (2) and inserting ‘‘false or misleading information was given’’;

(3) by striking ‘‘two times the amount’’ and inserting ‘‘three times the amount’’;

(2) by inserting ‘‘; or’’ at the end of paragraph (2) and inserting ‘‘false or misleading information was given’’;

(3) by striking ‘‘two times the amount’’ and inserting ‘‘three times the amount’’;

(2) by inserting ‘‘; or’’ at the end of paragraph (2) and inserting ‘‘false or misleading information was given’’;

(3) by striking ‘‘two times the amount’’ and inserting ‘‘three times the amount’’;

(2) by inserting ‘‘; or’’ at the end of paragraph (2) and inserting ‘‘false or misleading information was given’’;

(3) by striking ‘‘two times the amount’’ and inserting ‘‘three times the amount’’;

(2) by inserting ‘‘; or’’ at the end of paragraph (2) and inserting ‘‘false or misleading information was given’’;

(3) by striking ‘‘two times the amount’’ and inserting ‘‘three times the amount’’;

(2) by inserting ‘‘; or’’ at the end of paragraph (2) and inserting ‘‘false or misleading information was given’’;

(3) by striking ‘‘two times the amount’’ and inserting ‘‘three times the amount’’;

(2) by inserting ‘‘; or’’ at the end of paragraph (2) and inserting ‘‘false or misleading information was given’’;

(3) by striking ‘‘two times the amount’’ and inserting ‘‘three times the amount’’;
subject to an assessment shall be calculated without regard to whether some portion thereof also may have been intended to serve a purpose other than one prescribed by section 1320j."

(i) SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY REQUIREMENTS.—Section 1317(a), (b) of the Social Security Act (42 U.S.C. 1320c–5(b)(3)) is amended by striking "the actual or estimated cost" and inserting "up to $10,000 for each fraudulently solicited item or service"

(g) PROCEDURAL PROVISIONS.—Section 1376H(b)(6) of the Social Security Act (42 U.S.C. 1320m(h)(6)) is further amended by adding at the end the following new subparagraph:

""(D) The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil action under subparagraph (A) or (B) in the same manner as they apply to a civil money penalty or proceeding under section 1128A(a)."

(h) PROHIBITION AGAINST OFFERING INDUCEMENTS TO INDIVIDUALS ENROLLED UNDER PROGRAMS OR PLANS.—

(1) OFFER OF REMUNERATION.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7a(a)) is amended—

(A) by striking "or" at the end of paragraph (2) and inserting a semicolon;

(B) by striking "and" at the end of paragraph (2) and inserting a semicolon;

(C) by striking the semicolon at the end of paragraph (2) and inserting a comma;

(D) by striking paragraph (4) and inserting the following new paragraph:

"(4) offers to or transfers remuneration to any individual eligible for benefits under title XVIII of this Act, or under a State health care program (as defined in section 1128B(b)) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made in whole or in part, under title XVIII, or a State health care program:"

(2) REMUNERATION DEFINED.—Section 1128A(i) of such Act (42 U.S.C. 1320a–7a(i)) is amended by adding the following new paragraph:

"(i) the term 'remuneration' includes the waiver of coinsurance and deductible amounts payable under such plan, and payments in lieu of items or services for free or for other than fair market value. The term 'remuneration' does not include—"

"(A) the waiver of coinsurance and deductible amounts by a person, if—"

"(i) the waiver is not offered as part of any advertisement or solicitation;"

"(ii) the person does not routinely waive coinsurance or deductible amounts; and"

"(iii) the person—"

"(I) waives the coinsurance and deductible amounts after determining in good faith that the individual is in financial need;"

"(II) fails to collect coinsurance or deductible amounts after making reasonable collection efforts; or"

"(III) provides for any permissible waiver as specified in section 1128B(b)(3) or in regulations issued by the Secretary;"

(B) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all beneficiaries, third party payors, and providers, to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary not later than 180 days after the date of the enactment of the Health Care Fraud and Abuse Prevention Act of 1995; or

(C) incentives given to individuals to promote the delivery of preventive care as determined by the Secretary in regulations so promulgated.

(i) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 1996.

TITLE V—AMENDMENTS TO CRIMINAL LAW

SEC. 501. HEALTH CARE FRAUD.

(a) IN GENERAL.—

(1) FINES AND IMPRISONMENT FOR HEALTH CARE FRAUD VIOLATIONS.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following new section:

"8 1347. Health care fraud"

"(a) Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice—"

"(1) to defraud any health plan or other person, in connection with the delivery of or payment for health care benefits, items, or services; or"

"(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health plan, or person in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1346(g)(3) of this title), such person may be imprisoned for any term of years.

"(b) For purposes of this section, the term 'health plan' means the following new subsection:

"(I) the persons, the terms, the conditions, and the purposes of the plan, and the provision of benefits under the plan, for payment of health care benefits, items, or services shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1346(g)(3) of this title), such person may be imprisoned for any term of years.

"(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health plan, or person in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1346(g)(3) of this title), such person may be imprisoned for any term of years.

"(b) CRIMINAL FORFEITURES FOR FEDERAL HEALTH CARE OFFENSES.

SEC. 502. FORFEITURES FOR FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—

(1) FINES AND IMPRISONMENT FOR HEALTH CARE OFFENSES.

The Secretary of the Treasury shall deposit into the Health Care Fraud and Abuse Control account any amount equal to the criminal fines imposed under section 1347 of this title.

(b) FROZENING OF ASSETS.—Section 1345(a)(2) of title 18, United States Code, is amended by inserting in the section as a heading:"

"(c) a person who is privy to grand jury information concerning a Federal health care offense (as defined in section 982(a)(6)(B))—"

was received in the course of duty as an attorney for the Government; or

"(2) disclosed under rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure, makes false statements to an attorney for the Government to use in any investigation or civil proceeding relating to health care fraud.

SEC. 503. FALSE STATEMENTS RELATING TO HEALTH CARE MATTERS.

(a) IN GENERAL.—Chapter 47, of title 18, United States Code, is amended by adding at the end the following new section:

"8 1033. False statements relating to health care matters"

"(a) Whoever, in any matter involving a health plan, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined under this title or imprisoned not more than 5 years, or both.

"(b) For purposes of this section, the term 'health plan' means a health plan.

SEC. 504. GRAND JURY DISCLOSURE.

Section 5032 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by adding after subsection (b) the following new subparagraph:

"(c) A person who is privy to grand jury information concerning a Federal health care offense (as defined in section 982(a)(6)(B))—"

was received in the course of duty as an attorney for the Government; or

"(2) disclosed under rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure, makes false statements to an attorney for the Government to use in any investigation or civil proceeding relating to health care fraud.

SEC. 505. FALSE STATEMENTS.

SEC. 506. OBSTRUCTION OF CRIMINAL INVESTIGATIONS OF FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following new section:


(a) IN GENERAL.—Whoever willfully prevents, obstructs, misleads, delays or attempts to prevent, obstruct, mislead, or delay any criminal investigation or communication of information or records relating to a Federal health care offense to a criminal investigator shall be fined under this title or imprisoned not more than 20 years, or both.

(b) FEDERAL HEALTH CARE OFFENSE.—As used in this section the term 'Federal health care offense' has the same meaning given such term in section 982(a)(6)(B) of this title.

(c) CRIMINAL INVESTIGATOR.—As used in this section the term 'criminal investigator'
means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations for prosecutions for violations of health care offenses.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 3105 the following:

"§ 3486. Authorized investigative demand procedures."

SEC. 507. THEFT OR EMBEZZLEMENT.

(a) IN GENERAL.—Chapter 31 of title 18, United States Code, is amended by adding at the end the following section:

"§ 669. Theft or Embezzlement in Connection with Health Care.

(a) IN GENERAL.—Whoever willfully embezzles, steals, or otherwise without authority willfully and unlawfully converts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property, or other assets of a health plan, shall be fined under this title or imprisoned not more than 10 years, or both.

(b) HEALTH PLAN.—As used in this section the term ‘health plan’ has the same meaning given such term in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q))."

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 31 of title 18, United States Code, is amended by adding at the end the following:

"669. Theft or Embezzlement in Connection with Health Care."

SEC. 508. LAUNDERING OF MONETARY INSTRUMENTS.

Section 1966(c)(7) of title 18, United States Code, is amended by adding at the end the following paragraph:

"(F) Any act or activity constituting an offense involving a Federal health care offense as that term is defined in section 1924(a)(6)(B) of this title."

SEC. 509. AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.

(a) IN GENERAL.—Chapter 233 of title 18, United States Code, is amended by adding after section 2345 the following new section:

"§ 3486. Authorized Investigative Demand Procedures

(a) AUTHORIZATION.—

(1) An investigation relating to functions set forth in paragraph (2), the Attorney General or designee may issue in writing and cause to be served a subpoena compelling production of any records (including any books, papers, documents, electronic media, or other objects or tangible things), which may be relevant to an authorized law enforcement inquiry, that a person or legal entity may possess or have care, custody, or control. A custodian of records may be required to give testimony concerning the production of such records. The production of records may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place; except that such production shall not be required more than 500 miles distant from the place where the subpoena is served. Witnesses summoned for the purposes of this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. A subpoena requiring the production of records shall describe the objects required to be produced and prescribe a return date within a reasonable period of time within which the objects can be assembled and made available to the subpoenaee.

