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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer.

Let us pray.

O God, our protection, who fills the universe with the mysteries of Your power, guide and direct our lawmakers today in their work. Sustain them with the knowledge of Your mercy and supply them with wisdom for life's crossroads. Make them aware of Your presence during critical moments of decision.

In the hour of temptation, help them to exercise self-control. Use their skills for the strengthening of the Nation. Give each of us a faith in You that can be seen in our daily lives.

Thank You, Lord, for the opportunity You have given so many of us to serve You as we labor for our country. Enable us to live quiet and peaceful lives as we honor You.

We pray also for our men and women in harm's way around the world.

Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for up to 90 minutes with Senators permitted to speak therein, with the first 30 minutes under the control of the majority leader or his designee, and the next 30 minutes under the control of the Democratic leader or his designee.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The Senator from Kentucky is recognized.

SCHEDULE

Mr. MCCONNELL. Mr. President, today we have a period of morning business for up to 90 minutes. The first hour of that time is divided with the majority controlling the first 30 minutes, and the minority in control of the second 30 minutes.

At about 11 o'clock, the Senate will begin consideration of S. 384, the Nazi War Crimes Working Group extension bill. Senator DEWINE is the primary sponsor of that legislation, and he will be here to begin the debate.

Last night, we reached an agreement for 90 minutes of debate on the bill to accommodate several Senators who want to speak on the underlying legislation. It does not appear that a rollcall vote will be necessary on passage of S. 384, and we will notify everyone if someone requests a vote.

We are also working on agreements for the genetic nondiscrimination bill and the high-risk pooling bill.

This week, we also hope to consider the committee funding resolution, as well as any additional nominations that become available.

Finally, I remind all of our colleagues of the traditional reading of George Washington's Farewell Address that will occur this Friday. The junior Senator from North Carolina, Mr. RICHARD BURR, has agreed to deliver that address, and we thank him in advance for his contribution to this longstanding Senate tradition.

Mr. President, I ask unanimous consent that the final 30 minutes of the allotted morning business time be under the control of Senators CORNYN and LEAHY, or their designees.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

SOCIAL SECURITY

Mr. COLEMAN. Mr. President, much of the discussion of Social Security has been dominated by the politics of fear, scaring seniors into believing their benefits will be cut or taken away.

Let me be clear. Discussions about Social Security are not about the retirement security of those Americans who are 55 or older; the Social Security system for folks 55 and older is fine. It is not going to be changed. I will be one of those. If you were born before 1950, you are OK. There is nothing to worry about. In fact, I urge those 55 or older, talk to your kids; Talk to your grandkids; Start thinking a little bit about their future.

Social Security is a sacred trust. Many Minnesotan seniors depend on Social Security each month to buy food and medicine. Those checks are going to continue regardless of what happens in the discussion today.

The reality is we face a challenge, the challenge that the President of the United States talked about in the State of the Union, a challenge to work in a bipartisan way to fix the problems we all know Social Security faces today.

Society is changing. We are living longer. We are healthier, more productive. This places greater pressures on America's retirement system.

When Social Security was started, there were 41 workers for every retiree. By 1960, there were 16 workers per retiree. Today there are 3 workers per retiree. When the baby boomers start to retire in only 3 years, there will be a point where there are 2 workers for every retiree. That is the challenge we face.

As we start to retire, right now we have a surplus. In 13 years, we will be paying more out of Social Security than is coming in as more and more baby boomers retire. Congress will be faced in a little over a decade and beyond with a decision of how to make up the hundreds of billions of dollars going out of a system, than is coming in. That will have an impact on many other things we need to do for the country.

The challenge is, do we sit and wait? Three years comes quickly. In 13 years, the system pays out more than comes in. What do we do before we reach that point? It is not bankrupt but it means it does not have enough money to pay its obligations. Two-thirds of the folks working today every day have 12 percent from their paycheck taken out for Social Security every week. At a certain point they will not have that. That is a reality. It is not political rhetoric. It is a reflection of demographics.

The question is, What do we do? I offer personal experience on an issue like this to my colleagues to reflect upon. When I was elected mayor of St. Paul in 1993, there was a contract settled before I became mayor. My budget director then walked in, and said: Mr. Mayor, we will have $200 million of unfunded liability retiree health benefits based on their contract unless we do something. The good news is it is 15 years away. My advisers said, 15 years away, that is not your problem; that is someone else's problem down the road.

I had a son who was 8 years old and my daughter was 4. I thought that 8 years was a blink of the eye. Fifteen years is two blinks of the eye. It comes quickly. Any parent knows if your kid today is 3 years old, 5 years old, they will start college in 13 years. It is a blink of the eye.

The reality is I got sued and picketed, but we worked out a solution. We rejected a contract and worked out a solution that did not impact those in the program today, not unlike what the President is saying, that we are not going to impact those who are 55 or older today, but for younger people coming in we are going to look at their future and figure out what we are going to do. And we did. That was a little over a decade, 12 years ago. I don't see discussion today in St. Paul, the capital city, about unfunded liability. We had the courage to address the situation.

The challenge is to fix Social Security permanently in an open, candid, and bipartisan approach to reviewing the option. Any proposal must be fashioned in a bipartisan way. On this score, the President highlighted a number of proposals that friends on the other side of the aisle in the past have offered.

For example, President Clinton spoke of increasing the retirement age when he was in office. Former Congressman Tim Penny from my home State of Minnesota has raised the possibility of indexing benefits to prices rather than wages. Former Senator John Breaux suggested discouraging the early collection of Social Security benefits. The late Senator Daniel Patrick Moynihan recommended changing the way benefits are calculated.

I am hopeful my Democratic colleagues today will have the wisdom of their predecessors to recognize a problem is on the horizon and will have the willingness to work with us to find a solution. Again, some will tie this discussion to a national scare campaign to exploit fears for political gain. Don't. Talking about the future of our kids is way too important. Today's discussion about Social Security is about giving the younger generation, in part, a higher rate of return on the paltry 1.6 percent they earn from Social Security today, a 1.6-percent return on their investment.

There is a discussion we are having about allowing younger workers the opportunity to build their own nest egg, to give them a sense of ownership that they do not have over the money they themselves earn and pay into Social Security. It is their money and they are working for it. They should have the right to generate a return on that investment in a way that is not subject to speculation, not subject to rolling the dice. We can set up a system that gives younger workers an opportunity to have a nest egg that will grow. That is not the entire solution, but it is part of the solution.

Let us have the willingness to work together to give young people that opportunity to have a piece of the rock for themselves and, at the same time, have the courage to deal with some of the broader issues.

The question is, Will we in Congress make a political decision and do what is easy and push a $10.4 trillion gap in Social Security to another generation and another Congress or will we make the responsible decision and try to find a way to make sure America's retirement system is there for future generations? I sincerely hope we choose not to pass along to our children and grandchildren a decision which may be difficult today but devastating tomorrow.

It has been said that necessity is the mother of invention. There is a real opportunity right now as parents and grandparents to come up with a plan that leaves our kids with something better than we have; that is, an opportunity to own, build, and grow a nest egg of their own.

In conclusion, as President Clinton declared in 1998 about Social Security reform:

> We all know a demographic crisis is looming. If we act now, it will be easier and less painful than if we wait until later.

It is 2005. It is time to do something. I hope my colleagues on both sides of the aisle come together and get it done.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Wyoming.

Mr. THOMAS. Mr. President, I will continue discussing the issue before the Senate, Social Security, which in the last several weeks has been talked about in Washington, DC, and throughout the country.

Reactions have been interesting—many without much information about the alternatives, the needs. I suspect the most important thing we can do is to talk about the situation as it exists, the situation as it will exist if we do nothing, what the options are and what the impacts will be.

It has become, right or wrong, the principal issue. I don't think anything will happen too quickly because there needs to be time taken to explore the issue, to get people to understand the issues. Everyone is meeting at home with their constituents.

I met last weekend in Cheyenne, WY, with the AARP and exchanged some ideas. We have to continue that.

In my view, the President has properly brought forth the issue. He has indicated, if we do not do something now it will be even more difficult to do it in the future years. I don't think anyone argues the idea that our prime purpose is to maintain Social Security so it fulfills what has been laid out for people in the future, so it does not affect those in retirement on Social Security or affect those closer to that age.

It is naive to imagine a program put into place in the 1930s will go on for another 100 years without having some changes. Changes have taken place certainly in this country and will continue to take place.

I am hopeful we can explore the situation, that we can become more familiar with the impact if we do nothing, become more familiar with potential problems that will exist, and then, of course, take a look at potential changes.

It is important to understand what the administration and the President has laid out. As the President has said a number of times, he is willing to take a look at different solutions. That is where we are.

We had a meeting in the Finance Committee yesterday and went over interesting ideas, primarily, the so-called trust fund that exists. You can predict what will happen in that in terms of the cashflow, in terms of the interest.

Everyone does not recognize that when the Social Security moneys come in they go into the Federal fund with all other incomes and then they are sent over with a bond to the trust fund

and interest is earned on that trust fund from the Federal Government basic incomes. Those are bonds that come over and, of course, will, over time, like about 2009 when the income does not equal the outgo, these trust funds will have to be turned into cash so they can then be used to pay benefits.

My goals are to protect the promised benefits to retirees and potential retirees, to create a system for future generations, so the benefits of financial security that have been enjoyed by others will continue to be enjoyed for our kids as time goes by.

I believe strongly in the idea of incentives for people to create their own retirement program. Social Security was designed to be a supplement. I am hopeful—whether it is in the Social Security Program or whether it is outside of that program—that we continue to provide incentives for people to put aside their own money for retirement. Of course, in order to make that successful, the earlier you start putting aside some money, the more likely you are to have some when you need it later.

That is one of the issues before the Congress, whether the personal accounts should be made part of Social Security so there would be an opportunity for the kind of growth that can take place in the private sector.

However, those are two different issues. They are both very important. We can talk about them both, some of the things that need to be done for the Social Security Program as it exists and some of the things that can be done in the area of personal accounts.

There are difficult choices to be made. Obviously, some talk about increasing the payroll taxes. I don't think anyone is enthusiastic about that idea. There are ideas of going over the limits that are now there for the people who pay into, over a certain amount. That could be increased, I suppose. That is one of the options.

The idea of doing something about benefits, of course, is also an option. I do not know quite what specifically could be done, but I suppose there is talk about having benefits somewhat tied to the person's own resources and providing more benefits to people who have less resources than those who have more. That is a possibility.

I mentioned increasing the cap on the wages taxed. That has been talked about. Now the limit is $90,000. Some say it might be able to go above that.

There certainly are opportunities to talk about raising the age limit. One of the things that has changed so much, of course, is the fact that when the Social Security Program started, there were maybe as many as 20-some people working for every person drawing benefits. Now that has changed dramatically. It is my understanding that now there are about three working people for every person drawing benefits. So that is quite a different situation.

At the start of Social Security I think life expectancy was probably in the lower sixties. If you retired at age 65, quite a number of people did not enjoy the benefits of Social Security. Now, fortunately, life expectancy is much longer than that. So some have talked about perhaps over time raising the age for retirement.

There will be other options, of course, as to how these things might be done. I guess my real strong feeling is, No. 1, we have to do something because the system cannot go on as it has. No. 2, we ought to get as knowledgeable as we possibly can—all of us—about what the impacts are, what the situation is, what the alternatives are that could be used.

I think another idea is that it does not need to be done next week. This is something we can work on for a while. I do not mean 5 years, but maybe towards the end of the year we would be in a better position to do something. But the changes are not an option. We have to do some of those kinds of things, and we have to do them fairly quickly.

I was a little disappointed that, as this issue came out, we found some kind of immediate reaction: We are not going to do anything with that; We don't want to touch it.

Well, that is not an option, in our view. I suppose you could argue about critical timing, but it is very clear the longer we wait, the more difficult it will be to find solutions, and the more impact those solutions will have on what we are talking about.

Another idea, of course, is that we ought to look at other ways to do it. As a matter of fact, we have some bills, and the administration is looking at doing some things to encourage more tax-free investments for people's retirement years. I think that is one of the great ideas. There are two ways to do that, of course. No. 1, you can allow those moneys to go into an account before taxes, or the alternative is to go ahead and pay taxes on it now, and when it comes out, there would be no taxes on it.

For people who are in their retirement years, to be able to take their money out without taxing it is probably one of the most attractive alternatives. I have been working with the administration, and we intend to have a bill soon that will make it a little simpler. We have quite a number of different kinds of retirement programs now, and they are a little difficult to keep up with, and a little confusing, so we will soon, hopefully, make those a little bit different.

I am very pleased the President has undertaken this effort and has spent a good deal of time on it. He has basically handed the Congress a blueprint. Some are saying: Well, where is the plan? I think it is good the President has laid out the problem, laid out some of the alternatives, but has, in fact, said—and our committee met with him some time ago in the White House, and he indicated that, no, he is not sending out a specific proposal but is giving us ideas and a broader concept of where he would like to see us go.

So looking to the future, for all of us, as citizens—for the country, for ourselves—is something we must do.

Mr. President, I see my friend from Pennsylvania in the Chamber. I yield the floor.

The PRESIDING OFFICER. The majority's 30 minutes is now expired.

Mr. SANTORUM. Mr. President, since I do not see anybody on the other side, I ask unanimous consent for 5 minutes.

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

The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, first I thank and congratulate the Senator from Wyoming for his comments and also for his steadfast duty in coming here to make the case on a variety of different issues. This issue, in particular, Social Security, is a passion of mine, something I have worked on since I came to the Senate back in 1995. To me, this, as the Senator from Wyoming just said, is about a social compact from one generation to the next.

What we are in danger of doing is breaking that compact. We are in danger of telling the next generation of Americans who are entering the workforce that if we do nothing now, they, as a generation, will not get a positive return on their money. In other words, they will not get out of the system money they put in. To me, that is breaking this compact.

Every generation of seniors that has retired—in fact, those who are at or near retirement now—will, in fact, be able to get some measure of return on their money. Some earlier generations got very high rates of return. This generation's retirees will get a relatively low rate of return, but they will have invested money or paid into the program for people in the system while they were working and at least be able to get their money out of the system they paid in when they retire.

If we do nothing, which some have suggested we should do, which I think is irresponsible, but if we do nothing and simply wait for this generation that is in their twenties and thirties right now to retire, then they will be hit with one of two things. Either in the next few years—10 to 15 years—they will be hit with payroll taxes which will take their rate of return, if you will, from a bare positive to a negative or they will be hit with benefit cuts which, again, will take their rate of return—to get out of the system what they put in—and turn that into a negative.

That, in my mind, is breaking the compact. That is saying we have now turned Social Security into somewhat of just simply a tax from one generation and transferring it to another in an ever-increasing severity of tax. I think we can do better than that. That is what the President has suggested. He has come forward on an issue that he

did not have to. This problem is not going to hit America until probably the midteens when we begin to go negative into the Social Security system. In other words, we will not have the amount of money coming in to pay for benefits. Borrowing will have to start to occur from the Government side to pay off these bonds that are in the Social Security trust fund in order to pay benefits. We will do something at that point in time because the deficit impact will be huge on the United States of America.

Social Security, instead of running $100 billion surpluses, will be running $200 billion deficits. Compound that with the growth of Medicare and other things we are seeing, and we will be in a huge deficit situation, which will cause either income taxes to go up, spending on the Government side to go down—which I think is highly unlikely—benefit cuts in Medicare and Social Security, or tax increases for Medicare and Social Security. Any one of those situations puts a burden on future generations either through benefit reductions or tax increases, which I think is breaking the compact that we have had since 1936 with our seniors.

I am hopeful we can find some bipartisan cooperation to look at the problem that is confronting us and say: We have an opportunity to give people hope, to give younger people hope that we can have a better system for them than currently is promised. What is promised for people in their twenties right now is basically 70 cents on the dollar of the benefits that are promised under the system. We can only pay for 70 cents on the dollar. That is what this current system provides.

So when you hear, ''We will keep these promises,'' I understand what keeping the promises means. It means higher taxes for future workers or lower benefits for future retirees. That is what happens if we wait.

So the idea that says there is no problem, understand what that means. That means future generations—whether it is 5 years from now, 10 years from now, 15 years from now—will be hit with higher taxes and lower benefits or some combination of them or maybe one exclusive of the other. But the bottom line is, it is going to impact adversely that generation of workers and that generation of seniors.

We can avoid this problem right now if we allow younger workers the opportunity to put some money away, invest in the American economy, the strength of the American economy, with broad-based index funds that invest in the growth and future of the American economy, which I think we all have high hopes for and believe will be strong going into the future. We believe that is the most responsible way of avoiding this breaking of the compact with future generations, of saying to future generations they will not do as well as other generations of Americans have done under the current system.

So with that, Mr. President, I thank the other side for their indulgence and for the 5 minutes, and I yield the floor.

The PRESIDING OFFICER. The next 30 minutes is controlled by the Democratic leader or his designee.

Mrs. MURRAY. Mr. President, I ask unanimous consent for an additional 5 minutes on the Democratic side as well.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

SOCIAL SECURITY

Mrs. MURRAY. Mr. President, I come to the floor today to reiterate that I am extremely concerned about President Bush's proposed Social Security restructuring, privatization—whatever the code word of the day is—restructuring, which I believe is going to put at real risk the security of all Americans in this country, from our young workers who will be retiring in future decades, to our seniors who are retiring today or who are already retired.

As President Bush's plan has come out, we are realizing what it will do. It will end the guaranteed benefit that is such a critical part of this insurance program today. We also see that it is going to do nothing to fix the long-term issues that face Social Security. Just privatizing and restructuring it is not going to solve those long-term issues.

I am also here today to emphasize the fact that this restructuring or privatization plan is going to add trillions of dollars to our national debt—trillions of dollars when we already have record deficits that future generations will be responsible for. This privatization plan adds trillions of dollars to our national debt.

As President Bush has been traveling around the country to sell his privatization plan, we hear him say:

We have an obligation and a duty to confront problems and not pass them on to future generations.

Well, many of us, on both sides of the aisle, agree with him. We should not create new problems for the next generation to handle. But the trouble is, that is exactly what this President's plan does. It actually adds to the problems of the next generation. It does nothing to solve them.

I think it is time for President Bush to level with the American people about what his program really is. It really is a new recipe for a continuing fall into a black hole of debt. This plan, as the President is proposing, is going to run up $5 trillion in debt that our generation will not pay for. It is going to fall squarely on the shoulders of our children and our grandchildren.

The President not only wants to gamble away the secure future that retirees count on today, he wants to burden them with a huge new $5 trillion debt.

Now, there is another point worth making about the President's plan as well. I keep hearing him say that anyone over 55 will not be affected. Anyone over 55—well, let's be clear. Anyone over 55 will be impacted by this tremendous new debt that is incurred.

President Bush can say he will not cut your benefits now, but how can he guarantee that if we take trillions of dollars from the Social Security trust fund for this privatization plan?

All we have to do, to understand this situation, is to look at the record.

Just last week, we got a budget with the biggest deficit in our Nation's history—4 short years after the budget had the largest surplus in our Nation's history. A few days later, we saw cost estimates for the Medicare prescription drug benefit balloon from the $400 billion we were told it would cost to now it costing more than $700 billion.

Now the Bush administration plans to add trillions to our balance sheet by privatizing Social Security. Let's take a look at this chart. It tells the picture clearly. As we see with this chart, there is more red ink in the President's budget than we care to see for years to come. Unfortunately, if his privatization plan goes into effect, massive new debt increases are added in the years after this plan takes effect. The President, as he did with Medicare, likes to talk about the cost of implementation over 10-year periods. What he does not mention is that for 5 years under those projections, the plan is not fully phased in. So rather than considering his already bloated $700 billion transition projection, let's look at an outside source.

The Center on Budget and Policy Priorities says the borrowing numbers we have heard from the administration ''are misleadingly low.''

They are generated by using a ten-year budget window (2006 to 2015) that includes only five years of the fully phased-in plan. The plan would not be launched until 2009 and not be in full effect until 2011.

Over the first ten years that the plan actually was in effect (2009 to 2018) it would add $1.4 trillion to the debt. Over the next ten years (2019 to 2028) it would add about $3.5 trillion more to the debt. All told, the plan would add $4.9 trillion (14 percent of GDP in 2028) to the debt over the first 20 years.

That is almost $5 trillion. That money is going to have to come from somewhere, and it is pretty naive to think that huge new borrowing will not affect our current retirees. It is naive to think massive new borrowing won't affect programs such as Medicare or Medicaid that do need our attention. And it is naive to think we will simply go along and pass this massive new problem on to our children and grandchildren.

A story a couple of days ago in the Washington Post was headlined ''After Bush Leaves Office, His Budget Costs Balloon.'' I want to read a few lines from that story.

It warned that ''the numbers released in recent days add up to a budgetary landmine that could blow up just as the next president moves into the Oval Office.''

Philip G. Joyce, professor of public policy at George Washington University, said in the piece:

It's almost like you've got a budget and you've got a shadow budget coming in behind that's a whole lot more expensive.

And a Republican adviser to one of our colleagues said:

Hopefully some very difficult decisions will be addressed between now and the time we have a new White House resident so that occupant isn't faced with some very expensive chickens coming home to roost. There are some things that we can do, but unfortunately in the political world kicking down the road is often seen as leadership.

That is what kicking down the road is going to give us. That says it all.

This huge new debt is not the only bad part of privatization. In fact, we need to remember this plan that is being put forward does nothing to extend Social Security solvency—not for a year, a day, not for an hour. That is the issue we are trying to solve. The President's plan, at least the part he has been willing to share with us, does not address that. It is an ideological gamble that we in the Senate and those who depend on Social Security today and tomorrow and around the country should not stand for.

Rather than gambling away our security and running up this huge new debt, we should promote personal savings to help every American with their retirement security and we should stop raiding the Social Security trust fund to pay for misguided priorities such as massive tax cuts for the wealthy.

The ideas we have heard from the President are too dangerous for this generation's retirees or those who are to follow. As you can imagine, like all of my colleagues, I have heard a lot about this proposal from my constituents in Washington. I have heard from current retirees, from disabled workers whom we have not even begun to talk about how this plan will affect, and from young people who would supposedly benefit. President Bush would be very surprised by the tremendous number of comments I have been getting and the tone of them. I will share a few.

From a retiree who lives on Whidbey Island:

The administration should be ashamed of its effort to confuse and mislead the hard-working citizens of the United States.

I heard from a 20-something, who supposedly is going to benefit from privatization, who said:

I want Social Security to be left in its current form.

I heard from a 51-year-old self-employed fisherman who said:

My main concern about Social Security is that it survive for my children. The risks are simply too great for the future of our citizens and our country.

I agree with him. This plan is a plan for social insecurity. It is a guaranteed gamble, not a guaranteed benefit. We are going to continue to stand up for future generations, the young people who are following us, against a private solution that simply will add trillions of dollars in debt to the future generations we are supposedly thinking about here in the Senate. We want to be proud of what we pass along to our children and grandchildren.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 393 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CORNYN. Mr. President, I ask unanimous consent that I be allotted 15 minutes of the 30 minutes of the time allotted to myself and the Senator from Vermont.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The remarks of Mr. CORNYN and Mr. LEAHY pertaining to the introduction of S. 394 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. LEAHY. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CORNYN. Mr. President, I want to take a second to convey my appreciation to the Senator from Vermont for his eloquent and I know heartfelt remarks. Today is a good day for open Government in the Senate.

I wish to recognize the leadership of Senator DEWINE for legislation he will be pursuing later today that enhances disclosure of records regarding Nazi war criminals. Senator DEWINE, Senator FEINSTEIN, and I are proud to be cosponsors of the legislation, as is the Senator from Vermont. We are all proud of that effort under the leadership of Senator DEWINE.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President,I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DURBIN. Mr. President, how much time is remaining in morning business on the Democratic side?

The PRESIDING OFFICER. Fifteen minutes.

SOCIAL SECURITY

Mr. DURBIN. Mr. President, my staff just brought to my attention a publication from the Republican Policy Committee, which our colleague, Senator KYL of Arizona, chairs. It is on their Web site. I found it interesting because it is a description of the Democrat's Social Security plan. What is interesting about this so-called bill, as described by Senator KYL and the Republican Policy Committee, is that it does not exist.

They go on to describe this so-called bill by the Democrats which, according to the Republicans, will require new borrowing or tax increases of $5.8 trillion between 2018 and 2042. This does not exist. What I hold in my hand and what is on the Republican Policy Committee site is a complete fabrication. There is no truth to this.

It surprises me that my colleagues will reach a point where they would put this into the public discussion—try to—when they know it is not true.

Let's try to recap where we are on the debate about Social Security. It was President Bush who told us we needed to talk about Social Security. It was President Bush who told us we face a crisis, a challenge, a bankruptcy in Social Security. It was the President who said we needed to privatize Social Security. It was the President's leadership who brought us to this point in the discussion. And many of us are still waiting for the President's bill.

The President has spoken about Social Security. Some of his colleagues and friends on the Republican side of the aisle have applauded his suggestions, but as yet we have not seen President Bush's proposal. What we know about it concerns us.

Instead of strengthening Social Security, President Bush's privatization plan will weaken Social Security. Let me be specific.

A memo is released from the White House. It suggests changing the indexing rate for Social Security. That is the rate of inflation and other increases in the outyears. So we put the calculation together. What if you change the index from the wage index to the price index?

We find out that in a few decades, we would be cutting Social Security benefits by 40 percent. President Bush's proposal is to cut Social Security benefits by 40 percent.

How does that strengthen Social Security? It weakens it. For many seniors, it means they are going to be tipped over the edge. They are going to end up with less money from Social Security, despite a lifetime of contributions. So there is the first weakness.

The second weakness is the President wants to take money out of the Social

Security trust fund for these so-called private accounts, and as he takes the money out of the Social Security trust fund, it creates a greater deficit in America, a greater debt. This debt, of course, has to be paid off. We have to borrow money to make up for the amount the President wants to take out of the Social Security trust fund.

How much is it? Well, the conservative estimates are less than $1 trillion in the first 10 years but then up to $4 trillion or $5 trillion in the second 10 years. So the President is heaping debt on future generations for this privatization of Social Security plan and has no plan to pay for it.

So we have said to the President: Mr. President, you started this debate; you told us we should act now. Where is your proposal? And he cannot produce it.

If one takes a look at the President's budget for America, one would expect this is his highest priority, that the first chapter would be on Social Security privatization. Well, search if one will, get a magnifying glass, bring a bloodhound from the Westminster Kennel Show, take whatever one can find, and they are not going to find it in his budget. Highest priority for the Bush administration and not a word about paying for privatizing Social Security in the President's budget. Why? He cannot explain it. He cannot defend it. He cannot tell the American people that what he is proposing will actually strengthen Social Security.

As a result, people across America have said: Mr. President, we are not interested in your approach. If the President's approach means weakening Social Security and not strengthening it, if the President's privatization approach means substantial cuts in Social Security benefits, if the President's privatization plan means $2 trillion to $4 trillion more in debt for America, the American people, seniors and their families, are saying to the President, no, thanks.

That is not good news on the Republican side of the aisle. So because their plan is starting to fall apart and the support is not there for it, they have decided to go on the attack. The best defense is a good offense. So they want to attack the Democrats. Along comes the Republican Policy Committee and completely manufactures and fabricates a so-called Democratic bill that does not exist and says the Democratic plan is worse.

Well, I have news for them. November 2 was an important day in American political history last year. That was the day of our national election. If one wants to draw a parallel to a football game, there was a coin toss. President George W. Bush won the coin toss and he will receive. He received the opportunity to lead this Nation as a President. Now he has the ball and he has to run the plays. The President's theory about the game becomes the reality of governing, and the President has to step forward and give us his plan, tell us how he is going to privatize Social Security and make it stronger.

Everyone says if one takes money out of the Social Security trust fund, it weakens Social Security. Most everyone agrees that adding to our national debt means we have to turn to other countries in the world to borrow money. Who is paying for the debt of America today? The No. 1 country in the world is Japan. Not far down the list we will find China and Korea. As we look at these countries, the mortgage holders of America, it is no surprise that many of them are exporting more goods to America at the same time as they own our debt. The two go hand in hand. The actual deficit and the trade deficit go hand in hand. So as we lose millions of manufacturing jobs across America, we lose them to countries that are holding and owning America's debt: China, Japan, Korea.

What does this administration suggest we do? Go more deeply into debt, borrow more money from these foreign countries, become more dependent on them in the hopes that some day they will not turn around and tell us, we do not want to buy your debt anymore? The only way we will buy it is if you raise the interest rates, which, of course, affect our businesses, our families, and all of us as individuals.