(2) Investigative demands utilizing an administrative subpoena are authorized for any investigation with respect to any act or activity constituting or involving health care fraud, including a scheme or artifice—

(A) to defraud any health plan or other person with the delivery of or payment for health care benefits, items, or services; or

(B) to obtain, by means of false or fraudulent pretense, representation, or promise, any of the money or property owned by, or under the custody or control or, any health plan, or person in connection with the delivery of or payment for health care benefits, items, or services.

(b) SERVICE.—A subpoena issued under this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to such person. Service may be made upon a domestic or foreign association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena, which shall be made in the same form as any other affidavit, shall be signed by the person serving the same, and shall be attached to proof of service.

(c) ENFORCEMENT.—In the case of contumacy or refusal to obey a subpoena, the Attorney General may invoke the aid of any court of the United States within which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which such person carries on business or is found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce the records, or give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

(d) IMMUNITY FROM CIVIL LIABILITY.—Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of any State or to any customer or other person for such production or for nondisclosure of that production to the customer.

(e) USE IN ACTION AGAINST INDIVIDUALS.—

(1) Health information about an individual that is disclosed under this section may not be used, in or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; or if authorized by an appropriate court of a court of competent jurisdiction, granted after application showing good cause therefore.

(2) In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the patient services.

(f) HEALTH PLAN.—As used in this section the term ‘health plan’ has the same meaning given such term in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q))."

TITLE VI—STATE HEALTH CARE FRAUD CONTROL UNITS

SEC. 601. STATE HEALTH CARE FRAUD CONTROL UNITS.

(a) EXTENSION OF CONCURRENT AUTHORITY TO INVESTIGATE AND PROSECUTE FRAUD IN OTHER FEDERAL PROGRAMS.—Paragraph (3) of section 1903(o) of the Social Security Act (42 U.S.C. 1396o) is amended by inserting after “authorized by inserting “or a Department of Justice subpoena” after “subpoena”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 233 of title 18, United States Code, is amended by inserting after the item relating to section 3110 the following:

"§ 3486. Authorized investigative demand procedures."

(c) CONFORMING AMENDMENT.—Section 151(b)(3)(B) of title 18, United States Code, is amended by inserting “or a Department of Justice subpoena” after “subpoena”. 

TITLES VII—MEDICARE BILLING ABUSE PREVENTION

SEC. 701. IMPLEMENTATION OF GENERAL ACCOUNTING OFFICE RECOMMENDATIONS REGARDING MEDICARE CLAIMS PROCESSING.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall, by regulation, contract, change order, or otherwise, require Medicare carriers to acquire commercial automatic data processing equipment in the title referred to as “ADPE” meeting the requirements of sections 702 to process Medicare part B claims for the purpose of identifying billing abuse.

(b) SUPPLEMENTATION.—Any ADPE acquired in accordance with subsection (a)
shall be used as a supplement to any other ADPE used in claims processing by Medicare carriers.

(c) STANDARDS.—In order to ensure uniformity, the Secretary may require that Medicare carriers that use a common claims processing system acquire common ADPE in implementing subsection (a).

(d) Exceptions.—Any ADPE acquired in accordance with subsection (a) shall be in use by Medicare carriers not later than 180 days after the date of the enactment of this Act.

SEC. 702. MINIMUM SOFTWARE REQUIREMENTS.

(a) IN GENERAL.—The requirements described in this section are as follows:

(1) a software component item.

(2) The ADPE shall surpass the capability of ADPE used in the processing of Medicare part B claims for identification of code manipulation on the day before the date of the enactment of this Act.

(3) The ADPE shall be capable of being modified to:

(A) satisfy pertinent statutory requirements of the Medicare program and;

(B) conform to general policies of the Health Care Financing Administration regarding claims processing.

(b) MINIMUM STANDARDS.—Nothing in this title shall be construed as preventing the use of ADPE which exceeds the minimum requirements described in subsection (a).

SEC. 703. DISCLOSURE.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (b), any ADPE or data related thereto acquired by Medicare carriers in accordance with section 701(a) shall not be subject to public disclosure.

(b) EXCEPTIONS.—The Secretary may authorize the public disclosure of any ADPE or data related thereto acquired by Medicare carriers in accordance with section 701(a) if the Secretary determines that:

(1) release of such information is in the public interest; and

(2) the information to be released is not protected from disclosure under section 552(b) of title 5, United States Code.

SEC. 704. REVIEW AND MODIFICATION OF REGULATIONS.

Not later than 180 days after the date of the enactment of this Act, the Secretary shall order a review of existing regulations, guidelines, and other guidance governing Medicare payment policies and billing code abuse to determine if revision of or addition to these regulations, guidelines, or guidance is necessary to maximize the benefits to the Medicare program.

SEC. 705. DEFINITIONS.

For purposes of this title—

(1) the term “automatic data processing equipment” (ADPE) has the same meaning as in section 111(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 603(a)(2)).

(2) The term “billing code abuse” means the submission to Medicare carriers of claims for services that include procedure codes that do not appropriately describe the total services provided or otherwise violate Medicare payment policies.

(3) the term “commercial item” has the same meaning as in section 412 of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).


(5) The term “Medicare carrier” means an entity that has a contract with the Health Care Financing Administration to determine and make Medicare payments for Medicare part B beneficiaries payable on a charge basis and to perform other related functions.

(6) The term “payment policies” means regulations and other rules that govern billing, payment, and reimbursement policies, including global limitations on payments, and Medicare’s discharge, service violations, double billing, and unnecessary use of assistants at surgery.

(7) The term “Secretary” means the Secretary of Health and Human Services.
Authorized Investigative Demand Procedures: This section gives authority to the Attorney General or a designee to utilize an administrative subpoena for investigations with respect to Medicare carriers or other health care fraud. The inspectors generally have this authority and this section gives the Attorney General or a designee similar authority.

State Medicaid Control Units: The State Medicaid Control Unit authorization language has been changed so that those units will have concurrent authority to investigate and prosecuted health care fraud in other Federal programs at the approval of the relevant Federal agency. Their authority to investigate and prosecute patient abuse also would be expanded into non-Medicare “board and care” facilities.

Commercial Technology for Medicare Claims Processing: This section requires Medicare carriers to acquire commercial automatic data processing equipment to process Medicare Part B claims for the purpose of identifying billing code abuse.

By Mr. LEAHY: S. 1089. A bill to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to preserve and control the infestation of Lake Champlain by zebra mussels, and for other purposes; to the Committee on Environment and Public Works.

THE LAKE CHAMPLAIN ZEBRA MUSSEL CONTROL ACT

Mr. LEAHY. Mr. President, today I am pleased to introduce the Lake Champlain Zebra Mussel Control Act of 1995. A year ago, the Senate accepted my amendment to address the growing problem of zebra mussels and their threat to drinking water systems. Unfortunately, the House did not concur, and now the problem has reached epidemic proportions.

We enter a critical stage in our efforts to preserve Lake Champlain and other Vermont lakes from a zebra mussel explosion that could become an economic and ecological catastrophe. Vermonters have feared the arrival of this dreaded mollusk for a long time. We didn’t know how many there were or how they arrived. We knew only that they were powerful to prevent them from arriving on our lakeshores. But now they are with us—and they are multiplying out of control.

In 1993 the mussel was discovered in the South Lake near Orwell, VT by a young boy who had learned how to identify the zebra mussel by a wallet-sized identification card distributed by the Lake Champlain Basin Program. During the summer of 1994, the zebra mussels were discovered in about 1,500 to 3,000 per cubic meter. This year, less than 3 years from the mussels’ introduction, the Rutland Herald reported that zebra mussel larval densities have been found throughout the lake at about 60,000 to 100,000 per cubic meter with some concentrations as high as 134,000 per cubic meter—almost as high as the worst sites in the Great Lakes.

The zebra mussels in Lake Champlain deserve immediate and swift action. This pest poses a serious risk to the water resources throughout Vermont and the health and safety of the people of Vermont.

Twenty-five percent of Vermont’s families rely on Lake Champlain for their drinking water. The onslaught of zebra mussels and their astonishing ability to establish dense colonies in a matter of weeks, jeopardizes the intake pipes from water systems up and down the lake. Municipalities rely on Lake Champlain for industrial, and even the water systems to motors on recreation boats are threatened. Furthermore, the mussels don’t just clog the ends of the pipes. Zebra mussels have been shown to entangle colonies in the piping system causing multiple effects on the quality of drinking water. A recent Cornell University report points out that:

Once a water intake line, zebra mussels can colonize any part of the system from the mouth of the intake in the lake or river to the distribution pipes within the residence. Impacts of this colonization include loss of pumping efficiency, obstruction of foot valves, putrefactive decay of mussel flesh, production of obnoxious-tasting and foul-smelling methane gas, and increased corrosion of steel. If the pipes get clogged, the boaters who are the chief mechanism for the spread of these mussels to other lakes and waterways is great. All boaters will know that this is a national concern with clear protocols on how to stop the spread, and States can choose to enforce the guidelines as mandatory regulations if they believe the threat is justified.