This is an extremely shortsighted plan by President Bush. It is a plan which he has not brought forward in detail because he cannot explain it. He cannot explain to the American people how weakening Social Security is in the Nation's best interest.

The American people are wise enough to understand the reality. If we do not touch Social Security, if we leave it exactly as it is today, it will make every single promised payment, with a cost-of-living adjustment, every week, every month, and every year until the year 2042. That is 37 years of payments from the Social Security system as it currently exists. There is not another program of Government that one can say with certainty will make every payment for 37 years, but it can be said about Social Security.

Can we do better and extend its life even longer? Of course we can. But we will not reach that goal by creating this privatization of Social Security, by attacking the very premise of Social Security.

The President says this is all about the ownership society. I think it is time for the President to own up about the ownership society. He ought to be honest about it. What he is proposing in privatizing Social Security will not make it any stronger. What he is proposing is going to cut benefits. What he is proposing is going to end up in more national debt.

This idea of the Republicans to come back and attack the Democrats for legislation that does not exist shows how desperate their position has become. Maybe it is time to call a timeout in the game I referred to earlier. Maybe it is time to do something totally radical. Maybe it is time to have a bipartisan conversation about Social Security. We did it before. I was here. Twenty years ago, Democrats and Republicans sat down and asked: What can we do together in the best interest of Social Security? And we came up with a plan. With that plan, we bought more than 50 years of solvency for Social Security. There were no bragging rights for Democrats, no bragging rights for Republicans. We did it for the country, we did it for people and families who depend on Social Security. That is where we need to return today.

The privatization plan of the President is not going anywhere. People understand it is too great a risk. They do not want to play retirement roulette. They have invested for a lifetime in Social Security to have a basic safety net of protection, and today they need it more than ever. Today, as corporations declare bankruptcy and walk away from their pension obligations, as they walk away from health care for retirees, there are certain things which we ought to say are protected in America. Social Security is one of them.

We need to come together as a nation and first make a commitment that Social Security is going to survive and be strong; secondly, that any savings incentives we create should not be at the expense of Social Security. We have a thrift savings plan for Federal employees. I am part of it. My family participates in it. It is a good idea. It is over and above Social Security. We pay into Social Security and with extra money pay into this thrift savings plan. I think it is a smart thing for my wife and for my family. Other Americans could reach the same conclusion. There are ways to encourage savings but not at the expense of the Social Security trust fund.

The biggest problem the Social Security trust fund has today is all the money that has been taken out of the Social Security trust fund by this administration and others. When this President wants to pay for a tax cut for the wealthiest people in America, the money comes out of the Social Security trust fund. Want to keep Social Security strong? Put the money back into the Social Security trust fund. Stop taking it out.

When we had a surplus in our budget, the future of Social Security was even brighter. Today, with record deficits under the Bush administration, it is no wonder we are worried about Social Security after 40 years.

So I urge my colleagues, do not engage in this kind of political trickery, trying to suggest that legislation exists which does not exist, trying to assign certain numbers and costs to a bill that does not exist. It reflects very quickly how weak the President's proposal is.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Morning business is closed.

EXTENSION OF NAZI WAR CRIMES AND JAPANESE IMPERIAL GOVERNMENT RECORDS INTERAGENCY WORKING GROUP

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 384, which the clerk will report by title.

The legislative clerk read as follows:

A bill (S. 384) to extend the existence of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group for 2 years.

The PRESIDING OFFICER. Under the previous order, there will be 90 minutes of debate equally divided between the two leaders or their designees. Who seeks recognition?

The Senator from Ohio.

Mr. DEWINE. Mr. President, I ask unanimous consent to add the following members as original cosponsors of S. 384: Senators COLEMAN, COLLINS, and SANTORUM.

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

Mr. DEWINE. Mr. President, I rise this morning to urge support for S. 384, a bill that would extend a very important law; that is, the Nazi War Crimes Disclosure Act. This act launched a mission of discovery, and what we have learned from this bill has been extremely disturbing. It has been necessary that we learn what we have learned from this bill.

I will take a few moments to talk about the act's specific merits, but before I do that, there are some people I will thank. First, I thank the majority leader and his staff for allowing us time today on the Senate floor to debate this measure. I also thank Judiciary Chairman ARLEN SPECTER for agreeing some time ago to schedule a hearing about our bill. It was not necessary to hold the hearing, but it was important that he schedule it. It was his strong support for our efforts that allowed us to move so quickly on this issue. Senator SPECTER gave a strong push to all involved to resolve their differences and to move forward so we could be in the position that we are today. I thank him for his leadership and for his support.

In 1998, Congress first passed the Nazi War Crimes Disclosure Act, which our friend and colleague the late Senator Daniel Patrick Moynihan and I introduced, along with my friend Congresswoman CAROLYN MALONEY, who introduced it in the House.

The purpose of this law was to make public previously classified information about a terrible part of history, the history of Nazi persecution and also the relationship of the U.S. Government to the Nazi war criminals in the aftermath of World War II and during the Cold War.

The bill provided that we would disclose, within the constraints of national security, the information we had about these Nazi war criminals. Undeniably, the Nazi era was one of the darkest chapters in human existence and there is a natural tendency not to even want to think or talk about it. Congress passed the Nazi war crimes law because we understood that we owe it to all those who suffered and died in the death camps. We also owe it to their families to bring the whole truth to light.

The Nazi War Crimes Disclosure Act has been in effect since 1998, and it has resulted in a tremendous amount of information. These results have been produced primarily through the good efforts of a group called the Interagency Working Group, also known as the IWG, which was created by that law. By statute, the IWG includes the director of the Holocaust Museum, the historian of the Department of State, the Archivist of the United States, representatives from the CIA, FBI, Department of Justice, specifically the Office of Special Investigations, the Department of Defense, and three outside appointees, known as public members, who are Elizabeth Holtzman, Richard Ben-Veniste, and Thomas Baer.

The IWG also includes a number of professional historians and archivists, who, along with the public members and the other IWG members, took on the task of locating, identifying, and recommending documents for declassification, of course always provided as long as the declassification posed no threat to national security.

At this point I think it is important to offer thanks to all the members of the IWG for their years of hard work on this project. The staff, including the archivists and historians, has done remarkable work and has helped to produce a tremendous amount of research on this critical project. In particular, we owe a debt of gratitude to the public members of the IWG—Elizabeth Holtzman, Richard Ben-Veniste and Thomas Baer—who have worked without compensation and spent literally hundreds and hundreds of hours of their own time on this effort. We give them our thanks. They have contributed mightily to the knowledge of this terrible era in world history.

Once the IWG was created, it worked closely with the CIA, the FBI, the NSA, the Army, and a number of other agencies to examine and evaluate an enormous number of documents. In fact, since 1998, the Interagency Working Group has coordinated the single largest specifically focused declassification effort in American history. In its first year of operation alone, the IWG screened so many documents for possible declassification and uncovered so much work to do that Congress extended its life in 2001, under the leadership of Senator FEINSTEIN, and then again with my sponsorship in 2004.

At this point, over 100 million documents have been screened for possible relevancy, and over 8 million documents have been declassified and used to create a book titled, U.S. Intelligence and the Nazis. This book, which I have right here, now provides us with 15 chapters of insight into the Holocaust and the post-World War II era—insight into what U.S. Government officials knew and when they knew it. It makes for absolutely fascinating reading. We can be assured that, as more documents are uncovered and as historians have the opportunity to study what has already been uncovered, there will be more articles published, more interpretation, more understanding of history.

When I came to the floor almost 7 years ago to introduce and help pass the Nazi War Crimes Disclosure Act, I brought with me several aerial U.S. intelligence photographs taken in 1944 of Auschwitz. In the photographs, which were discovered by photo analysts from the CIA in 1978, prisoners were being led into gas chambers. This confirmed that our government knew that these atrocities were occurring. What else did they know? At that time, we could not be sure.

Now, however, due in great part to this law, we are much closer to answering that question. The book has contributed to our understanding of history—much more so than we ever hoped. Let me tell just a couple of the many stories this research has uncovered.

Let me tell a couple of the many stories that this research has uncovered so far.

For example, the historians were able to examine a range of documents produced by Gonzalo Montt, the Chilean consul in Prague during the early 1940s. Montt was a Nazi sympathizer and, as such, appears to have had significant access to Nazi plans regarding ''the Jewish problem'' and how the regime was planning to address it—and that plan involved moving the Jews into ghettos, expropriating their assets, and eventually eradicating the Jewish population.

British intelligence got access to many of Montt's dispatches to his home government and provided them to the United States as early as March 1942. Under the law, the IWG recommended that these documents be declassified, and our government agreed. These documents show that certain officials in our government had some evidence of Nazi intentions toward the Jews at least 6 months earlier than had previously been known.

Further, as the authors, themselves, say, these documents show again that:

for many Americans and Britons inside and outside of government, the central, overriding concern during 1939–1945 was the war, itself—not the barbaric policies that accompanied it.

Our job in Congress, at least in passing the law, was not to judge history. That is up to historians. That is up to the people who read it. That will be up to us, later on. As these documents come out, we can begin to judge it.

The point is, though, to make this information available, to let the truth come out, whatever that truth is. Let these raw documents come out to let people make judgments based on those documents. Let historians view it. Let historians argue about them. But to get those documents out in front of the historians and, ultimately, in front of the American people and in front of the world.

We learn from history. We learn from the truth. What this bill is about is getting out the truth.

Other documents showed other details. For example, in a chapter written by Professor Norman J.W. Goda, a professor at Ohio University, the book details how the German government, in coordination with a number of U.S. and European banks, worked together to funnel money illegally expropriated from the accounts of German Jewish nationals back to Germany. Although the details are somewhat complex, in essence, the German government used these expropriated assets to lure a prior generation of German immigrants back to Germany from the United States and, essentially, invest in the German war effort.

A large U.S. bank was intimately involved in this scheme, and profited greatly from it. The scheme was discovered in late 1940 by the FBI, and it began a lengthy investigation. Rather than shut down the operation, the Bureau surveilled the many participants and eventually did arrest a large number of them. At some point during the investigation, the bank, itself, did cooperate with the investigation and was never prosecuted in order to protect FBI and Army intelligence sources. Until this project began, this story had never fully been exposed.

As this book shows and those stories illustrate, this project has been a great success, and the IWG has been very effective at their task—but the law is due to expire at the end of March and the IWG needs more time. Unfortunately, during the course of the last year, the IWG and the CIA have had several ongoing disagreements about the correct interpretation of the law and what type of disclosure the law requires.

After a great deal of effort, the parties have finally come to a common understanding of what the law requires. Specifically, it is now understood that the law was drafted broadly, so that as much information as possible may be released—both about specific Nazi war crimes and also about the relationship the U.S. Government had with Nazi war criminals in the post World War II and Cold War era.

With this understanding going forward, the various parties who comprise the IWG agree that there is a need for some more time to conclude their important work, and I agree, as well. Accordingly, yesterday I introduced, along with Senators FEINSTEIN and CORNYN, legislation that will extend the life of the IWG for 2 additional years, until March 2007. Both the IWG and the CIA agree that 2 years is a reasonable amount of time for the extension, and I agree.

I hope and expect that well within those 2 years, the IWG, working closely with the CIA, will be able to examine the remaining documents and release the important information that still lays within the files of the CIA—unexamined by the public until now. We have come a long way and told a large part of the story, and it is time to finish the job.

Finally, I would like to note for the record the contributions of the many people who have helped us to get to where we are today. Once again, Senator SPECTER, the chairman of the Judiciary Committee, was instrumental in putting the power of the Judiciary Committee behind our effort to move this issue quickly. I also would like to thank Senator LEAHY, the ranking member of the Judiciary Committee, who has been a leader on this issue since the beginning, along with our cosponsors on the Committee, Senator FEINSTEIN and Senator CORNYN.

In the House of Representatives, as I mentioned earlier, Representative CAROLYN MALONEY has been my counterpart and the leader on this issue since the beginning. I look forward to working with Representative MALONEY and with Chairman DAVIS, Chairman SENSENBRENNER and Chairman HOEKSTRA to help move this legislation in the House.

Of course, I also must recognize the commitment, dedication, and vision of the late Senator Daniel Patrick Moynihan. He spent countless hours involved in this issue. He knew how important this was to deepening our understanding of history. He appreciated the value of uncovering this information and what it would mean to those who suffered through the Holocaust and their families.

I also must mention that the CIA, of course, has played a critical role in resolving this dispute and moving forward toward the completion of this project. I'd like to thank former DCI George Tenet for his efforts in that regard and, in particular, mention current DCI Porter Goss, who, as a Congressman from Florida, was a cosponsor of the original legislation in the House. Again, as I noted earlier, the members and staff of the IWG, including the public members, deserve our special thanks.

I should mention again the efforts of leadership and Floor staff, particularly Sharon Soderstrom and Laura Dove, for helping to move this legislation so quickly and make sure we had the opportunity to consider it prior to the expiration of the IWG next month.

Finally, on a personal note, I thank the staffs of all of the Members who have played such a large role on this issue. In particular, I would like to recognize the contributions of my former Judiciary Committee Staff Director Louis Dupart. Louis was a critical part of the team that helped us turn this idea into law back in 1998. Even though he is no longer working in the Senate, he has never stopped working to help promote this legislation and the effective implementation of the law. His ongoing efforts have been crucial to the success of our efforts here today.

Again I urge my colleagues to vote for this important and timely legislation to extend our efforts to finally and fully open our files regarding this horrific period in history and give the victims of the Nazi era and their families as complete an accounting as possible. We owe them no less.

Mr. LEAHY. Mr. President, I am a strong supporter of this bill, and I am pleased to again work with Senator DEWINE to help ensure that our government discloses what it knows about Nazi war criminals and their counterparts in the Japanese Imperial Government.

We passed the Nazi War Crimes Disclosure Act in 1998, and I had the opportunity to work on the bill in the Judiciary Committee. The act required U.S. Government agencies to disclose documents in its possession that related to Nazi war criminals and was later expanded to cover the Japanese Government. Congress took care to respect legitimate national security concerns, including exemptions to allow agencies to withhold documents under a variety of circumstances, provided they reported such withholding promptly to the relevant committees.

The act also established the Interagency Working Group, IWG, to study and report on the documents held by government agencies. Through no fault of its own, the IWG has not been able to complete its work, and the legislation before us today would extend its life for an additional 2 years.