The legislation also allows States to work cooperatively on watershed approaches to the prevention and treatment of zebra mussels. If my State of Vermont devoted millions of dollars in time and resources to fight the mussel and our neighbors on Lake Champlain did nothing, the effort would be futile. Section 4 of my bill emphasizes that Vermont faces a problem with no astronomical. I hope that those who supported S. 1 to reduce State costs by limiting Federal standards recognize soon that their effort may have had the exact opposite effect.

The Lake Champlain Zebra Mussel Control Act specifically includes Lake Champlain in Federal programs designed to fight the zebra mussel. As America’s “sixth Great Lake” with one of the greatest emerging zebra mussel problems and a destination for thousands of boats, it is essential that Lake Champlain be included in any national effort to address the problem.

My bill also establishes national voluntary guidelines for recreational boaters who are the chief mechanism for the spread of these mussels into new areas. With 70 million people living within 1 mile of the Great Lakes, relations with our neighbors on Lake Champlain are important. These guidelines will help States inform boaters of the steps they can take personally to stop the spread of zebra mussels. With 70 million people living within 1 mile of Lake Champlain, the potential for the spread of these mussels to other lakes and waterways is great. All boaters will know that this is a national concern with clear protocols on how to stop the spread, and States can choose to enforce the guidelines as mandatory regulations if they believe the threat is justified.

The bill designates the University of Vermont as a Sea Grant College eligible to receive a Sea Grant. Ironically, the only State in New England with a confirmed zebra mussel problem is also the only State in New England without a Sea Grant College. My bill changes this. Also, recognizing that zebra mussels are not just a coastal problem, my bill authorizes land-grant colleges to compete for zebra mussel research funding.

Finally, my legislation reauthorizes the Aquatic Nuisance Species Control Act, Public Law 101-372, and extends the appropriations authority through the year 2000. To address the current need to find control solutions, my bill
VERDAKE Aug 31 2005 05:55 May 28, 2008 Jkt 041999 PO 00000 Frm 00044 Fmt 0624 Sfmt 0634 J:\ODA15\1995_F~1\S28JY5.REC S28JY5mmaher on MIKETEMP with SOCIAL SECURITY NUMBERS

Senator SARBANES will introduce a bill that addresses the problem of national significance only as a few years ago, and are now plaguing by their existence. 

By Mr. LEAHY (for himself, Mr. BROWN and Mr. KERRY): 

S. 1090. A bill to amend section 552 of title 5, United States Code (commonly known as the Freedom of Information Act), to provide for public access to information in an electronic format, and for other purposes; to the Committee on the Judiciary.

THE ELECTRONIC FREEDOM OF INFORMATION IMPROVEMENT ACT OF 1996

Mr. LEAHY, Mr. President, today I am joined by Senators BROWN and KERRY in introducing the Electronic Freedom of Information Improvement Act.

This bill would increase public access to the electronic records of Federal agencies, and take long overdue steps to alleviate the delays in processing requests for Government records. In the last Congress, a unanimous Judiciary Committee reported the bill, which then passed the Senate by voice vote on August 25, 1994.

The emerging national information infrastructure [NII] will consist of interconnected computer networks and databases that can put vast amounts of information at users’ fingertips. Such an information infrastructure will give the public easy access to the immense volumes of information generated and held by the Government. Individual Federal agencies are already contributing to the development of the NII by maintaining Government databases that can put vast amounts of information more easily accessible to our citizens. For example, the Internet Multicasting Service (IMS) now posts massive Government data archives, including the Securities and Exchange Commission’s filing database and the U.S. Patent and Trademark Office database on the Internet free of charge. Similarly, FedWorld, a bulletin board available on the Internet, provides a gateway to more than 60 Federal agencies.

The Electronic Freedom of Information Improvement Act would contribute to that information flow by increasing online access to Government information, including agency regulative and non-proprietary data and agency- and FOIA-released records that are the subject of repeated requests.

Some agencies are taking important steps in this direction. For example, the Department of Energy compiled a digital database of photographs and texts describing federally-sponsored tests of radiation on human beings and put made that database available on the World Wide Web. Now, instead of responding to multiple requests for the same documents from human irradiation experiments, DOE has efficiently used technology to make this material freely available on the Internet.

The bill would also require all Federal agencies to use technology to make Government more accessible and accountable to its citizens by requiring an assessment of how new computer systems will enhance agency FOIA operations to avoid erecting barriers that impede public access. Federal agencies are increasingly dependent on computers to generate, store and retrieve records electronically. This bill would ensure that these electronic records are available, in a timely manner, to requesters on the same basis as paper records. Specifically, the bill would clarify that FOIA requests cover all agency information in any form and that agencies can release records in requested formats when possible.

The changes proposed in the bill are not just important for broader citizen access to Government records. Government information is a valuable commodity and a national resource. In fact, the Government is the largest single producer and collector of information in the United States. It is essential for American competitiveness that the American people have ready access to that resource be available.

We have recognized that Government must take advantage of the benefits of new technologies to provide easier and broader dissemination of information. In 1993, we passed a law requiring that people have online access to important Government publications, such as the Federal Register, the CONGRESSIONAL RECORD and other documents put out by the Federal Register, People’s Guide, and the United States Statutes at Large. Earlier this year, House Speaker NEWT GINGRICH unveiled “Thomas,” an electronic archive available on the Internet that contains bills and congressional speeches. In his National Performance Review, the Vice-President has described his vision of the electronic Government of the future, where information technology will enable people to have access to public information and services when and where they want them.

Making Government information readily available electronically on people’s computers can help to revitalize citizens’ interest in learning what their Government is doing and better their understanding of the reasons underlying Government actions. This would, I believe, help reduce cynicism about Government.

This electronic FOIA bill is an important step forward in using technology to make Government more accessible and accountable to our citizens.

In addition, Federal agencies must work to reduce the long delays, which in some agencies stretch to over 2 years, that it takes to give responses to FOIA requests. These delays, newspaper reporters, students and teachers and others working under time deadlines, have been frustrated in using FOIA to meet their research needs. This works to the detriment of us all.

These delays are intolerable. This is not the level of customer service the American people deserve from their public servants. The American taxpayer has paid for the collection and maintenance of this information and the American people deserve from their Government agencies should meet. Long delays in access can mean no access at all.

The bill addresses the delay problem in several ways: first, the bill doubles the 10 day statutory time limit to 20 days to give agencies a more realistic time period for responding to FOIA requests. Second, this bill urges agencies to implement a two-track processing system for simple and complex requests. Third, the bill provides for expedited access to requestors who demonstrate a compelling need for a speedy response. Finally, the bill gives agencies an incentive to comply with statutory time limits by allowing agencies in compliance to retain half of their fees, instead of submitting those fees to the general treasury as is currently the case. The fees the agencies receive, in turn, would go to the agency FOIA operation to provide an incentive and resources to make these operations better and more efficient.
I look forward to working constructively with the administration and people in the FOIA community to keep FOIA up-to-date with new technologies and to ensure FOIA is an effective tool for open Government.

Mr. Chairman, with unanimous consent that the bill, a section-by-section analysis, and a letter of support from 23 organizations representing a substantial portion of the FOIA requester community, be inserted in the RECORD. Without objection, the material was ordered to be printed in the RECORD, as follows:

S. 1090

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 “Electronic Freedom of Information Improvement Act of 1995”.

SEC. 2. FINDINGS AND PURPOSES.
(a) FINDINGS.—The Congress finds that—
(1) the purpose of the Freedom of Information Act as amended by the Federal Agencies to make certain agency information available for public inspection and copying and to establish and enable enforcement of a right to obtain access to the records of such agencies (subject to statutory exemptions) for any public or private purpose;
(2) the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means for any person to learn how the Federal Government operates;
(3) the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government;
(4) the Freedom of Information Act has led to the identification of unsafe consumer products harmful drugs, and serious health hazards;
(5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and
(6) Government agencies should use new technology to enhance public access to agency records and information.

(b) PURPOSES.—The purposes of this Act are to—
(1) foster democracy by ensuring public access to agency records and information;
(2) improve public access to agency records and information;
(3) ensure agency compliance with statutory time limits; and
(4) maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government.

SEC. 3. PUBLIC INFORMATION AVAILABILITY.
Section 552(a)(1) of title 5, United States Code, is amended—
(1) in the matter before subparagraph (A) by inserting “by computer telecommunication, or if computer telecommunication means are not available, by other electronic means,” after “Federal Register”;
(2) by striking out “and” at the end of subparagraph (B); and
(3) by redesignating subparagraph (E) as subparagraph (F); and
(4) by inserting after subparagraph (D) the following new subparagraph:
“(E) a complete list of all statutes that the agency head or general counsel relies upon to authorize the agency to withhold information under subsection (b)(3) of this section together with a specific description of the scope of the information covered; and”.