President Clinton instructed agencies to comply fully and rapidly with the act. Most have done so. The Central Intelligence Agency, however, has until recently insisted on a cramped interpretation of the statute that did not accord with congressional intent. The CIA's approach if left unquestioned would have denied researchers and the American people a complete accounting of U.S. Government information about Nazi war criminals.

The plain reading of the act says that if the CIA, or any other agency, possesses documents relating to war criminals, all such documents must be disclosed unless a specific statutory exemption applies. I understand that the FBI, the Army, and other agencies covered by the law adopted that interpretation. The CIA, however, took the position that it must disclose only those documents directly relating to the individual's criminality.

In recent weeks, however, under the continued prodding of Senator DEWINE and the public members of the IWG, the CIA has agreed to revise its interpretation of the law and provide the IWG with the additional documentation it has sought. Richard Ben-

Veniste, Elizabeth Holtzman, and Tom Baer, the public members, deserve our thanks for their persistent efforts to uncover the whole truth about the criminals of World War II that is contained in U.S. Government files.

In addition to providing additional information, the CIA must also comply with its obligation under the act to report to the Senate Judiciary Committee and the House Government Reform Committee whenever it invokes an exemption to avoid disclosing documents. Seven years after enactment, we have yet to receive any such report from the CIA, even as it declined to disclose a number of documents sought by the IWG.

The enactment of this law was an important victory for openness in government, and it is critical that all agencies offer full compliance. I have been a strong supporter of the Freedom of Information Act, FOIA, throughout my service in the Senate, and in fact worked to ensure that the Nazi War Crimes Disclosure Act would not inadvertently reduce agencies' ordinary obligations under FOIA.

The actions of this body today are a welcome departure from our sometimes complacent attitude toward secrecy. Indeed, I believe this Congress has been all too willing to accept the secretive ways of the Bush administration. The Bush White House has conducted its policymaking behind closed doors to an unprecedented degree, from the energy task force to the construction of the legal regime that would govern the war on terror. When we have sought to exercise our oversight responsibilities, we have frequently been stonewalled.

This stonewalling is most apparent in the administration's refusal to disclose information about the abuse of detainees in Afghanistan, Iraq, and Guantanamo Bay. Nearly 10 months after the world learned of the atrocities at Abu Ghraib, those of us in the Congress who strongly believe that oversight and accountability are paramount to restoring America's reputation as a human rights leader remain stymied in our efforts to learn the full truth about how this administration's policies trickled down from offices in Washington to cellblocks in Abu Ghraib.

We know that the CIA is reluctant to provide documents related to Nazi war criminals that are 50 years old and older. How can we expect the same agency to willingly disclose information that might implicate its own agents for recent violations of international law? The administration contends that the prisoner abuse scandal has been fully investigated, yet we continue to learn about new abuses in the press. Several reports, including a recent article by Jane Mayer in The New Yorker, detail the CIA's use of extraordinary rendition to transfer terrorism suspects in U.S. custody to the custody of countries where they are likely to be tortured, a practice expressly prohibited by international law. Other recent reports describe how female interrogators at Guantanamo repeatedly used sexually suggestive tactics to try to humiliate Muslim prisoners. To fully understand this sad chapter in our Nation's history, there needs to be an independent investigation of the actions of those involved, from the people who committed abuses to the officials who set these policies in motion.

Even without an independent investigation, we know the genesis of this scandal began in Washington, not Abu Ghraib. Based on flawed legal reasoning that was contrary to the advice of the State Department and military lawyers, the President determined more than 3 years ago that suspected members of al-Qaida were not entitled to any protections under the Geneva Conventions. Unfortunately, this decision traveled down the chain of command and led to the abuses we have seen in Iraq, Afghanistan, and Guantanamo Bay.

The President's decision to deny suspected terrorists Geneva Conventions protections is particularly relevant as we discuss the Nazi War Crimes Act. It was in August 1949, in response to the Nazi atrocities committed during World War II, that the international community adopted the Geneva Convention on Rules of War. The United States and most other nations of the world ratified the Conventions to ensure that, even in times of war, all nations would be bound by the rule of law. More than fifty years later, we must now investigate our Nation's failure to remain committed to these laws.

Finally, as we discuss the commission of war crimes from the World War II era, I would like to note the passage in December of the Anti-Atrocity Alien Deportation Act, which was included in the National Intelligence Reform Act. This law, which has already been employed to bring removal proceedings against a former Ethiopian government official who has been convicted of torture there, expands the grounds under which we can deport or deny entry to those who have engaged in war crimes and other serious violations of human rights abroad. I began introducing this bill in 1999, but it was only in 2004 that we were finally able to overcome the opposition of some House Judiciary Committee Republicans, with the great help of the lead sponsor of the House companion bill, Representative MARK FOLEY of Florida.

I support the extension and full compliance with the Nazi War Crimes Disclosure Act.

Mrs. FEINSTEIN. Mr. President, I rise today in support of legislation to authorize the extension of the Nazi War Crimes Records Disclosure Act and the Japanese Imperial Army Disclosure Act for an additional 2 years.

In 1998, Congress passed the Nazi War Crimes Records Disclosure Act to ensure that the records of our national security and intelligence agencies related to the criminal activities of the Nazi regime could, after more than half a century, become public.

During the 106th Congress, I introduced, and the President signed into law, the Japanese Imperial Army Disclosure Act which expanded the scope of the original statute to cover war crimes that occurred in the Pacific theater.

That legislation was sought by a large number of Californians who believed that there was an effort to keep information about possible Japanese Imperial Army abuse of war prisoners from the public record.

Indeed, both pieces of legislation were much needed because many of the records and documents regarding Germany's and Japan's wartime activities were classified and hidden in U.S. government archives and repositories. Even worse, according to some scholars, some of these records were being inadvertently destroyed.

The statutes were designed to work through an Interagency working group which would ensure that the documents that needed to be declassified would be declassified, and that the process would occur in an orderly and expeditious manner.

At the time, it was recognized that there could be circumstances where classification was still appropriate, so the best way for the working group to conduct its work was to do so in coordination with other agencies. What we did not recognize was the bureaucratic setbacks that the working group would encounter.

The bottom line here is that the working group did its part and tried diligently to meet its deadline. Nevertheless, despite the group's best efforts, it appears that delay and confusion on the part of the CIA have obstructed its progress.

As a result, the working group, through no fault of its own, was unable to complete this important work within the timetable that the legislation contemplated and now requires additional time to finish.

I find this to be very unfortunate because the time has already long since passed for the full truth to come out.

However, I have been assured that the intelligence community, in general, and the CIA, in particular, have a renewed understanding of the importance of this matter and will now work expeditiously with the working group until the work is completed.

With the fast-thinning ranks of our brave American World War II veterans, it is all the more imperative that the truth comes out sooner, not later. Especially for those that were the victims of war crimes, there should be a full accounting of what happened so that old wounds have a chance to heal.

We need to pass this legislation now so the working group can finish the work that it has started before it is too late. Our veterans gave and risked their lives for this country. The least we can do is provide them with the truth before they are all gone.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DEWINE. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DEWINE. Mr. President, I ask unanimous consent that Senators LEAHY, GRAHAM, and ALLEN be added as cosponsors to the bill.

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

Mr. DEWINE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DEWINE. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DEWINE. Mr. President, I yield all time.

The PRESIDING OFFICER. All time has been yielded.

The question is on the engrossment and third reading of the bill.

The bill (S. 384) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 384

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

SECTION 1. TWO-YEAR EXTENSION OF WORKING GROUP.

Section 802(b)(1) of the Japanese Imperial Government Disclosure Act of 2000 (Public Law 106–567; 114 Stat. 2865) is amended by striking ''4 years'' and inserting ''6 years''.

MORNING BUSINESS

Mr. DEWINE. Mr. President, I ask unanimous consent that there be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

Mr. DEWINE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

TRIBUTE TO AMBASSADOR MICHAEL KERGIN

Ms. MURKOWSKI. Mr. President, I rise today to honor an individual who is a credit to his nation, his government, and the office in which he serves. He has earned the admiration and appreciation of his staff, the respect of his colleagues, and the friendship of many of us here in Washington. Sadly, he is also a man whose current service in our Nation's Capital has come to an end, and he will soon be departing to return home. The man I am speaking of this morning is Canada's Ambassador to the United States, Mr. Michael Kergin.

At the end of February, Ambassador Kergin will be returning to Canada after serving admirably here in Washington for the past 4-plus years. He assumed his position in October of 2000, just the 19th representative to the United States for our northern neighbor—our eastern neighbor for those of us in Alaska. His background prior to serving as Ambassador to the United States is impressive.

He was born in a Canadian military hospital in England. Ambassador Kergin joined the Canadian Department of External Affairs in 1967. He served in New York, Cameroon, and Chile. He was Ambassador to Cuba from 1986 to 1989. In 1998, Ambassador Kergin was asked by Prime Minister Jean Chretian to serve as his Foreign Policy Adviser as well as Assistant Secretary to the Cabinet for Foreign and Defense Policy—the equivalent of our National Security Adviser.

It is from this background that Ambassador Kergin drew when the terrorists attacked on September 11, 2001. If you were to ask the Ambassador about his most memorable activities while here in Washington, working with his U.S. counterparts to prevent further terrorist attacks would rank toward the top of that list—taking our border relations to the next level to fight terrorism by implementing the Smart Border Process to keep terrorists out while allowing for the legitimate flow of commerce and visitors between our nations.

It is appropriate to remember, as we are again considering comprehensive energy legislation, that Ambassador Kergin played a key role in the aftermath of the August 2003 blackout that hit the Northeast through the Canada-United States Power Outage Task Force, which was to improve our integrated electricity grid.

I would also be remiss if I did not mention the Ambassador's work to develop natural gas pipelines from both Canada's MacKenzie Delta and Alaska's North Slope to meet our common energy needs.

Mr. President, many of my colleagues from the West are quick to point out the differences between Eastern and Western United States. Canada is much the same. And when you look at a map, it is readily apparent that the seats of government for both nations are very much in the East. So it was a pleasant surprise for me when I first met Ambassador Kergin to learn that he was from British Columbia. When Alaskans speak about fishing or timber or mining issues, he gets it. He understands the Alaskans' point of view.

I look forward to working with Ambassador Kergin's successor, but I will also miss the good Ambassador's presence here in Washington, DC.

So I would like to say to him: Mr. Ambassador, thank you for your service in our Nation's Capital, and thank you for your willingness to work so closely with Congress and the American people to continue our strong relationship.

With that, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

Mr. BINGAMAN. Madam President, I ask unanimous consent that I be allowed to speak for 15 minutes in morning business.

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

GLOBAL WARMING

Mr. BINGAMAN. Madam President, today marks the entry into force of the Kyoto Protocol on Climate Change. Following President Bush's decision to opt out of ratification of that treaty, enforcement of the Protocol fell onto Russian shoulders and was finally ratified by the Russian Federation late last year. Today it is a legally binding treaty.

The basic climate change problem is well understood. We have been told repeatedly in peer reviewed scientific assessments that increasing concentrations of greenhouse gases will lead to an increase in the average global temperature. The increasing temperature of the earth will lead to a large number of important changes to today's climate system. Through past emissions and projected emissions over coming years and decades we expect that the warming will accelerate unless the world alters its emissions path. Indications of warming are already evident in the global temperature record. Last year was the fourth-warmest year since temperature measurements began in the 19th century. The warmest year on record was 1998, followed by 2002 and 2003. Indications are also evident in the vast changes now underway in the Arctic and the bleaching of coral reefs around the world.

Over the years there have been many who have been skeptical of the science that has informed us of the climate change problem. But the mainstream of the scientific community, as evidenced by panels organized through the National Academy of Sciences, has been quite consistent in their views. Our doubling of the pre-industrial level of carbon dioxide has been a major factor in increased global average temperatures.

If human-induced global warming continues on its present path, the

changes to our way of life could be vast. We know this from looking at climates of the past as well as projections made by scientific models. There would be significant changes in water resources, because precipitation patterns will change. The sea level will increase because the oceans will warm and will expand. The ice sheets of Greenland and parts of Antarctica could disintegrate, further adding to long-term sea level rise. A warming of the earth will place major ecological systems at risk, including many of our forests and coral reefs. We are essentially performing a global experiment with our planet, with increasing risk to the future. A prudent course of action would be to take steps now to lower these risks, while we continue to improve our understanding of the implications of the warming of our planet.

The desirability of taking prudent steps now, on a national and international basis, to stem global warming is further highlighted by other developments. Across the United States, an increasing number of individual States are taking policy steps related to global warming. California and New York are moving forward with innovative programs to do their part in minimizing emissions. Add into the mix States like Pennsylvania, Colorado, Texas, Minnesota and others and you can see that a patchwork quilt of climate policies is being formed across the United States. While States can be a great laboratory of ideas, the developing situation really calls out for Federal leadership to get to a more coordinated and rational approach across the country.

The business community is looking for federal leadership as well. At a recent hearing before the Energy Committee, an industry economist called climate change a ''wild card'' that could shape energy markets and governance worldwide. He testified that it would be ''prudent to take preparatory steps'' to reduce carbon dioxide emissions. He is not alone. Many U.S.-based multinational corporations are looking to the Federal Government for help as they seek to comply with the EU emissions trading scheme. More than 12,000 factories and power plants in Europe are subject to emissions caps, affecting many U.S. multinationals with operations in Europe.

I applaud the hard work that has been done by many of my colleagues on the issue of global warming. In past Congresses, we have seen productive work both in terms of discrete bills, such as that by Senators MCCAIN and LIEBERMAN or the abrupt climate change bill by Senator COLLINS, or as part of large legislation, such as the bipartisan climate change titles in past comprehensive energy bills. It is clear that most Members of the Senate understand the importance of global warming. I hope that we will continue to work together this Congress on a path toward sensible climate legislation. For my part, as the ranking member on the Senate Committee on Energy and Natural Resources, I hope that we can find a way to continue to integrate global warming concerns in energy legislation.

Energy legislation is an appropriate place to deal with global warming. I have said many times that climate change is so closely related to energy policy because the two most prominent greenhouse gases—that is, carbon dioxide and methane—are largely released due to energy production and use. To a large extent, to do energy legislation is to do climate legislation and vice versa.

As we consider climate in an energy context, I would like to lay out three principles that I stand for and that I think are important. I think that these principles are both modest and aimed at providing more certainty to decisions that need to be made by the many actors who are part of our national energy picture.

The first principle is to have a sensible plan to reduce emissions of carbon dioxide. I am very impressed with the recent proposal by the bipartisan National Commission on Energy Policy in this regard. They have presented a well-thought out plan to create a mandatory emission trading scheme that protects the economy and provides the essential framework for certainty.

Industry needs the certainty of a program that will help them make investment decisions for the future without causing them to prematurely retire capital stock. For example, I would bring to the Senate's attention the recent report of the Cinergy Corporation and their detailed analysis of the implications of potential greenhouse gas regulations. They conclude that neither their company, nor their region, nor this country would be endangered in the face of a modest greenhouse gas emissions policy that includes a safety valve to protect against shocks to the economy. This approach has been championed by well known economists such as Glenn Hubbard and Joseph Stiglitz, as well as institutions such as Resources for the Future, the Climate Policy Center and the Washington Post.

Protecting our economy will not come from ignoring the situation. Lack of attention is as detrimental as legislation that is too aggressive. The Energy Commission's proposal is the right mix of modesty and certainty.

The second principle is to couple any emission reduction plan with robust technology research and development and a broader energy package that addresses energy supply from nuclear power, renewable energy, natural gas, IGCC, and other sources. We need our approach to research and development to be strategic in the sense of creating new options for dealing with greenhouse gases in an economic way.

The third and final principle I wanted to mention is the need to enact policies that affect emissions trends in developing countries, at the same time that we try to deal with emissions trends here. EIA has projected that we will soon be overtaken by the developing countries in terms of greenhouse gas emissions. At the same time, these developing countries are not required by the Kyoto Protocol to reduce emissions. This has been a key point for opponents of the Protocol who are worried about losing competitive advantage to countries with weak environmental standards.

In terms of the long-term resolution of this issue and the competitiveness of the U.S. economy, it is essential that the United States and developing countries coordinate action. One way to do this is to link progress in the United States to policies overseas. Here again I point to the Energy Commission proposal that links progress on American action to what is done by the international community.

Climate change is important to the international community. It is important to Prime Minister Blair and the other members of the G–8 who will be meeting later this year. And, finally, it is important to all Americans.

I intend to propose some sensible climate legislation at an appropriate point that is consistent with the principles I have laid out here.

I hope we can address elements of it in energy legislation as it moves forward through Congress. We need to find a way to move forward, and I believe we can before this Congress concludes.

I ask unanimous consent that several items be printed in the RECORD: First, an editorial out of the Washington Post entitled ''A Warming Climate''; second, a letter from Glenn Hubbard, professor, Columbia University, and Joseph Stiglitz, professor, Columbia University to JOHN MCCAIN and JOSEPH LIEBERMAN; third, a summary of the Report to Stakeholders on air issues that has been developed by Cinergy Corporation; and finally, a summary of recommendations of the National Commission on Energy Policy entitled Ending the Energy Stalemate.

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

[From the Washington Post, Jan. 28, 2005]

A WARMING CLIMATE

For the past four years members of the Bush administration have cast doubt on the scientific community's consensus on climate change. But even if they don't like the science, British Prime Minister Tony Blair, one of their closest allies in Iraq and elsewhere, has given the administration another, more realpolitik, reason to rejoin the climate change debate: ''If America wants the rest of the world to be part of the agenda it has set, it must be part of their agenda, too,'' the prime minister said this week.

Mr. Blair's speech came at an interesting moment, both for the administration's energy and climate change policies and for the administration's diplomatic agenda. In the next few weeks, the House will almost certainly vote once again on last year's energy bill, a mishmash of subsidies and tax breaks that finally proved too expensive even for a Republican Senate to stomach. After a House vote, there may be an attempt to trim

the cost of the bill and add measures to make it acceptable to more senators—including the growing number of Republicans who have, sometimes behind the scenes, indicated an interest in climate change legislation. Indeed, any new discussion of energy policy could allow Sens. John McCain (R–Ariz.) and Joseph I. Lieberman (D–Conn.) to seek another vote on their climate change bill, which would establish a domestic ''cap and trade'' system for controlling the greenhouse gas emissions that contribute to global warming.

If domestic politics could prompt the president to look again at the subject, international politics certainly should. Administration officials assert that mending fences with Europe is a primary goal for this year; if so, the relaunching of a climate change policy—almost any climate change policy—would be widely interpreted as a sign of goodwill, as Mr. Blair made clear. Beyond the problematic Kyoto Protocol, there are ways for the United States to join the global discussion, not least by setting limits for domestic carbon emissions.

Although environmentalists and the business lobby sometimes make it sound as if no climate change compromise is feasible, several informal coalitions in Washington suggest the opposite. The Pew Center on Global Climate Change got a number of large energy companies and consumers—including Shell, Alcoa, DuPont and American Electric Power—to help design the McCain-Lieberman legislation. A number of security hawks have recently joined forces with environmentalists to promote fuel efficiency as a means of reducing U.S. dependence on Middle Eastern oil. Most substantively, the National Commission on Energy Policy, a group that deliberately brought industry, environmental and government experts together to hash out a compromise, recently published its conclusions after two years of debate. Among other things, it proposed more flexible means of promoting automobile fuel efficiency and suggested determining in advance exactly how high the ''price'' for carbon emissions should be allowed to go, thereby giving industry some way to predict the ultimate cost of a cap-and-trade system.

They also point out that legislation limiting carbon emissions would immediately create incentives for industry to invent new fuel-efficient technologies, to build new nuclear power plants (nuclear power produces no carbon) and to find cleaner ways to burn coal. Technologies to reduce carbon emissions as well as fossil fuel consumption around the world are within reach, in other words—if only the United States government wants them.

COLUMBIA UNIVERSITY,
GRADUATE SCHOOL OF BUSINESS,
New York, NY, June 12, 2003.

Hon. JOHN MCCAIN,
Russell Office Building,
Washington, DC.
Hon. JOSEPH LIEBERMAN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATORS MCCAIN AND LIEBERMAN: As Congress takes up the issue of market-based systems to reduce emissions of carbon dioxide and other greenhouse gases, we are writing to encourage you to incorporate an allowance price cap sometimes referred to as a ''safety valve.'' In the context of a cap-and-trade system for emission allowances, a safety valve would specify a maximum market price at which the government would step in and sell additional allowances to prevent the price from rising any further. Much like the Federal Reserve intervenes in bond and currency markets to protect the economy from adverse macroeconomic shocks, this intervention is designed to protect the economy automatically from adverse energy demand and technology shocks. While we disagree on what steps are necessary in the short run, we both agree it is particularly important to pursue them in a manner that limits economic risk.

Our support for the safety valve stems from the underlying science and economics surrounding the problem of global climate change, and is something that virtually all economists—even two with as politically diverse views as ourselves—can agree upon. It is based on three important facts.

First, unexpected events can easily make the cost of a cap-and-trade program that includes carbon dioxide quite high, even with a modest cap. For example, consider an effort to reduce domestic carbon dioxide emissions by 5% below future forecast levels over the next ten years—to about 1.8 billion tons of carbon. This is in the ballpark of the domestic reductions in the first phase of McCain-Lieberman allowing for offsets, the targets in the Bush climate plan, and the level of domestic emission reductions described by the Clinton administration under its vision of Kyoto implementation. Based on central estimates, the required reductions would amount to about 90 million tons of carbon emissions, and might cost the economy as a whole around $1.5 billion per year. However, reaching the target could instead require 180 million tons of reductions because of otherwise higher emissions related to a warm summer, a cold winter, or unexpected economic growth. Based on alternative model estimates, it could also cost twice as much to reduce each ton of carbon. The result could be costs that are eight times higher than the best guess.

Second and equally important, the benefits from reduced greenhouse gas emissions have little to do with emission levels in a particular year. Benefits stem from eventual changes in atmospheric concentrations of these gases that accumulate over very long periods of time. Strict adherence to a short-term emission cap is therefore less important from an environmental perspective than the long-term effort to reduce emissions more substantially. Without a safety valve, cap-and-trade risks diverting resources away from those long-term efforts in order to meet a less important short-term target.

Finally, few approaches can protect the economy from the unexpected outcome of higher energy demand and inadequate technology as effectively as a safety valve. For example, opportunities to seek offsets outside a trading program can effectively reduce the expected cost of a particular emission goal—which is beneficial—but that does not address concerns about unexpected events. In fact, if the system becomes dependent on these offsets, their inclusion can increase uncertainty about program costs if the availability and cost of the offsets themselves is not certain. Another proposal, a ''circuit breaker,'' would halt future declines in the cap when the allowance price exceeds a specified threshold, but would do little to relax the current cap if shortages arise. Features that do provide additional allowances when shortages arise, such as the possibility of banking and borrowing extra allowances, are helpful, but only to the extent they can ameliorate sizeable, immediate, and persistent adverse events.

To summarize, the climate change problem is a marathon, not a sprint, and there is little environmental justification for heroic efforts to meet a short-term target. Such heroic efforts might not only waste resources, they risk souring our appetite to confront the more serious long-term problem. Absent a safety valve, a cap-and-trade program risks exactly that outcome in the face of surprisingly high demand for energy or the failure of inexpensive mitigation opportunities to arise as planned. A safety valve is the simplest, most transparent way to signal the market about the appropriate effort to meet short-term mitigation goals in the face of adverse events.

While trained economists hold divergent views on many topics—as our own views demonstrate—economic theory occasionally delivers a relatively crisp message that virtually everyone can agree on. We believe this is one of those occasions, and hope you will consider these points as Congress addresses various climate change policies in the coming months.

Sincerely,

R. GLENN HUBBARD,
Professor, Columbia University, Chairman, Council of Economic Advisers.
JOSEPH E. STIGLITZ,
Professor, Columbia University, Chairman, Council of Economic Advisers.

AIR ISSUES—REPORT TO STAKEHOLDERS
EXECUTIVE SUMMARY

This report discusses the potential impact on Cinergy Corp.'s operations and risk exposure should Congress pass legislation requiring limits on the emissions of greenhouse gases (GHGs), or if GHG emissions are otherwise limited by treaty, regulations or judicial action. We have worked with a respected shareholder group, Committee on Mission Responsibility Through Investment of the Presbyterian Church (U.S.A.), and Ceres to discuss the potential for eventual GHG regulations and their consequences on the coal-fired electric generating industry in general, and on Cinergy in particular.

Cinergy operates nine coal-fired generating stations and burns almost 30 million tons of coal per year. We generate approximately 70 million gross megawatt hours of electricity for use by our 1.5 million customers in southwestern Ohio, northern Kentucky and much of Indiana. Our newer stations, representing 35 percent of our total generation, operate with sulfur dioxide (SO_2) scrubbers, while approximately 50 percent of our generation has been fitted with selective catalytic reduction equipment (SCRs), which reduces nitrogen oxides (NO_X) emissions. Our operations are in full compliance with all applicable clean air laws and regulations. We have recently announced a significant construction program of additional emission control equipment to comply with more restrictive pending regulations.

The first comprehensive regulation of air emissions occurred in 1970 when Congress passed the first Clean Air Act (CAA) and established the Environmental Protection Agency (EPA). The CAA has been amended at various times in the last 34 years, most recently in 1990.

Early regulations were based on ''command and control'' that prescribed the maximum amount of a specified ''pollutant'' a company was allowed to emit in a given time frame from a particular unit. Command and control often did not allow any flexibility or account for individual characteristics in the age or type of coal-fired generating stations. Command and control regulations also failed to recognize other important variables that could have lowered compliance costs.

In the 1990 CAA Amendments, Congress replaced command and control regulations in certain air emissions programs with a newer mechanism—''cap and trade.'' Cap and trade uses the market to produce a far more efficient, least-cost approach to achieving a prescribed level of emissions reductions. Cap

and trade imposes a cap on the level of permissible emissions, yet offers companies flexibility by recognizing the large number of technical and operational differences in regulated facilities. This flexibility allows generators to make decisions based on economic and environmental factors and provides incentives to reduce emissions below threshold requirements. An emissions ''cap'' is achieved, but the exact reductions occur where they are most economic. Emissions ''credits'' are traded with units where reductions are not as easily or economically achieved. The result, proven over the last 14 years, is improved air quality at less cost to electric customers than under command and control regulation.

In early 2004, the EPA proposed new rules to further control $S0_2$, NO_X and, for the first time, mercury emissions from coal-fired generating stations. The EPA proposed requirements after Congress was unable to pass several emissions reduction bills presented to it, including President Bush's Clear Skies Act. Cinergy expects the EPA to finalize the rule further reducing $S0_2$ and NO_X emissions before the end of 2004 and anticipates the final mercury rule to be issued by March 2005.

Presently, GHG emissions are not regulated, and while several legislative proposals have been introduced in Congress to reduce utility GHG emissions, none has been approved. We anticipate the climate change debate will continue into the 109th Congress, but believe it is unlikely legislation requiring GHG limits will be passed in the next two years.

Our costs to comply with these or other new environmental regulations will depend on a number of factors, including the timetables, levels of emissions reduction required, the impact on coal prices and, most importantly, whether the EPA will adopt a cap and trade or a command and control approach to further regulation.

In anticipation of the proposed rules on $S0_2$, NO_X and mercury, in September 2004, Cinergy announced the largest environmental construction project in its history, asking state regulators to approve a plan that would retrofit scrubbers and SCRs on generating units not currently equipped with these devices. The company also intends, as a pilot project, to install large scale mercury control equipment at a generating station in southern Indiana. The cost for the entire program is projected to be between $1.65 and $2.15 billion through the next decade, depending on whether the ultimate regulations adopt cap and trade or command and control. This plan has been developed so as to comply with a command and control regulatory scheme, with the ability to reduce certain aspects of the plan should cap and trade ultimately be the method of regulation.

The uncertainty Cinergy faces in the current regulatory climate has made it difficult to plan the capital expenditures we will need to make to comply with all environmental requirements while continuing to serve our customers' future energy needs in a reliable manner. Overlapping regulations with differing implementation timelines are inefficient and unnecessarily costly for the company and its customers. Cinergy has asked Congress to act and has urged passage of a long-term, multi-emissions bill that would take the unnecessary uncertainty out of national environmental policy.

Although we do not believe Congress will soon vote to regulate GHGs, we remain hopeful that it will move forward on legislation that provides greater certainty regarding the levels and timetables for reducing emissions of SO_2, NO_X mercury and particulates. We do believe, however, as our CEO Jim Rogers has said, that we eventually will operate our business ''in a carbon-constrained world'' and that it is our responsibility to prepare for that likelihood. We began that preparation in September 2003 by launching a voluntary GHG emissions reduction program, partnering with Environmental Defense and in concert with the President's Climate Leaders program.