SEC. 4. MATERIALS MADE AVAILABLE IN ELECTRONIC FORMAT AND INDEX OF RECORDS MADE AVAILABLE TO THE PUBLIC.
Section 552(a)(2) of title 5, United States Code, is amended—
(1) in the matter before subparagraph (A) by inserting “by computer telecommunication, or if computer telecommunication means are not available, by other electronic means,” after “copying”;
(2) in subparagraph (B) by striking out “and” after the semicolon;
(3) in subparagraph (C) by inserting “and” after the semicolon;
(4) by adding after subparagraph (C) the following new subparagraphs:
“(D) an index of all major information systems containing agency records regardless of form or format unless such an index is provided as otherwise required by law;
(E) a description of any new major information system with a statement of how such system shall enhance agency operations under this section;
(F) an index of all records which are made available to any person under paragraph (3) of this subsection;
(G) copies of all records, regardless of form or format, which because of the nature of the subject matter have become or are likely to become subject of subsequent requests for substantially the same records under paragraph (3) of this subsection;
(H) in the second sentence by striking out “or staff manual or instruction” and inserting in lieu thereof “staff manual, instruction, or index or copies of records, which are made available under paragraph (3) of this subsection”;
(I) in the third sentence by inserting “and the extent of such deletion shall be indicated on the record which is made available or published at the place in the record where such deletion was made” after “explained fully in writing”.

SEC. 5. HONORING FORMAT REQUESTS.
Section 552(a)(3) of title 5, United States Code, is amended by—
(1) inserting “(A)” after “(B)”;
(2) striking out “in any format” and inserting in lieu thereof “(i) reasonably”;
(3) striking out “(B)” and inserting in lieu thereof “(II)”; and
(4) adding after the end thereof the following new subparagraphs:
“(B) An agency shall, as requested by any person, provide records in any form or format in which such records are maintained by that agency.
“(C) An agency shall make reasonable efforts to search for records in electronic form or format and provide records in such form or format requested by any person, including in an electronic form or format, even where such records are not usually maintained but are available in such form or format.”.

SEC. 6. DELAYS.
(a) FEES.—Section 552(a)(4)(A) of title 5, United States Code, is amended by adding at the end thereof the following new clause:
“(viii) If at an agency’s request, the Comptroller General determines that the agency annually has either provided responsible documentation that it requests in substantial compliance with the requirements of paragraph (6)(A), one-half of the fees collected under this section shall be credited to the Treasury and the agency shall be credited the costs of complying with this section through staff development and acquisition of additional request processing resources. The requestor’s request shall be treated under this section as being remitted to the Treasury as general funds or miscellaneous receipts.”.

(b) PAYMENT OF THE EXPENSES OF THE PERSON MAKING A REQUEST.—Section 552(a)(4)(E) of title 5, United States Code, is amended by adding at the end thereof the following:
“The contracting agency shall pay all of the costs of complying with the time limit provisions of paragraph (6) of this subsection. In determining whether to award such fees and expenses a court shall consider whether an agency’s failure to comply with statutory time limits was not warranted and demonstrated bad faith or was otherwise unreasonable, in the context of the circumstances of the particular request.”.

(c) DEMONSTRATION OF CIRCUMSTANCES FOR DELAY.—Section 552(a)(4)(E) of title 5, United States Code, is further amended by—
(1) by inserting “(i)” after “(E)”; and
(2) by adding at the end thereof the following new clause:
“(ii) An agency not in compliance with the time limits set forth in this subsection shall demonstrate to a court that the delay is warranted under the circumstances set forth under paragraph (6) (B) or (C) of this subsection.”.

(d) PERIOD FOR AGENCY DECISION TO COMPLY WITH REQUEST.—Section 552(a)(6)(A)(i) is amended by striking out “ten days” and inserting in lieu thereof “twenty days”.

(e) PAYMENT OF THE EXPENSES OF THE PERSON MAKING A REQUEST.—Section 552(a)(6)(B) of title 5, United States Code, is amended by inserting after the second sentence the following:
“After the request has reasonably been determined to be the product of exceptional circumstances, the agency shall pay all of the costs of complying with the time limit provisions of paragraph (6) of this subsection. In determining whether to award such fees and expenses a court shall consider whether an agency’s failure to comply with statutory time limits was not warranted and demonstrated bad faith or was otherwise unreasonable, in the context of the circumstances of the particular request.”.

(f) NOTIFICATION OF DENIAL.—The last sentence of section 552(a)(6)(C) of title 5, United States Code, is amended by—
(1) by inserting the following:
“(III) A request for expedited access to records;
“(IV) A request for agency decision to comply with request; and
“(V) A request for payment of the expenses of the person making a request.”.

(g) MULTITRACK FIFO PROCESSING AND EXPEDITED ACCESS.—Section 552(a)(6)(D) of title 5, United States Code, is amended by adding after the end thereof the following:
“(b) A multitrack system shall not negate a claim of due diligence under subparagraph (C), if FIFO processing within each track is maintained and the agency can show that it has reasonably allocated resources to handle the processing for each track.”.

(h) For purposes of such a multitrack system—
“(i) a simple request shall be a request requiring 10 days or less to make a determination on whether to comply with such a request; and
“(ii) a complex request shall be a request requiring more than 10 days to make a determination on whether to comply with such a request.”.

(i) If the request has reasonably been determined to be the product of exceptional circumstances, the agency shall pay all of the costs of complying with the time limit provisions of paragraph (6) of this subsection. In determining whether to award such fees and expenses a court shall consider whether an agency’s failure to comply with statutory time limits was not warranted and demonstrated bad faith or was otherwise unreasonable, in the context of the circumstances of the particular request.”.

SEC. 7. ADDITIONAL REQUIREMENTS.
(a) RECORDS.—The provisions of this section shall apply to—
(1) Federal agencies;
(2) Federal contractors; and
(3) all non-Federal agencies.

(b) RECORDS.—The provisions of this section shall apply to—
(1) Federal agencies;
(2) Federal contractors; and
(3) all non-Federal agencies.

(c) RECORDS.—The provisions of this section shall apply to—
(1) Federal agencies;
(2) Federal contractors; and
(3) all non-Federal agencies.
and a showing by the person making such re-
quest of a compelling need for expedited ac-
cess to records, the agency shall determine
within 5 days (excepting Saturdays, Sun-
days, and legal holidays) after receipt of
such a request, whether to comply with such
request. No more than one day after mak-
ing such determination the agency shall
make a final determination whether to grant
or deny expedited access to such determina-
tion, the reasons therefor, and of the right to
appeal to the head of the agency. A request for
records to which the agency has granted expedi-
ted access shall be processed as soon as prac-
ticable. A request for records to which the
agency has denied expedited access shall be
processed within the time limits under para-
graph (6) of this subsection.

(ii) A person whose request for expedited
access has not been decided within 5 days of
its receipt by the agency or has been denied
shall be required to exhaust administrative
remedies. A request for expedited access
which has not been decided may be appealed
to the head of the agency within 7 days (ex-
cepting Saturdays, Sundays, and legal public
holidays) after the receipt of the request.

(iii) The burden of demonstrating a com-
pling need by a person making a request for
expedited access may be met by a show-
ing, which such person certifies under penal-
ty of perjury to be true and correct to the
best of such person’s knowledge and belief,
that failure to obtain the requested records
within the timeframe for expedited access
under this paragraph would—

(1) create a hardship in carrying out
the business of such person’s life or safety;
(II) result in the loss of substantial due
process rights and the information sought is
not otherwise available in a timely fashion;
or

(III) affect public assessment of the na-
ses of records disclosed in response to FOIA
requests that the agency determines have
been or will likely be the subject of addi-
tional requests, must be made available for
public inspection and copying in basically
the same manner as the materials required
to be made available under paragraph (a)(2).
As a practical matter, this would mean that
copies of records released in response to FOIA
requests on a popular topic, such as the
names and addresses of public officials, would
be subsequently treated as (a)(2) materials,
which are made available for public inspec-
tion and copying. This would reduce the
number of multiple FOIA requests for the
same records requiring separate agency re-

The purpose of this bill is to improve
capture information, and to reduce the delays in agencies’
response to FOIA requests. This section clarifies that Congress
enacted the FOIA to require Federal agencies to
make records available to the public
through public inspection and upon the
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The ability to redact information on the computer changes the complexion of released documents. At times, determining whether a document contains releasable material is a critical step in using the FOIA. See “Department of Justice Re- port on ‘Electronic Record” Issues Under the Freedom of Information Act” S. Hrg. 102- 1098, 102d Cong., 2d Sess. 33 (1992).

The bill defines “search” as “a manual or automated review” to locate records responsive to a FOIA request. Under the FOIA, an agency is not required to create documents that do not exist. Computer records located in a database rather than in a file cabinet may require the use of codes or some form of programming to retrieve the information. Under the definition of “search” in the bill, the search of computerized records would not amount to the creation of records. Otherwise, it would be virtually impossible to get records that are maintained completely in an electronic form, like electronic mail, because some manipulation of the information likely would be necessary to search the records.