Cinergy's goal is to reduce our GHG emissions to five percent below our 2000 level during the period between 2010 and 2012. With our 2000 CO_2 emissions at approximately 74 million tons, we intend to reduce our emissions to no more than 70 million tons per year through the period 2010–2012. We have committed $21 million to fund projects through the remainder of this decade to help us reach this voluntary goal. We plan to achieve these reductions despite a steadily rising demand for electricity by our customers and greater internal needs for electric generation to operate the pollution control equipment being installed at most of our stations. Given historical trends in electric demand, we estimate that we will need to cut GHG releases by a total of 30 million tons versus the business-as-usual case.

It is important to note that we must accomplish this goal without access to a readily available CO_2 control technology. Unlike SO_2 NO_X, mercury and particulates, there is no ''carbon machine'' that can remove GHG emissions from our stations. Instead, we expect to meet the goal by improving energy efficiency at our stations, employing effective demand side management programs, adding renewable energy to our generation mix, sequestering carbon through forest preservation, purchasing allowances when economically prudent and, possibly, sequestrating GHGs in underground geologic formations. This latter program would most likely be linked to a demonstration project at a utility scale integrated gasification combined cycle (IGCC) plant that we considering for our next ''base load'' facility. Cinergy recently announced a joint project with General Electric Company and Bechtel Corporation to study the feasibility of constructing an IGCC station in Indiana. We expect that the IGCC plant will run more efficiently than traditionally constructed coal-fired generation and will, thus, contribute fewer CO_2 tons per megawatt of electricity produced.

Cinergy's expertise is also being deployed outside of our legacy utility businesses. Over the last several years, we have created two companies that provide energy management services to a number of industrial and large commercial customers. These services have resulted in significant GHG emissions reductions and operating efficiencies for those customers. To date, we estimate these programs have resulted in the reduction of three million tons of GHGs.

We anticipate that our voluntary program will help us learn about effective methods of obtaining GHG emission reductions and help us comply with any future regulatory program limiting GHG. Regardless of our planning, however, our ultimate strategy for complying with GHG-restricting regulations will depend greatly on the final direction and timing of such requirements. A well-constructed policy that gradually and predictably reduces emissions can be managed without undue disruption to the company or economy, though even the best plan will have rate impacts on our customers. Much of the future impacts also depend on how readily new technologies emerge, as well as the response of the gas market and resulting gas prices.

Cinergy and its generating stations are similar to other coal-fired utilities in our market region. Natural gas-fired units in our region are typically the market's price setters—meaning that they are the last units to be deployed or ''dispatched'' to meet short term peak demand—so they would not enjoy any particular advantage With CO_2 constraints unless gas prices were to drop dramatically, which is a scenario we find highly unlikely. Nuclear and hydropower stations will be well-positioned, though neither is likely to displace coal-fired generation in the short to medium timeframes because their capacity is fully utilized now, with no new construction anticipated in the near term. Renewable energy may well increase in the future, but there are significant impediments, both technologically and economically, before it will make much of an impact in the Midwest.

Coal fuels more than 80 percent of the Midwest electric market. We do not see it being displaced as the main fuel source for electric production without what we believe would be unacceptable economic and social consequences, not only to the region, but to the entire nation. Although other alternatives are likely to become more economic or practical over time with technological breakthroughs, the nation cannot dismiss a fuel that is as domestically abundant as coal. The capital expenditures we are making at our stations today to comply with the EPA's pending rules are prudent investments because we expect that the generating units will remain economically viable under any reasonable GHG program. We do not believe the resulting price dynamics in the natural gas market will render operation of our coal-fired generating stations cost-prohibitive.

The preparation of this report demonstrates our desire to inform our stakeholders of the GHG challenges we face as a coal-fired electric utility company and to provide insight into how we are meeting those challenges. Because we are a stakeholder-focused company, it is our goal to weigh the interests of all of our stakeholders and come to a balanced result. Our customers, the communities we serve, our employees, regulators, suppliers and most certainly our investors have much at stake as we anticipate and begin to prepare for the challenges we may face in a carbon-constrained world.

We do not project that any of the current legislative proposals would produce these higher prices in the short or medium timeframe. However, this example manifests the importance of developing a policy that does not force reductions too quickly or otherwise limit flexibility and international trading.

Risk of Very High CO_2 Prices Unlikely—Though Details Matter

It is our view that the very high range of prices shown above would only be expected in the near term (20 years) if sharp emissions reductions were required without being preceded by a period of slowed growth followed by zero growth or there were imposed limits on flexibility. Having said that, the fact is we don't know what prices will be and the risk remains. Should high CO_2 prices emerge within the next 20 years, they would flow through to electricity prices because there would be no time to replace the generation fleet with much lower emitting technologies that do not rely on high-priced natural gas. Because electricity prices play an important role in our manufacturing economy, we think that policies that cause dramatic price increases are not viable and, should they occur, would not last long because of political reaction.

One strategy to protect consumers and producers from CO_2 price risks may be to assign price caps to CO_2 that increase over time—this is the so called ''safety valve.'' Price caps will provide price certainty (or at

least protection from high prices) during the critical years of program start up. This should be important to climate change advocates because price shocks will likely result in a program reversal or unwinding. An unrelated, yet telling example is provided by the price shocks of the California energy crisis, brought on by flawed deregulation. They demonstrate how a program can be quickly scrapped if newly created markets are subjected to dramatic price increases.

Escalating price caps should be given serious attention by policy makers because of the following important points:

1. There is a broad range of uncertainty around forecasted CO_2 prices as reported by policy analysts. Reported prices are only the single values within a broad distribution of outputs that depend on what input assumptions are made.

2. The actual prices generated by a real market will be higher or lower than the reported numbers and will vary depending on the supply-demand balance at any particular moment.

3. If they happen to be quite a lot higher for a sustained period, which is a real possibility, the program will be at risk of being rolled back because of the economic pain generated.

4. An escalating price cap will prevent this from happening, while creating a less uncertain price signal for those trying to make forward looking decisions.

5. An escalating price cap will serve as the program's insurance policy, dramatically decreasing the risk of the program producing very high prices that lead to its demise.

ENDING THE ENERGY STALEMATE: REDUCING RISKS FROM CLIMATE CHANGE

To address the risks of climate change resulting from energy-related greenhouse gas emissions without disrupting the nation's economy, the Commission recommends:

Implementing in 2010 a mandatory, economy-wide tradable-permits system designed to curb future growth in the nation's emissions of greenhouse gases while capping initial costs to the U.S. economy at $7 per metric ton of carbon dioxide-equivalent.

Linking subsequent action to reduce U.S. emissions with comparable efforts by other developed and developing nations to achieve emissions reductions via a review of program efficacy and international progress in 2015.

The Commission believes the United States must take responsibility for addressing its contribution to the risks of climate change, but must do so in a manner that recognizes the global nature of this challenge and does not harm the competitive position of U.S. businesses internationally.

The Commission proposes a flexible, market-based strategy designed to slow projected growth in domestic greenhouse gas emissions as a first step toward later stabilizing and ultimately reversing current emissions trends if comparable actions by other countries are forthcoming and as scientific understanding warrants.

Under the Commission's proposal, the U.S. government in 2010 would begin issuing permits for greenhouse gas emissions based on an annual emissions target that reflects a 2.4 percent per year reduction in the average greenhouse gas emissions intensity of the economy (where intensity is measured in tons of emissions per dollar of GDP).

Most permits would be issued at no cost to existing emitters, but a small pool, 5 percent at the outset, would be auctioned to accommodate new entrants, stimulate the market in emission permits, and fund research and development of new technologies. Starting in 2013, the amount of permits auctioned would increase by one-half of one percent each year (i.e., to 5.5 percent in 2013; 6 percent in 2014, and so on) up to a limit of 10 percent of the total permit pool.

The Commission's proposal also includes a safety valve mechanism that allows additional permits to be purchased from the government at an initial price of $7 per metric ton of carbon dioxide (CO_2)-equivalent. The safety valve price would increase by 5 percent per year in nominal terms to generate a gradually stronger market signal for reducing emissions without prematurely displacing existing energy infrastructure.

In 2015, and every five years thereafter, Congress would review the tradable-permits program and evaluate whether emissions control progress by major trading partners and competitors (including developing countries such as China and India) supports its continuation. If not, the United States would suspend further escalation of program requirements. Conversely, international progress, together with relevant environmental, scientific, or technological considerations, could lead Congress to strengthen U.S. efforts.

Absent policy action, annual U.S. greenhouse gas emissions are expected to grow from 7.8 billion metric tons of CO_2-equivalent in 2010 to 9.1 billion metric tons by 2020—a roughly 1.3 billion metric ton increase. Modeling analyses suggest that the Commission's proposal would reduce emissions in 2020 by approximately 540 million metric tons. If the technological innovations and efficiency initiatives proposed elsewhere in this report further reduce abatement costs, then fewer permits will be purchased under the safety valve mechanism and actual reductions could roughly double to as much as 1.0 billion metric tons in 2020, and prices could fall below the $7 safety valve level.

The impact of the Commission's proposed greenhouse gas tradeable-permits program on future energy prices would be modest. Modeling indicates that relative to business-as-usual projections for 2020, average electricity prices would be expected to rise by 5–8 percent (or half a cent per kilowatt-hour); natural gas prices would rise by about 7 percent (or $0.40 per mmBtu); and gasoline prices would increase 4 percent (or 6 cents per gallon). Coal use would decline by 9 percent below current forecasts, yet would still increase in absolute terms by 16 percent relative to today's levels, while renewable energy production would grow more substantially; natural gas use and overall energy consumption, meanwhile, would change only minimally (1.5 percent or less) relative to business-as-usual projections.

Overall, the Commission's greenhouse gas recommendations are estimated to cost the typical U.S. household the welfare equivalent of $33 per year in 2020 (2004 dollars) and to result in a slight reduction in expected GDP growth, from 63.5 percent to 63.2 percent, between 2005 and 2020.

The PRESIDING OFFICER. The Senator from Missouri.

SMALL BUSINESS HEALTH FAIRNESS ACT

Mr. TALENT. Madam President, I am hopeful that later in the day the Senate will be able to take up the Genetic Nondiscrimination Act. It is a bill I sponsored in the past. I know discussions are going on right now about getting it done, and hopefully we will be able to get it done. If that happens, it will be in no small measure because of the leadership of Senator ENZI, who has already shown in the brief period that we have been in session a great ability to work with Senator KENNEDY and others on the HELP Committee to pass legislation.

I was moved by that to come down and to discuss another piece of legislation that a number of us are discussing with Chairman ENZI. I am grateful to him for his openmindedness to it and the discussions that have been going on. I am talking about the Small Business Health Fairness Act which the chairman of the Small Business Committee, Senator SNOWE, will introduce today for herself and a number of others who have sponsored this bill in the past.

I congratulate Senator SNOWE on her great work on behalf of this bill. I am hopeful that we will be able to pass it this year in the Senate. It may be the most significant thing we can do to reduce the number of people in this country who do not have health insurance.

I want to talk about that for a few minutes. There really is no problem in confronting small business and the economy greater than that problem. It is everybody's problem, even if you have health insurance.

There are 44 million people in the country who do not have health insurance. We have about 500,000 people in Missouri—about 10 percent of our State's population, a little less than that, including 70,000 children who get up and go to school without any health insurance coverage.

Sixty percent of the people in the State of Missouri and around the United States who do not have health insurance are working people. It is a mistake to assume that most of these folks are people who are not employed. They are not classically the disadvantaged people as we normally think of that. Most of those folks we have made eligible for Medicaid, which certainly has a problem, but it is at least health insurance coverage.

Health insurance costs have been increasing for small business employers and their employees on average about 20 percent per year, which means this is not just a health access problem but a huge economic growth problem as well.

Those small businesses that are providing health insurance are having to deal with these enormous costs every year. They will have to take money out of wages or out of investments in the business to try to keep their heads above water in terms of providing health insurance.

Over the years of my experience in the House and the Senate, I have encountered many such small employers. I have talked to hundreds of their employees. We have all done that. All of us, when we get around our States, hear about this problem. It is everywhere. It may be the biggest day-to-day problem the average person in our State confronts, at least if they work for a small business.

Let me just tell you one story of a fine lady named Janet Hoppin from

Missouri. Janet owns a small business in the St. Louis area. She wants to do right by her five employees by providing them with health insurance. Over the past few years, one of her employees became ill. She contracted breast cancer. As a result of that, the insurance costs for Janet's company have increased by $431 per employee per month, or a total increase over the last 2 years of 35 percent. Actually, it could have been a lot more than that.

I have talked to people whose insurance costs have doubled or tripled over the course of several years, particularly if an employee actually gets sick and has the temerity to file a major health insurance claim.

Like most small business owners, health insurance costs for Janet affect the rest of her business. There is downward pressure on the wages and salaries of her other employees and her own salary. She has resolved this by taking it out of her own salary so she can continue to provide health insurance for herself and for her employees.

There are many small businesspeople around the country who are doing exactly the same.

One of the bad things about this situation is because so many people who work for small businesses do not have health insurance, it is easy to assume that small businesspeople just do not care about their employees and that is why they don't provide health insurance. It is terribly unfair. They do care about their people. They work with them every day. Most small business owners are employees of their own company. If they can provide health insurance to the company and the other employees, they will be able to get health insurance under a group policy rather than having to try to go out and buy it on the individual market. It affects their ability to compete for employees.

For a while, when I was chairman of the Small Business Committee in the House, I would meet with groups of small businesspeople and I would ask them to raise their hand if they had lost an employee or had been unable to hire an employee because the employee wanted to work for a big business that had health insurance. Whenever I asked that question, at least half of the people there would raise their hand. They have a disadvantage of getting good employees because of their competitive disadvantage in buying health insurance.

What do we do about it? Fortunately, there is a solution. The legislation has passed the House I think 4 or 5 years running by large bipartisan votes. It passed the House by 100 votes the last time it passed. It is a solution that the President strongly supports. It is a solution that had bipartisan sponsorship in this body last year. What I am about to say is not unimportant at the same time when we are all suffering under a tight budget. It is a solution that doesn't cost the taxpayers any money. It is not a Government program as such. It is not the Government deciding to buy health insurance for somebody, or expanding Medicaid. Those may be good things to do.