By Mr. CRAIG (for himself and Mr. CONRAD)
S. 1061. A bill to finance and implement a program of research, promotion, market development, and industry and consumer information to enhance demand for and increase the profitability of canola and rapeseed products in the United States, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE CANOLA AND RAPESEED RESEARCH, PROMOTION AND CONSUMER INFORMATION ACT

Mr. CRAIG. Mr. President, my purpose here today is to introduce the Canola and Rapeseed Research, Promotion, and Consumer Information Act. I am pleased to report that this piece of legislation is backed by the strong support of those in the canola and rapeseed industry.

Canola and rapeseed products are an important and nutritious part of the human diet, and the crops are in all regions of the United States. This crop is produced by thousands of growers and consumed by people all over the world. A total of 35 states grow over 330,000 acres, and that level is rapidly increasing. States such as Idaho see well over 40,000 acres devoted to this particular crop. As you can see, Mr. President, it is important that these readily available commodities are marketed efficiently to ensure that consumers have access at a reasonable price.

Currently, a number of established state and national organizations exist

other litigation costs in any case in which the complainant has reasonably prevailed. The bill would permit a court to award payment of requesters’ litigation expenses and reasonable fees incurred in the administrative process in any case in which the agency fails to comply with the time limits. In determining whether to make such an award, the court would consider whether an agency’s failure to comply with statutory time limits was not warranted and demonstrated bad faith or was otherwise unreasonable under the circumstances of the particular request.

Demonstration of Circumstances for Delayed Responses—The bill would require agencies to demonstrate in compliance with the time limits to demonstrate “that the delay is warranted under the circumstances.” The bill would clarify the only circumstances that excuse compliance with the time limits are those unusual or exceptional circumstances set forth in paragraphs (B) and (C) of Section 552(a).

Expansion of Agency Response Time—The bill would expand the time limit for an agency to respond to a request for records under FOIA from ten days to twenty days. Attorney General Drew alerts the public to the inability of most federal agencies to comply with the ten-day rule as “a serious problem” stemming principally from “too much work and the face of record overload.” A doubling of the time limit will assist federal agencies in reducing their backlogs.

Agency Backlogs—The current statute provides that in “exceptional circumstances,” the statutory time limits can be extended, but does not define what those circumstances are. In Open America v. Watertag Special Prosecution Force, 547 F.2d 605 (D.C. Cir. 1976), the court held that an unforeseen 3,000 percent increase in FOIA requests in 1974, which created a massive backlog in an agency with insufficient resources to process those requests in a timely manner, can constitute “exceptional circumstances.”

Routine backlogs of requests for records under FOIA should not give agencies an automatic excuse to ignore the time limits, since this provides a disincentive for agencies to clear up those backlogs. This section of the bill would clarify the holding in Open America v. Watertag Special Prosecution Force, 547 F.2d 605 (D.C. Cir. 1976), that routine agency backlogs do not constitute exceptional circumstances for purposes of the Act.

Multitrack FIFO Processing—An agency submitting FOIA requests on a FIFO basis has been held to satisfy the requirement that an agency exercise due diligence in dealing with backlogs of FOIA requests. Some agencies have taken the position that they must process requests on a FIFO basis, even if this procedure may result in lengthy delays for simple requests due to the processing of complex requests. The bill would encourage agencies to implement multi-track processing systems for FOIA requests to reduce backlogs.

Expeditied Access—The bill would authorize expedited access to requesters who demonstrate “compelling need” for a speedy response. The agency would be required to make a determination whether or not to grant the request for expedited access within five days. The agency would be bound by the decision of a judicial review of an agency’s denial of such a request. The bill would permit only limited judicial review based on the same record before the agency. A agency’s denial of expedited access would be demonstrated by showing that failure to obtain the records within an expedited timeframe would: (I) threaten a person’s life or safety; (II) result in the loss of substantial due process rights and the information sought is not otherwise available; (III) result in a substantial public access assessment of the nature and propriety of actual or alleged governmental actions that are the subject of widespread, contemporaneous media attention; (IV) result in the ability to redact information on the computer changes the complexion of released documents. At times, determining whether a document contains releasable material is a critical step in using the FOIA. See “Department of Justice Report on ‘Electronic Record” Issues Under the Freedom of Information Act” S. Hrg. 102-1098, 102d Cong., 2d Sess. 33 (1992).

The bill defines “search” as “a manual or automated review” to locate records responsive to a FOIA request. Under the FOIA, an agency is not required to create documents that do not exist. Computer records located in a database rather than in a file cabinet may require the use of codes or some form of programming to retrieve the information. Under the definition of “search” in the bill, the search of computerized records would not amount to the creation of records. Otherwise, it would be virtually impossible to get records that are maintained completely in an electronic form, like electronic mail, because some manipulation of the information likely would be necessary to search the records.

By Mr. CRAIG (for himself and Mr. CONRAD)
S. 1061. A bill to finance and implement a program of research, promotion, market development, and industry and consumer information to enhance demand for and increase the profitability of canola and rapeseed products in the United States, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE CANOLA AND RAPESEED RESEARCH, PROMOTION AND CONSUMER INFORMATION ACT

Mr. CRAIG. Mr. President, my purpose here today is to introduce the Canola and Rapeseed Research, Promotion, and Consumer Information Act. I am pleased to report that this piece of legislation is backed by the strong support of those in the canola and rapeseed industry.

Canola and rapeseed products are an important and nutritious part of the human diet, and the crops are in all regions of the United States. This crop is produced by thousands of growers and consumed by people all over the world. A total of 35 states grow over 330,000 acres, and that level is rapidly increasing. States such as Idaho see well over 40,000 acres devoted to this particular crop. As you can see, Mr. President, it is important that these readily available commodities are marketed efficiently to ensure that consumers have access at a reasonable price.

Currently, a number of established state and national organizations exist
whose primary goals include the research and promotion of their respective commodities. The cooperative development, financing, and implementation of a canola and rapeseed research, information, and promotion program is necessary to maintain and expand the existing market and to develop new markets for these important products.

In addition, this act will establish an orderly procedure for financing through assessments on domestically produced canola and rapeseed, and the development and implementation of a program of research, promotion, consumer and industry information.

It is the policy of this act to establish a concise and uniform method of requesting, issuing and amending orders relative to the canola and rapeseed industry. It will provide for a national canola and rapeseed board of 15 members who will administer and carry out programs and projects which provide maximum benefit to the industry.

Under this act, assessments will be levied on those products produced and marketed in the United States and will be deducted from the payment made to a producer for all canola or rapeseed sold to a first purchaser. The assessment rate shall be 4 cents per hundredweight of canola or rapeseed produced and marketed in a State, or a rate of 2 cents per hundredweight for States with a State checkoff.

Essentially, this act will enable the industry to create a commodity driven and commodity controlled checkoff program. The idea of a checkoff is not new, and generic promotional and research programs funded through voluntary checkoff contributions have been working at all levels of government for over 50 years. Considering the limited resources of the Federal Government in all areas, especially agriculture, I believe that programs of this nature will become increasingly important. I wholeheartedly commend everyone involved in the canola and rapeseed industry for their efforts in bringing this checkoff to the attention of the Congress.

Mr. President, I urge my colleagues to join me in enabling this industry to shape its own future. I ask unanimous consent that a section-by-section summary of the bill be placed in the RECORD.

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

CANOLA AND RAPESEED RESEARCH, PROMOTION, AND CONSUMER INFORMATION ACT—July 28, 1995

SECTION BY SECTION ANALYSIS

Section 1: Short Title, Table of Contents

The short title is the “Canola and Rapeseed Research, Promotion, and Consumer Information Act.”

Section 2: Findings and Declaration of Policy

Canola and Rapeseed products are important components of the human diet. The state and national organizations whose primary goal is to promote canola and rapeseed research, consumer information, and industry information which is valuable to the new and existing markets. The cooperative development, financing, and implementation of a coordinated national program is vital to this market.

Section 2: Definitions

This section specifies definitions for words and phrases used throughout this bill.

Section 4: Issuance and Amendment of Orders

In general, the Secretary shall issue the orders only upon request of the industry. This order shall be national in scope and not more than one order shall be in effect at any one time.

Section 5: Required Terms in Orders

This section gives the specific terms and conditions to be met by any order. It also specifies the organization of the Board and other members, and gives guidelines for day to day operations.

The Board consists of 15 members. Additionally, there shall be no more than 4 producer members of the Board from any state.

This section describes the required provisions for collection and refund of assessments.

The assessment rate shall be 4 cents per hundredweight of canola or rapeseed produced and marketed in a state. The rate is 2 cents per hundredweight for states with an approved checkoff.

Section 7: Referenda

The Secretary shall conduct a referendum among producers during the period ending 30 months after the date the order was issued to determine whether the order should be continued.

Section 8: Petition and Review

Anyone subject to an order may file a petition with the Secretary.

Section 9: Enforcement

This section outlines the jurisdiction, process, and penalties in regards to the enforcement of an order.

Section 10: Investigations and Power to Subpoena

The Secretary may make investigations as he or she sees fit in order to ensure that no violations of specific regulations have occurred and to ensure that there are no abuses of those regulations.

Section 11: Suspension or Termination of an Order

The Secretary has the power to terminate any order that is no longer conducive to the industry.