We do not have to do it here. We need to empower small business people to do what the big companies already do. We need to allow them to buy health insurance as part of big national pools which will save money because the overhead costs, the administrative costs of buying health insurance, are a lot greater per employee for small businesses than for big businesses. The reason for that is there are economies of scale in insuring large pools.

That is what the small business health plan would do. It would take advantage of the same national structure currently used by 275,000 plans which already cover over 72 million people, including union members, people who work for Fortune 500 companies. The irony is that everyone else in the country, except the employees of small business, everyone else who has health insurance, has it now as part of a big national pool, either private or public. Either you work for a big company—in Missouri at Anheuser-Busch or Sprint or Hallmark—and you are part of a big national pool or maybe you are a labor union member and you get it through one of their health and welfare plans or you are on a public plan, in Medicare, a big national pool, or Medicaid or you are a Federal employee or a retired Federal employee.

There is a reason everyone else gets their health insurance as part of a big national pool. It is cheaper that way. It is administratively easier. The overhead costs are less. It is common sense to believe it costs less to set up and administer a plan where you can spread the costs over a pool of hundreds of thousands of people, rather than a pool of 5 or 10 employees or fewer, which is what people such as Janet Poppin have to face every day today.

All we want to do is allow the trade associations, in which small businesses currently organize for other purposes, to sponsor national health insurance pools. The National Restaurant Association, as an example, could go out, contract with insurance companies nationally, and then you join the restaurant association if you own a small restaurant, as my brother does, and you become part of this big pool. The easiest way to think of it is a small company would get health insurance on the same terms and conditions as if you had been acquired by a Fortune 500 company. You become like a little division of that company. It would be exactly the same thing.

What would it mean for this country if at no cost to the taxpayers every working person has access to health insurance as if they worked for a Fortune 500 company? When I chaired the Committee on Small Business, we had a number of hearings on this. Senator SNOWE has had a number of hearings. We estimate a reduction in the cost of health insurance to small business of 10 to 20 percent, and for very small businesses it would be much less than that. For every percent you decrease the cost of health insurance, many people become insured. Small businesses, such as my brother's, who runs this little restaurant, are in a position now to afford health insurance for their employees and, by the way, for themselves because the owners of the companies are almost always employees of the company themselves and they will go out and get health insurance this way.

Think of the savings from their perspective, not just in money but time and effort. I use my brother as a example. He and my sister-in-law run the place. Getting health insurance for their business means spending hours and hours soliciting bids, trying to work their way through it, making sure they are not cheated, dealing with all the legal risks today of making a contract like that. They do not know whether they might get sued for something if they contract with an HMO and there is a screwup. If you can join the restaurant association, they send him the papers, the papers describe what options are available for the employees, and he says I will pay this much for you, you choose what you want.

It is easier, it is cheaper, it is safer. It will mean millions of people who currently do not have health insurance coverage will get it and millions of others will get better, more secure, lower cost, higher quality health insurance—again, at no cost to the taxpayer.

There isn't any reason not to do this. We have been working with those who have had concerns about solvency. How do we make sure these association health plans are solvent? That is a legitimate concern. We already have in the bill tough standards to try and guarantee that. We want to work with people to try and make certain that everybody is satisfied on those points.

We can work our way through this and produce a bill that will make a big difference for America. I am not the only one who thinks so. In addition to Senator SNOWE and her great leadership, nine other Members of the Senate who cosponsored this bill last year, Association Health Plans, or the Small Business Health Fairness Act, strongly supported by the administration, 170 organizations representing over 12 million employers, and 80 million American workers support it. The coalition is as broad as the U.S. Chamber, National Federation of Independent Business, the American Farm Bureau, the Associated Builders and Contractors, the Latino Coalition, the National Black Chamber of Commerce, the National Association of Women Business Owners. They all support it.

I mention the Farm Bureau. The Presiding Officer and I have a number of farmers in our States. One of the big problems they have is getting health insurance for themselves and their families. This is a classic example of

people trapped in a small group for individual markets situation. What if they could join the American Farm Bureau and become part of a pool of tens and tens of thousands of people?

In recessions, when people get laid off from big businesses—and I have talked to many people in this situation—one of the biggest and most immediate problems when you are laid off is what do you do about health insurance, particularly if you have kids. Many people are able to get another job pretty quickly, maybe with a small business, or they want to start their own spinoff firm when they get laid off from a big company. This is increasingly common today, and a big problem they have is health insurance. What do they do about health insurance? A sole proprietor can join the Chamber of Commerce and the National Chamber of Commerce would be able to start an association health plan under this bill. You would be part of a pool of tens and tens of thousands of people. You would not be at the mercy of a big company deciding it is going to cut your job.

I could go on and on on the subject. I am sure the Senate has become convinced of that, if I have convinced Senators of nothing else. I am very enthusiastic about it. I cannot compliment enough the work of Senator SNOWE. Her leadership on this is crucial. Her credibility in this Senate is great. She has taken the whole Small Business Committee in the Senate in the direction of supporting this. I am very pleased to be helping her in this and grateful again to Senator ENZI for his open-mindedness. I cannot speak for him and do not want to, but I remember I was presiding and the Senator from Wyoming was speaking about what he intended to do with the HELP Committee. He said his door was open; he wanted to hear ideas from Senators. He wanted to work with them. He has been as good as his word. I am grateful to him for that.

Let's do this. Members have concerns and we want to address them. I believe we can address them. This is too good an idea to pass up. There is no reason to. I have said for several years, what is the downside? Suppose we allow these associations, however they are constructed, to set up these association health plans, and it doesn't work as well as we think it will work; they do not lower costs quite as much as we hope, and not as many people take advantage of them. What is the downside? Not so many people use the plans as we hope will use the plans. There is no cost to the taxpayers. It is not as though we are spending billions and billions of dollars for something and if it does not work, there is an enormous loss. We are giving people another option, the same option big companies already have. There is no reason not to do it.

Let's work out whatever concerns we have, pass this on a bipartisan basis as they have in the House, and empower our small business people and their employees to have health insurance and to have protection against these rising costs.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ISAKSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DORGAN. Mr. President, I ask unanimous consent to speak in morning business for as much time as I may consume.

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

SOCIAL SECURITY

Mr. DORGAN. Mr. President, we are about to embark on a 1-week recess. Many of us will be back in our home States next week. I expect that most of us will hold some kind of event or meeting to talk about Social Security with our constituents. I want to talk about that a bit today.

In the Senate, we deal with all kinds of issues, some big and some small. Sometimes we treat the big issues in a manner that suggests it is a rather small item. Sometimes we take a very small item and blow it up into something we suggest is very large.

On the issue of Social Security, my feeling is people on all sides of this debate understand this is a very big issue with very big consequences for the American people.

It will not be surprising that we will have very aggressive differences of opinion on how we should handle this issue of Social Security. The reason it is brought to our attention at this point is the President is offering a proposal. He says the proposal is not specific, and I agree with that, but it is specific enough for us to understand what he wants to do.

What the President has been saying—and the Vice President as well and others in the administration—is that Social Security is about to be bankrupt, broke, flat busted, and any number of other words to describe that Social Security is about to fail.

As a result, the President says we should do the following: We should borrow a substantial amount of money now, anywhere from $1 trillion to $3.5 trillion or more, invest it in the stock market in private accounts, change the indexing of Social Security, reduce Social Security benefits, and with a combination of the remaining Social Security and his private accounts, people will be better off in the long term.

Social Security was created in 1935. When Franklin Delano Roosevelt signed that legislation, he talked about the legislation being able to lift people out of a poverty-ridden old age. At that point, one-half of our elderly were living in poverty. That is what was happening to our grandparents: 50 percent in poverty; now it is less than 10 percent. Why? Because Social Security has lifted tens of millions of Americans out of poverty in the last 70 years.

The President says Social Security needs to be changed because it is about to be bankrupt. With respect, I say to the President that he is wrong. Social Security is not about to be bankrupt. Social Security has some problems that are born of success.

What is the success? In a century, we have increased life expectancy in America from about 46 years of age to 76 years of age. We ought to celebrate that fact. What a successful thing to have happen. Since people are living longer, better lives, we have some strain on the Social Security program. But it is not about to be bankrupt, and it does not require major surgery to fix it. It will require some adjustments as we proceed ahead, but it is not about to be bankrupt or flat busted. And it is not a cause to take apart what I think is one of the most successful programs we have ever developed in this country to lift a large group of Americans out of poverty.

The President is not new to this position of private accounts. In 1978, he ran for Congress in Texas. President George W. Bush, then a candidate for Congress, said in 1978: Social Security will be broke in 10 years. That is when he was a candidate for Congress. What was his remedy for that in 1978? Private accounts. Some things never change very much.

The fact is, the President was wrong in 1978. Social Security did not go belly up in 1988 as he predicted. And the fact is, he was wrong then calling for private accounts in Social Security, and he is wrong now.

I happen to support private investment accounts such as IRAs and 401(k)s. I have them and so do many Americans, and we have incentivized them with tax incentives because we believe in encouraging people to invest in the market and to save for retirement. But I do not believe we ought to take a portion of the core insurance program—and that is what Social Security is, an insurance program, not an investment program—that provides the bedrock financial security for retirement.

We pay for Social Security principally through a paycheck deduction called FICA. That is your FICA tax. The I in FICA is for insurance, not investment; insurance, that is what it stands for. It creates an insurance program for which you pay. Yes, part is retirement old-age benefits, some is disability. Another part is for dependents, should the wage earner die.

So it is more than just an old-age benefit. It has always been an insurance program, and never an investment program.

The President says let's try to create an investment program out of Social Security and begin to take it apart.

The suggestion is, of course, that the investment portion of Social Security would always be wonderful.

Will Rogers once said his daddy told him how to do really well. He said his daddy said you should buy stock and hold it until it goes up, and then you should sell it. And he said if it does not go up, do not buy it. So that was Will Rogers's description of how his dad suggested he handle the market.

I suppose there is an element of that suggestion in Social Security because of those who say if one takes Social Security apart and creates private investment accounts, things will be just Nirvana, just fine. But we all know better than that.

I believe there ought to be two major parts to a retirement program. One is Social Security. Make sure it is there—it always has been. Make sure it works. We can do that. The second is the private investments that we now incentivize to the tune of $140 billion each year in tax incentives to encourage people to invest in IRAs and 401(k)s and private pensions. I support both. Strengthen, improve, and keep Social Security, and provide additional incentives for private savings in 401(k)s and IRAs.

I just described President George W. Bush's prediction about bankruptcy in 1978. He said Social Security would be bankrupt in 10 years, by 1988. We have plenty of people who say it is going to go broke, flat busted, on its back, bankrupt. They remind me of the economists who predicted ten of the last two recessions. It is easy enough to walk around and claim these things. However, it is just not accurate to suggest that Social Security is about to go belly up.

What is true is that the taxes collected for Social Security this year are expected to exceed the amount of money we will need to pay out in Social Security by $160 billion. We will have a surplus this coming year in the Social Security accounts of $160 billion. That money will be invested in U.S. Treasury securities.

The President has a fiscal policy that suggests we have large deficits. I understand there are a lot of reasons for it, but I do not understand why we were not a bit more conservative earlier. I stood on the Senate floor 4 years ago, and when the President said, We are going to have 10 years of surplus and we need to start doing big tax cuts right now, I and some others said maybe we should be a little conservative. Maybe we will not have 10 years of surplus. Maybe things will change. Maybe something will happen we do not anticipate. Maybe we ought to be a little conservative. No, Katey, bar the door, let us pass these tax cuts.

What happened? We had a terrorist attack. We have had a war on terror. We have had a war in Iraq. A whole series of things have occurred that have changed the economic fortunes of this country. We went from the largest surpluses in the history of this country to the largest deficits. We are now the biggest debtor country in the world. We have a budget in front of us with budget deficits that I believe are predicted at $427 billion this year. But that is not accurate at all because there is zero money in the budget for Iraq and Afghanistan. I will be going to a hearing in about 10 minutes with Secretary Rumsfeld. They are asking for $82 billion in emergency funding now.

So in the next fiscal year add another $82 billion for Iraq and Afghanistan—we are spending $1 billion a week—and that gets us to roughly a $500 billion estimated deficit next year. Then take the Social Security surplus out of it because we cannot use those surplus funds against the rest of the budget. It ought to be put in a trust fund, not counted. So then there is an honest deficit next year of about $660 billion or so. That is where we are. That is where we start.

So the discussion is not just about Social Security. It is a discussion about values. I think most of us would agree that there are a couple of things in life that are of primary importance to us. One, we will do almost anything for our kids. If there is anything more important to any of us than our kids, I would like to hear what it is.

Second, we care a lot about what happens to grandpa and grandma. When they reach that point in their life where they cannot work anymore, they are dependent on what they might have saved, dependent on Social Security, the question is, How do we as a society make sure that they are not living in poverty as 50 percent of them were in 1935?

Some say there needs to be adjustments in Social Security and we cannot afford that. I say there will need to be some adjustments in Social Security, but it is not major surgery. It is not major adjustments. The question is, if we cannot afford that, it is a matter of priorities. We are going to afford $82 billion just like that in funding, I will hear from Secretary Rumsfeld about in a few moments. We can afford funding for the one I saw this morning that piqued my interest, Television Marti. This is unbelievable.

This morning I was looking through the budget. With Television Marti, for people who do not know it, we broadcast signals to Cuba with an aerostat blimp called Fat Albert. The purpose of using this blimp, Fat Albert, to broadcast television signals into Cuba is to tell the Cuban people how good things are in our country. Of course, they know that from listening to Miami radio stations, but they still want to send them the television signal.

The fact is, Castro jams the television signals. So we broadcast signals to no one. Cubans cannot get it. We have done that for many years. We have spent nearly $200 million, and this year, to broadcast a signal no one receives in Cuba, the President is proposing we double the funding in the budget.

We cannot afford Social Security, we cannot afford this, cannot afford that, but we can double the funding for Television Marti to broadcast signals to no one?

My point is, this is about values and priorities. I noticed in the playbook on the Social Security debate that was given out to those who are supportive of the President's position says—this is the instruction on communication: Do not say that Social Security lifts seniors out of poverty. People do not appreciate all that Social Security does.

That is what one is not supposed to say. But I said that earlier because I believe that is the fact, that Social Security lifts millions of seniors out of poverty. However, for those who support the President's program to take apart part of the Social Security system and go to a privatization system, they say do not say Social Security lifts seniors out of poverty because people do not appreciate all that Social Security does.