Section 12: Regulations

The Secretary shall issue any regulations necessary to carry out this act.

Section 13: Authorizations and Appropriations

This section deals with the appropriation of funds for this act.

By Mr. McCONNELL:

S. 1092. A bill to impose sanctions against Burma, and countries assisting Burma, unless Burma observes basic human rights and permits political freedoms; to the Committee on Foreign Relations.

THE 1995 FREE BURMA ACT

Mr. McCONNELL. Mr. President, today, I am introducing the 1995 Free Burma Act. I had planned to introduce the legislation on July 11, the date the State Law and Order Restoration Council—SLORC—was to reach a determination on the situation of Aung San Suu Kyi. Fortunately for Suu Kyi, her family and Burma, SLORC decided to release her from 6 years of house arrest.

Everyone hoped that her release would mark the beginning of significant change in Burma. But, as Suu Kyi recently remarked, “We are nowhere near democracy. I have been released—that is all. The situation has not changed in any other way.”

I had planned to announce that I would refrain from introducing sanctions legislation in the interests of determining just how serious the SLORC was about change in Burma. I indicated that we should monitor the situation and determine if progress was made in four areas before introducing sanctions. Let me review those conditions.

First, Suu Kyi has called for dialog with the SLORC to negotiate the peaceful transfer of power. In her first public statement she took note of the fact that a majority of the people in Burma voted for democracy and a market economy in 1990. In fact her National League for Democracy carried 392 seats in Parliament. A dialog to set up a new government based on the results of the election is valuable to the new and existing markets.

Second, Suu Kyi must continue to be afforded the opportunity to meet with her political supporters. It is essential that Suu Kyi have freedom of movement and speech and that her supporters and the press enjoy the same rights.

Third, Suu Kyi urged the SLORC to release all political prisoners, including the 16 elected members of Parliament and hundreds of other NLD supporters. I hope this occurs promptly, but in the meantime, I think it is imperative that the SLORC sign and implement the ICRC agreement granting access to political detainees. Last month the ICRC announced they intend to withdraw from Burma after 7 years of attempting to negotiate an agreement with SLORC. I believe it would represent a good faith effort if SLORC now signed that agreement.

Finally, SLORC’s intention to move toward national reconciliation could be demonstrated by ceasing attacks on ethnic minorities along the Thai border. Over the past year, SLORC has engaged in negotiations to reach cease-fire agreements with many of the ethnic groups—agreements which explicitly call upon the withdrawal of SLORC forces from various regions. In December, SLORC broke off talks and launched attacks against the Karen. Nearly 20,000 refugees fled across the border. Over the past several weeks several thousand SLORC troops have moved into the Kayah state and launched attacks against Karen camps. News accounts report that 20,000 refugees have fled.

On Monday, this week, I asked Assistant Secretary of State for Asian Affairs, Winston Lord, Assistant Secretary for Narcotics, Robert Gelbard, to provide the administration’s assessment of progress in meeting these conditions. We also met with Karen student, Omar Khin, and representatives from Asia Watch and the AFL-CIO to testify.
Although everyone agreed that Suu Kyi’s release was an important development and that she was being afforded the opportunity to meet with her supporters, every witness expressed disappointment that that was all that has happened.

The war against ethnic groups continues. Political repression and human rights violations continue. In fact, just this week, Asia Watch released an extensive report detailing how the situation has deteriorated. And, perhaps most importantly, the Red Cross still plans to shut down operations because of SLORC’s refusal to grant access to political prisoners. And, perhaps most importantly, no negotiations have been initiated by SLORC to implement the 1990 elections. In fact, no efforts have been made to set a date for dialogue to begin.

It is pretty obvious that SLORC’s decision to release Suu Kyi was a calculated move designed to encourage foreign investment and Burma’s inclusion in ASEAN. Indeed, within 48 hours of her release, several governments announced their intention to consider expanding trade and assistance. I think it is too early to reward SLORC—these initiatives are premature.

I admired Suu Kyi who has cautioned all potential investors. A recent AP story made clear that she is concerned about a rush to embrace SLORC. She has, in fact, welcomed this legislation as a means of pressuring SLORC to do the right thing. In an AP story she said, “These are very tough sanctions and I think they have shown they are very interested in democracy.”

The legislation sends the message that Suu Kyi’s release is not enough that the Senate expects SLORC to implement the results of the 1990 election and transfer power to a civilian government.

Mr. President, some people may wonder why Burma should matter to the United States. And all these are certainly other countries with comparable human rights records.

That may well be true. But, there is one compelling reason why we have a direct interest in Burma. Today, Burma is the source of 65 percent of the heroin coming into the United States compared with 15 percent 10 years ago. More alarming is the fact that purity has shot up. Law enforcement officials here in Washington and in Kentucky tell me the purity is around 2 percent to 3 percent on our streets. Now it is not uncommon to find purity levels from 25 percent to 65 percent.

The drug czar has said heroin trafficking represents a serious threat to our national interests. I agree. I also agree with Assistant Secretary Lord’s testimony that the only thing that will solve the problem is a change in government.

Mr. President, we all hope that Suu Kyi’s release marks the beginning of the end of repression in Burma. However, past experience with this military dictatorship suggests caution is the appropriate approach.

Suu Kyi has issued a statement of remarkable good will toward a regime that illegally held her in detention for 6 years. She has demonstrated courage and determination, stating immediately after her release that her detention has not changed her basic goals to achieve peace and freedom in Burma. I think it is important that we respect and promote that agenda. Keeping the pressure on SLORC will assure that her release is seen from a symbolic gesture to real progress.

Mr. President, I ask unanimous consent to include in the RECORD several letters of support for this legislation which have come in from around the world. I also ask unanimous consent to include a brief summary of the legislation and an article including comments Suu Kyi has made about the legislation.

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

SENATOR MCCONNELL, MEMBERS OF THE PRESS: My name is Ohmar Khin. I am a Burmese student who participated in the 1988 nationwide pro-democracy movement in Burma and experienced first-hand, the brutality of the current military regime. The memories of the events of 1988 will vividly remain in my heart.

At that time, I was a senior student at Rangoon Arts and Science University majoring in Chemistry. On March 16, while walking to chemistry class, I saw students gathering. I heard loud drums and calling others to gather nearby the Convocation Hall. They were protesting the death of a student who was shot by soliders dispersing a demonstration three days earlier. My friends and I joined the protesters. As we marched passed Inya Lake we saw troops stationed on the road, blocking our way and riot police trucks rolling down the road.

Many students ran into nearby streets and some jumped into the lake. Others were beaten and kicked by police then dragged into the trucks. I was separated from my friends and ran into one of the houses in the neighborhood. The guards let me and a few others in, locking their gate. From there, I watched the terrifying scene. My heart was pounding with fear. My sarong was torn apart. I was holding a pencil sharpener to fight for justice in our country. During the night, I was separated from my group and was caught by soldiers dispersing a demonstration nearby the Convocation Hall. They were protesting the death of a student who was shot by soliders dispersing a demonstration three days earlier. My friends and I joined the protesters. As we marched passed Inya Lake we saw troops stationed on the road, blocking our way and riot police trucks rolling down the road.

Many students ran into nearby streets and some jumped into the lake. Others were beaten and kicked by police then dragged into the trucks. I was separated from my friends and ran into one of the houses in the neighborhood. The guards let me and a few others in, locking their gate. From there, I watched the terrifying scene. My heart was pounding with fear. My sarong was torn apart. I was holding a pencil sharpener to fight for justice in our country.

During those months of struggle in 1988, hundreds of students were arrested, universities and colleges were closed. Thousands of students, like myself, were forced to flee the country. I believe that democracy and human rights will truly come to Burma one day, but the help of the international community is critical in bringing about that change. Pressure brought to bear by the international community was instrumental in freeing Daw Aung Sunu Kyi and such pressure must continue until democracy is restored. The legislation planned by Senator McConnell calling for economic sanctions on the military regime is the type of initiative which will sustain such pressure.

The struggle of 1988 should not be forgotten. The spirit of the people and their desire to live under a just and democratic government continues. Senator McConnell’s legislation can help the people of Burma achieve that goal.

NATIONAL COALITION GOVERNMENT OF THE UNION OF BURMA

OFFICE OF THE PRIME MINISTER

WASHINGTON, DC, MARCH 29, 1995.

Hon. Mitch McConnell,
U.S. Senate, Washington, DC.

Mr. President, I have recently learned of your intention to introduce a bill to impose US economic sanctions on Burma. On behalf of the democratically elected government of Burma, I am writing to give you my wholehearted support as well as that of my government in your effort.

The imposition of sanctions should never be taken lightly. Any measure designed to constrict the economy of a country will create a greater rift between the people. However, I believe, and the democratic forces working to liberate our country believe, that foreign investment serves to strengthen the democratic opposition. SLORC controls all foreign investment into Burma and channels contracts to the military and its party officials. Unlike other countries, investment will not serve to create a middle class of entrepreneurs, only reinforce allegiance to a regime that has murdered tens of thousands of people whose crime was the desire for democracy and to live in a free society. SLORC is in desperate need of foreign currency. Cutting off access to US funds will be a severe blow to SLORC.

Your decision to move forward on this issue will not be popular with the US business community or countries in Europe and Asia. There are many who place trade and money over Burma’s deplorable narcotics, political, and human rights record. I applaud your courage and will do everything in my power to see you succeed.

The United States has a very special place in the hearts of my countrymen. During the nationwide democratic uprising of August 8, 1988, hundreds of students were seen marching in Rangoon carrying American flags and demonstrating in front of the US Embassy. Supporting us in our struggle is the International Republican Institute. This organization funds pro-democracy activities inside Burma. The Burmese people desperately want what Americans have: the ability to live in peace without fear of government persecution, respect for human rights, and social justice. American ideals will always be a symbol for what we wish to achieve.

I want to personally thank you for your leadership and raising your voice to support those who are oppressed. I look forward to assisting you in any way possible.

With my highest consideration,

Yours sincerely,

Shin Win,
Prime Minister.
of the rainbow. The economy is only open for the Burmese generals and their associates to line their pockets and they are in complete control of all business contracts and are interested in upfront money in the form of signature bonuses paid in dollars.

Any evidence offered that the regime is easing its oppression is superficial. What the military leadership is seeking is international legitimacy at the least cost to itself.

In spite of no foreign threats whatsoever, SLORC is boosting up its armed forces to over 350,000 men and 500,000 just to rule the country at gun point.

The best example of the Burmese leadership’s political failure is their attitude toward the ethnic minorities. For nearly half a century it has used the bankrupt policy of a military solution to Burma’s political problems. It just does not have adequate capacity to realize that Burma’s ethnic problems are a political problem that requires a political solution.

May I urge you as President of the New Mon State Party and Chairman of the National Democratic Front to do everything possible to eliminate U.S. foreign investment in Burma until a legitimate democratic government is in power.

Yours truly,

NAI SHWE KYIN
President

KACHINLAND PROJECTS U.S.A.
FOR HUMAN RIGHTS AND DEMOCRACY IN BURMA,
June 13, 1995

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: I write on behalf of the Kachin-American & Friends USA, for Democracy and Human Rights in Burma, a US citizens’ organization dedicated to the purpose of restoring democracy and human rights in Burma, especially in the Kachin areas. We want to let you know that we support your proposed resolution to impose trade sanctions against Burma most strongly. We support your leadership through active citizen input to our representatives in the US Congress. If we could be of help in other ways please let us know.

We have been unspeakably outraged by the severe persecution of our people over the years for no apparent reason than the fact that they are Kachin. We have felt most painful and helpless because the one political movement, the Kachin Independence Organization, has been hand-tied by the cease-fire agreement. While Kachin leaders have been honor-bound, SLORC’s oppression and predations against our people have continued as if they have despised hypocrisy about opium production and trading.

We support in the strongest manner any pressure that could be applied against SLORC, by the US and by the international community. And we will continue our strong protest against SLORC’s deadly rule in ethnic minority areas with their occupation arm. This pariah regime must be condemned and cast aside.

We hope that you are determined to exercise your authority in a manner that will have a strong, effective and lasting impact. We are ready and eager to come to your assistance whenever called.

Most sincerely yours,

LA RAW MARAN, PH.D.
Executive Director

THE NEW MON STATE PARTY,
GENERAL HEADQUARTERS,
June 6, 1995

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

YOUR EXCELLENCY: Information of your efforts at imposing economic and trade sanctions on Burma under the brutal regime known as the State Law and Order Restoration Council (SLORC) is very encouraging to us.

Current situation shows that, only by international economic and diplomatic pressure can liberate Burma from the atrocious control of the ruling military junta.

It appears that the economic and trade community is now mesmerized by SLORC’s promises of the proverbial pot of gold at the end
Hon. MITCH MCCONNELL, U.S. Senator, Washington, DC.

By Mr. REID (for himself and Mr. BRYAN).

S. 1093. A bill to prohibit the application of the Religious Freedom Restoration Act of 1993, or any amendment made by such act, to an individual who is incarcerated in a Federal, State, or local correctional facility, or penal or correctional facility, and for other purposes; to the Committee on the Judiciary.

The RELIGIOUS FREEDOM RESTORATION ACT OF 1993 AMENDMENT ACT OF 1995

Mr. REID. Mr. President, I send a bill to the desk in behalf of Senators REID and BRYAN.

Mr. President, the bill that I just introduced is a prison reform bill that is designed to close a gaping hole in the current law that allows prison inmates to file frivolous lawsuits at will. This legislation is necessary, and it is overdue. It addresses and remedies a specific ailment plaguing an otherwise solid piece of legislation that passed this body in the last Congress. I am referring to the Religious Freedom Restoration Act. More specifically, I am referring to the application of this law as it relates to prison inmates. When the Senate passed RFRA, it sought to provide the legal protections supporting the right to freely exercise one’s religious belief. This legislation was a well-intentioned goal which this Senator supported.

The concern I raised when we considered this legislation was the abuse that I knew would take place of these new rights by prison inmates. In fact, I offered an amendment that would have exempted inmates from coverage of this legislation. Unfortunately, my amendment was narrowly defeated. As the saying goes, Mr. President, you reap what you sow. And because the sponsors of this legislation sought to expand this coverage to prison inmates, our courts are now being flooded with inmate lawsuits alleging discrimination under this act. And the lawsuits are filed often for the most spurious of reasons. I said then, and I say now, that providing inmates with all those rights and privileges would be a recipe for disaster, and I was right.

(Mr. CRAIG assumed the chair.)

Mr. REID. Mr. President, word of these new legal rights has spread like wildfire. They are in Idaho. We have a letter that we will talk about from one of the deputy attorneys general of Idaho.

These taxpayer-supported lawsuits are spreading like wildfire. The research for these filings is being conducted in taxpayer-supported law libraries containing spades of helpful filing information at the disposal of prisoners.

Mr. President, this is like an alcoholic locked inside a liquor store. These inmates cannot get enough.

What am I talking about? Should I talk specifics? I do not know where to start talking specifics. I only brought over a few of the lawsuits.

In this hand I have some of the Nevada lawsuits; only some of them. Because you see prison litigation in Nevada is a result of prisoner lawsuits.

Is that what this is all about? Have we run wild? But a Federal judge that sets the court’s time—40 percent of the litigation in our Federal courts in Nevada are a result of prisoner lawsuits.

I call to order some of the other lawsuits. These inmates cannot get enough. They are not there because we are trying to check to find out if they are good or bad. They are felons. And we are spending 40 percent of the court’s time on this trash.

Let me talk about some cases around the country. In California, we have an inmate there who is a drug offender. But a prison authority to allow him to practice a religion called Wiccan, which is witchcraft. He is upset because the prison authorities will not supply him, among other things, tarot cards and other paraphernalia that go with it.

We have one lawsuit filed because the satanic group in a prison wanted unbatized baby fat for their candles.

Mr. President, I wish I were making this up. But a Federal judge that has a lifetime appointment, who is there to decide what is good and bad in this country, is being called upon to rule on this trash. And they have to do it. They have to go through the process.

In the State of Connecticut they have allowed Catholics and Protestants to have religious services, and Moslems. We have an inmate there who was not satisfied with that. What this inmate wanted is a certain very clearly defined sect of the Moslem religion because he refuses to go to a service for all Moslems. He wants his own.

We have one who changes his name. This man is in Florida. He keeps changing his name, and he sues the mail in his right name. So he filed a lawsuit.
One wanted to perform the rite of washing—his definition of washing—a religious ceremony.

Another inmate filed a lawsuit because his hat was confiscated.

Another inmate filed a lawsuit because he alleged that the inmate barbers are unskilled and are forced to perform the haircuts under too much pressure from the clock. This is a lawsuit filed.

We have another who filed a lawsuit because the diet in the prison did not meet his expectations. He believed that his religion entitles him to a healthy lifestyle as defined by what diet he wants.

We have another out of Nebraska. This man has filed a lawsuit because he is a member of the Asatru religion, which is an Islamic word, which is a term for an ancient religion of the Teutonic people of northern Europe. And the prison authorities had a little trouble finding the paraphernalia this gentleman wanted.

We have another case out in Nebraska where an inmate there thinks he is being tapped in a man’s body, and thus strip searches by male prison officials are not allowed by his religion.

Again, Mr. President, I kind of wish I was making this up. I mean, can you imagine these are real lawsuits that our Attorneys General and others are defending on a daily basis taking tremendous amounts of time when they should be involved in other important matters. We have case after case of this nonsense. I said it would happen and I intend to continue to fight to end this problem.

I am going to push this, Mr. President. We can wait for hearings in the Judiciary Committee. We can do all kinds of things. But before this year is out, I am going to be offering this as an amendment to a piece of legislation moving through here. We cannot allow this to go on.

We have a letter here—I said on the floor, this is going to happen—from the Attorney General of the United States saying, no, it will not.

Like an alcoholic locked inside a liquor store, these inmates cannot get enough.

The consequences of these new prisoner rights are many, and an overburdened judiciary is forced to allocate its scarce resources to considering and processing these frivolous lawsuits. Our Nation’s attorneys general are being forced to defend inmate lawsuits rather than prosecute criminals. And as usual, who is picking up the tab? The taxpayers are paying for the libraries from all over the country. They cannot get jewelry; they cannot get incense; they cannot get the right type of nutritious vegetarian diet.

They cannot get incense; they cannot get the right type of victuals that was bulky and large; they thought it could cause problems to the rest of the prison populace. Not according to this man’s religion. According to his claim, the jewelry would become defiled if another person touched it.

We have another man who is suing a prison chaplain for refusing to conduct a marriage ceremony between him and his male friend because they belong to the Universal Life Church, and this church allows people of the same sex to marry.

They cannot get incense; they cannot get jewelry for their religious ceremonies; they cannot get the right type of altar; they cannot get the right type of nutritious vegetarian diet.

Skinheads have the right to receive, because of their religion, hateful, bigoted, anti-Semitic, racist literature from all over the country.

I have a letter from the deputy attorney general from the State of Idaho. She says, besides the cases enclosed—paraphrasing—even though we do not have a lot of cases, the flood is beginning. I emphasize “yet” because I know the Department of Corrections has every reason to believe it is only a matter of time.

This woman goes on in her letter to explain the trouble they have gone to in Idaho. They have sweat lodges in their prisons, trying to make the Indian religions happy. They have problems with the Aryan Nation, motorcycle gangs, trying to comply with their wishes of what they need in prison. I do not understand why we have to bend over backward to protect the rights of people who are locked up in prison.

Remember, 7 percent of the criminals commit over 75 percent of the violent crime in this country. So our job is to get rid of the 7 percent. But what are we doing? We are trying to determine if the right pork products are in toothpaste. I believe that these criminals who are convicted felons have forfeited not all their rights but some of their rights by committing these acts against society. Rather than providing these people-funded gyms, we should be hiring more personnel so they could watch them in chain gangs.

I think, with some of what we have going on in some States where they are going back and looking at chain gangs and having these people do work instead of sitting around writing these phony lawsuits, we would be better off. They do not deserve the costly luxuries they are provided in prison. I believe the more difficult and the more unpleasant the present prison setting can be the better off we would be.

Mr. President, I practiced criminal law. When I was a young lawyer, I was assigned to represent a criminal defendant. At that time they did not have the public defender system. And I went over there as a young lawyer and raring to go to defend this man who had been charged with stealing a car and taking it across State lines. And I proceeded as a young lawyer, wanting to get into that courtroom and help this defendant. He said, “I just back off.” He said, “I committed this crime on purpose. I knew what crime I committed. I wanted to be returned to a Federal prison because they are nicer than the State prisons.” I have never forgotten that.

So I am going to push hard for this legislation. Our judges ought to be spending more time hearing meritorious cases and our attorneys general should be spending more time prosecuting these frivolous lawsuits, defending frivolous lawsuits brought by them.

I ask unanimous consent that the text of the bill be printed in the Record.

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

S. 1093

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

SECTION 1. APPLICATION TO INCARCERATED INDIVIDUALS.


(1) by moving section 5 to the end of the Act;

(2) by redesignating section 5 as section 8; and

(3) by inserting after section 4 the following new section:

SEC. 5. APPLICATION TO INCARCERATED INDIVIDUALS.

“Notwithstanding any other provision of this Act, nothing in this Act or any amend-
with respect to any individual who is incarcerated in a Federal, State, or local correctional, detention, or penal facility (including any correctional, detention, or penal facility that is operated by a private entity under a contract with a government)."

ADDITIONAL COSPONSORS

S. 41
At the request of Mr. REID, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 41, a bill to amend title 4 of the United States Code to limit State taxation of certain pension income.

S. 304
At the request of Mr. SANTORUM, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 861
At the request of Mr. GRASSLEY, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 861, a bill to amend title XVIII of the Social Security Act to provide for increased Medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 1028
At the request of Mrs. KASSEbaum, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1028, a bill to provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes.

S. 1052
At the request of Mr. HATCH, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1052, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for clinical testing expenses for certain drugs for rare diseases or conditions and to provide for carryovers and carrybacks of unused credits.

SENATE RESOLUTION 166
At the request of Mr. JOHNSTON, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of Senate Resolution 166, a resolution designating the week beginning November 19, 1995, and the week beginning on November 24, 1996, as "National Family Week," and for other purposes.

SENATE CONCURRENT RESOLUTION 22—RELATIVE TO EXPO '98 IN LISBON, PORTUGAL

Mr. PELL submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

Whereas there was international concern expressed at the Rio Conference of 1992 about conservation of the seas;
Whereas 1998 has been declared the "International Year of the Ocean" by the United Nations in an effort to alert the world to the need for improving the physical and cultural assets offered by the world's oceans;
Whereas the theme of Expo '98 is "The Oceans, a Heritage for the Future";
Whereas Expo '98 has a fundamental aim of alerting political, economic, and public opinion to the growing importance of the world's oceans;
Whereas Portugal has established a vast network of relationships through ocean exploration;
Whereas Portugal's history is rich with examples of the courage and exploits of Portuguese explorers;
Whereas Portugal and the United States have a relationship based on mutual respect, and a sharing of interests and ideals, particularly the deeply held commitment to democratic values;
Whereas today over 2,000,000 Americans can trace their ancestry to Portugal; and
Whereas the United States and Portugal agreed in the 1995 Agreement on Cooperation and Defense that in 1998 the 2 countries would consider and develop appropriate programs to mark the upcoming quincentennial anniversary of the historic voyage of discovery by Vasco da Gama: Now, therefore, be it
Resolved by the Senate (the House of Representatives concurring), That the United States should fully participate in Expo '98 in Lisbon, Portugal, and encourage the private sector to support this worthwhile undertaking.

Mr. PELL. Mr. President, today I am submitting a resolution expressing the sense of the Congress that the United States should fully participate in Expo '98 in Lisbon, Portugal, and that it should encourage the private sector to support this effort.

Prime Minister Cavaco Silva recently invited the United States and other countries to participate in Expo '98, which will be the last exposition to take place in this century. A number of countries, including Germany, Greece, the United Kingdom, Morocco, India, Pakistan, and Cape Verde, have committed to participating in Expo '98, and several others, including Argentina, the Philippines, Canada, and Poland, have demonstrated their strong interest in participating.

I understand that our own Government is seriously considering accepting the Portuguese Government's invitation. I believe it would be useful for the Senate to weigh in on this issue, and to encourage the administration to participate in this important exposition.

As a longtime friend of Portugal, I am pleased to support United States participation in Expo '98. The theme of the exposition, "The Oceans, a Heritage for the Future," is particularly fitting as we mark the 500th anniversary of Vasco Da Gama's discovery of the sea route to India. Portugal, of course, has a great history of sea exploration, and in fact, the important trade links between the peoples of Europe, the Americas, Africa, and Asia. Lisbon, the capital of Portugal since the 12th century, is a vibrant cultural and economic center, and its location on the Atlantic makes it a fine choice for an expo focused on the sea.

The U.N. General Assembly has declared 1998 as the International Year of Ocean in an effort to alert the world to the need to improve the physical and cultural assets of the world's oceans. The theme of the expo is therefore, particularly appropriate. A fundamental goal of Expo '98 will be to focus on the growing importance of the world's oceans and to foster a debate on the sustainable use of marine resources and environmental protection. The United States, of course, has a vested interest in being part of this debate.

The organizers of Expo '98 will provide all facilities relating to each national pavilion free of charge. Accordingly, participating countries will have to provide only the contents of its representation, which I expect to be sponsored by the private sector. In fact, the resolution I am submitting encourages the private sector to support Expo '98.

As a fellow Atlantic power, and an ally of Portugal, the United States should have a strong interest in participating in this exposition. I sincerely hope that President Clinton will accept Prime Minister Cavaco Silva's invitation to be part of this important event.

SENATE RESOLUTION 158—TO PROVIDE FOR SENATE GIFT REFORM

Mr. MCCAIN (for himself, Mr. LEVIN, Mr. COHEN, Mr. WELLSTONE, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. KYL, Mr. MCCONNELL, Mr. GRAMS, Mr. ABRAHAM, Mr. WARNER, Mr. HARKIN, Mr. BINGMAN, and Mr. BAUCUS) submitted the following resolution; which was considered and agreed to:

Resolved, SECTION 1. AMENDMENTS TO SENATE RULES.
Rule XXXV of the Standing Rules of the Senate is amended to read as follows:
"(a)(1) No Member, or an employee of the Senate shall knowingly accept a gift except as provided in this rule.

(2) A Member, officer, or employee may accept a gift (other than cash or cash equivalents) which the Member, officer, or employee reasonably and in good faith believes has a value of less than $50, and a cumulative value from one source during a calendar year of not more than $100. No gift above $10 shall count toward the $100 annual limit. No formal recordkeeping is required by this paragraph. But a Member, officer, or employee shall make a good faith effort to comply with this paragraph.

(b)(1) For the purpose of this rule, the term "gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other thing having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, which are provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(b)(2)(A) A gift to a family member of a Member, officer, or employee is not a gift to any other individual based on that individual's relationship with the Member, officer,