I do not see it right here but another piece of the playbook that I found interesting was, do not try to destroy myths. People have certain myths about Social Security. One of the myths that bounces around the Internet every day all day and talk radio is that Members of Congress do not pay Social Security taxes. In fact, that is one of myths that this playbook mentions. When one hears that from people, do not demolish that myth, let them think that. That tends to mess things up a little bit.

There was a leaked memorandum from the White House about 3 weeks ago by the architect of the Social Security plan. The person in the White House who is working on this plan had drafted this memorandum to all the stakeholders in the administration saying, here is what we are wanting to do. The key point to it was this:

> For the first time in six decades, the Social Security battle is one that we can win . . .

The implication of that is quite clear. There are some who have never liked Social Security, never wanted Social Security to exist. They have never had the opportunity to take it apart or repeal it, and this is the first time in six decades that the Social Security battle can be won.

One of the leading spokespersons on the far conservative rightwing said: Social Security is the soft underbelly of the welfare state.

It is not, of course. But that philosophy describes that there are some who simply never liked Social Security, do not believe it ought to exist, and will support any effort to begin taking it apart.

My feeling is what we ought to do is decide as a Congress that there are two responsibilities with respect to retirement security. One is to preserve, protect, and strengthen the Social Security system for the long term. According to Social Security actuaries, the Social Security program will pay full benefits from now until the year 2042.

According to the nonpartisan Congressional Budget Office, if there are no changes made, the Social Security system will pay full benefits until the year 2052.

According to the analysts, the Social Security program will need no adjustments in the next 75 years if we have the kind of economic growth that is predicted by the President and others, when they say you can get a 6 or 7 percent return in private accounts. If you have the economic growth that produces that kind of return in the private accounts, you have the economic growth that means Social Security will exist without adjustments for the next 75 years. You can't have it both ways. Either we are going to have, as the actuaries predict, dramatically lower economic growth than we have had in the past 75 years, and that is about 3.4 percent average real economic growth, or we are going to have the more pessimistic view of the Social Security actuaries in their recommendations, about 1.9 percent growth. If we have 1.9 percent growth, you would not be able to pay full benefits—you would only be able to pay 73 percent of the benefits after 2042. But if that is the case, you don't have the economic strengths to produce the corporate profits to lift the stock market to provide the return in private accounts. You can't argue both sides in the same question.

My belief, again, is we should preserve, protect, and strengthen the Social Security system. It works. We know it works. It has lifted so many millions of Americans out of poverty.

Second, yes, in retirement security we ought to do everything possible to say to all Americans who are working: You need to do more than rely on Social Security. It will be there when you are ready to retire, but you need to do more than that. We want you to invest. We want employers to offer retirement plans and we will provide incentives for them to do that for their employees. We want employees to invest in IRAs, we want employees to invest in 401(k) programs, and we are already providing significant incentives there. But I suggest we increase them because it will be a complement to keeping Social Security as the core retirement insurance.

So, as I indicated, there are small matters and big issues before this body. The question of what we do with the Social Security program, strengthen it, preserve it, and extend it as a core social insurance program, or begin to take it apart and change it from an insurance program to an investment program—is a big issue. I stand on the side of believing that Social Security works. It has enriched the lives of senior citizens in this country for decades and will continue to do so for decades.

I also stand here saying that it is in my judgment a meritorious issue for all of us to care a lot about retirement security beyond the Social Security program itself.

The one thing we should do and must do is all begin from the same set of facts. My colleague, the late Senator Moynihan, used to say everyone is entitled to their own opinion, but not everyone is entitled to their own facts. I hope as we work through and think through this great debate on Social Security that we will at least agree on the basic set of facts. Those facts, I think, if read in a manner that represents a level look, will tell us this Social Security program has been an enormous success for this country and will be in the future as well, if we have the strength and courage to do what is right to preserve it and strengthen it.

I yield the floor and I make the point of order a quorum is not present.

The PRESIDING OFFICER (Mr. THUNE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DURBIN. Mr. President, I ask unanimous consent to be recognized as if in morning business.

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

SOCIAL SECURITY

Mr. DURBIN. Mr. President, today we were visited on Capitol Hill by Alan Greenspan. Alan Greenspan is the head of the Federal Reserve and is considered the economics guru who comes to Washington periodically, to Capitol Hill, and gives us advice. Sometimes that advice is very wise and sagacious, and sometimes I think it is totally political—the same Alan Greenspan who helped President Clinton with the task of reducing the deficit, the right thing to do.

President Clinton came up with a proposal which in fact reduced the deficit, a deficit which through previous administrations of President Ronald Reagan and President George Bush finally came to an end at the end of the Clinton administration. For the first time in modern memory, we were generating surpluses in the Federal Treasury. All of that red ink finally ended. We moved into the black. Mr. Greenspan was the inspiration for this initially, saying to the Clinton administration, get serious and get real about the deficit. We were anxious to listen to Mr. Greenspan in following years about what his advice might be.

Along came the Bush administration 4 years ago proposing dramatic tax cuts. The argument for the White House was, if you have a surplus, more money in the Treasury than you need, for goodness sakes, give it back to the people who paid it. That was the argument for the tax cut.

Many of us warned that sometimes the economy turns around, and things happen you don't anticipate. If we are going to have tax cuts, we should have some sort of a safety valve there. If things go badly, the tax cuts will not continue and drive us into deficit. Mr. Greenspan didn't argue for that kind of caution at all, and the Bush White House rejected that notion.

What happened? Exactly as we anticipated—unforeseen circumstances; the surplus disappeared, the tax cuts were there. Along came a recession, followed by a war on terrorism, followed by the invasion of Iraq and Afghanistan, in addition to the tax cuts still being on the books. That grand surplus disappeared into a deficit—the biggest deficit in the history of the United States.

Now comes the President with a new plan. He says let us privatize Social Security. Let us create private and personal accounts, knowing full well that to do that you have to take money out of the Social Security trust fund so people can invest it in mutual funds. Some say that is too risky. Regardless of whether it is risky, it does take money out of the Social Security trust fund and adds to the deficit.

In comes Mr. Greenspan today for more words of advice. We welcome him to Capitol Hill, but we wait patiently and anxiously to hear that same deficit fighter of years ago comment on what we are seeing today. Where is Mr. Greenspan when it comes to these tax cuts that have driven us into this deficit? Where is Mr. Greenspan when it comes to privatizing Social Security that will make it worse? Sadly, he understands that deficits are not healthy, but Dr. Greenspan is afraid to prescribe any serious medicine.

One of the concerns we have with the Social Security trust fund is after the surplus has ended and the Bush administration's tax cuts brought us into this new era of deficits, more and more money is being pulled out of the Social Security trust fund.

The President, who tells us he is worried about the Social Security trust fund, has been the biggest problem the Social Security trust fund has run into. His tax cut plan and his privatization plan attack literally the balance in the Social Security trust fund. Congress has joined in this.

Every time Congress voted for the tax cuts, it voted to raid the Social Security trust fund. Since 2000, the Social Security trust fund surplus has lost $800 billion—$800 billion taken out of the Social Security trust fund since the year 2000 when President Bush came to office.

Now the President tells us he is worried about Social Security's future. The obvious question is, Why weren't you worried when you were taking all of this money out of the Social Security trust fund?

How much of that surplus was paid back to strengthen the Social Security trust fund since President Bush took office? Zero. The President has been taking their money out of the Social Security trust fund. That means workers have paid $800 billion more into Social Security in taxes than were necessary to pay out benefits and the Social Security trust fund turned around,

and that money was removed by the President's policies.

The Bush administration has borrowed $800 billion from the American public over the last 5 years—money that was paid to the Government for the Social Security trust fund, for their tax cuts, and to fund the war. Instead of paying it back, the Republicans have called the bonds on the Social Security trust fund ''meaningless IOUs.'' How is that for respect for the Social Security trust fund.

Now to draw attention away from the Republican idea of cutting benefits instead of paying the trust fund back, the Republican Policy Committee has come up with a document criticizing a Democratic plan on Social Security that doesn't exist. We talked about that earlier this morning. In their document, the Republican Policy Committee says the Democrats want to use the Social Security trust fund surpluses for the next 13 years for new Government programs.

We have been saying for years that we need to protect the Social Security trust fund. The Democratic position was well articulated by President Clinton in 1998. In his State of the Union Address, President Clinton said, ''What should we do with the projected budget surplus? Save Social Security first.''

That has been the Democratic position—not the Republican position.

President Clinton went on to say, ''I propose that we reserve 100 percent of the surplus—that's every penny of any surplus—until we have taken all the necessary measures to strengthen the Social Security system for the 21st Century.''

In his campaign to succeed President Clinton, former Vice President Gore—they kidded him about this—talked about a lockbox to protect the trust fund for Social Security. But since President Bush was elected in 2000, Democrats in Congress have been trying to preserve the Social Security trust fund. We have tried time after time to amend President Bush's reckless tax cuts and to protect the Social Security trust fund.

Here is a chart which goes through the variety of votes taken on the floor of the Senate since President Bush took office. Each one of these six votes was an effort by the Democrats to protect the Social Security trust fund from tax cuts and spending by President Bush.

Starting with the Bush tax cut in 2001, Senator BYRD, to forego tax cuts to extend Social Security, was defeated on a party-line vote—38 Democrats, yes; 48 Republicans, no.

The Harkin amendment to delay the tax cuts until we enact legislation that ensures the long-term solvency of Social Security and Medicare, party-line vote, defeated; 45 Democrats voted yes, Republicans voted no, 49.

The list goes on.

The point is that repeatedly we have said to the Bush administration, if you keep taking money out of the Social Security trust fund, you are going to jeopardize the future. You have to protect it. Don't give a tax cut to the wealthiest people in America and endanger Social Security.

Six different times, the Republicans in the Senate were given a chance to agree with this, and six different times they prevailed and voted ''no.'' Now they come before us today and argue it is the Democrats who want to take money out of the Social Security trust fund.

Take a look at the reality of deficits under this administration. Take a look at the surplus, the black ink, inherited by President Bush, and then look at deficits that have been created. One-half of this deficit was created by tax cuts, primarily to the wealthiest people in America.

Now look at how this deficit will grow, if the President's privatization plan on Social Security goes through.

Mr. Greenspan came to Capitol Hill. He had a chance to talk about being fiscally conservative. He had a chance to tell us that privatizing Social Security was a bad idea because of the deficits it creates for future generations. But once again, he stopped short of that kind of sound advice.

Today, Mr. Greenspan told the Senate Banking Committee the single biggest tool the Government has to increase national savings is to reduce the deficit. We all agree with that. Unfortunately, Mr. Greenspan is not candid and direct when it comes to the President's privatization plan for Social Security, which adds dramatically to the deficit.

Imagine, over 20 years we are going to add $4 or $5 trillion to the deficit so that President Bush can create the so-called private accounts. That is shortsighted. It is not going to help the country recover.

After the President submitted a budget last week showing a dramatic worsening of the Nation's fiscal outlook, the President sent Congress a request for an additional $82 billion in spending for the war in Iraq. The money to fund the war on terrorism, the money to fund this war in Iraq is not included in the President's budget. President Bush's plan to privatize Social Security was not included, either. The $2 trillion that is needed for this transition in Social Security is not there.

The Republican Policy Committee wants to criticize Democrats on Social Security instead of answering the hard questions about the President's privatization plan. Where did the money go that Americans paid into Social Security? Where will the money come from to transition to any privatization system?

Instead of criticizing the so-called Democratic bill that does not exist, the Republicans ought to produce their bill to privatize Social Security. Once the American people understand it doesn't add up, they will reject it.

We are going to go back to principles and values which say we should protect Social Security first. That is what President Clinton said. That should still be our guiding value in this debate.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CORNYN. Mr. President, I understand we are in morning business.

The PRESIDING OFFICER. The Senator is correct.

NOMINATIONS

Mr. CORNYN. Mr. President, I will spend a few minutes correcting the record in response to a question of press availability on Tuesday about whether Democrats were opposing as a caucus all of the renominated judges that previously were denied an opportunity for an up-or-down vote when a bipartisan majority stood ready to confirm them last year.

The Senate minority leader said, ''Renomination is not the key. I think the question is, those judges that have already been turned down in the Senate''—in other words, he said these judges, even though they commanded the support of a bipartisan majority of the Senate during the last 2 years and were not permitted to have an up-or-down vote, he characterized those judges who have now been renominated by the President as judges who have, in fact, been turned down by the Senate.

So my question is, to whom is the distinguished Democratic leader referring? None of President Bush's nominees have been turned down by the none, zero. The nominees he referred to were denied a vote altogether. In fact, all of these nominees would have been confirmed last Congress had majorities been allowed to govern as they have during the entire history of this country and the entire history of the Senate—save and except for the time when Democrats chose to deny a majority the opportunity for an up-or-down vote.

So I would say, correcting the record, it is a little difficult to turn down a nominee, as the minority leader has said, if the nominee never gets an up-or-down vote on the Senate floor.

Now, the second part I would like to correct is that when the Democratic leader was asked whether obstruction would create a 60-vote threshold for all future judicial nominees, he said:

> It's always been a 60-vote for judges. There is—nothing change[d].

He said:

> Go back many, many, many years. Go back decades and it's always been that way.

Well, we took his advice, and we did go back over the years. It turns out it

has not always been that way. Indeed, there has never, ever, ever been a refusal to permit an up-or-down vote with a bipartisan majority standing ready to confirm judges in the history of the Senate until these last 2 years. Many nominees have, in fact, been confirmed by a vote of less than 60 Senators. In fact, the Senate has consistently confirmed judges who enjoyed a majority but not 60-vote support, including Clinton appointees Richard Paez, William Fletcher, and Susan Oki Mollway; and Carter appointees Abner Mikva and L.T. Senter.

Specifically, the distinguished Democratic leader, yesterday, when he said this had been used by Republicans against Democratic nominees, mentioned Judge Paez. Well, obviously, that is not correct because Judge Paez, indeed, was confirmed by the Senate and sits on the Federal bench today.

So it reminds me of, perhaps, an old adage I learned when I was younger, when computers were not as common as they are now, and people marveled at this new technology, and those who wanted to chasten us a little bit would say, well, they are not the answer to all of our concerns, and they said: Garbage in, garbage out. In other words, if you do not have your facts right, it is very difficult to reach a proper conclusion.

So I thought it was very interesting—and I thought it was important—that the Democratic leader would make this claim, first of all, as I said, that these judges had been somehow turned down by the Senate when, in fact, they had been denied an opportunity for an up-or-down vote; and, secondly, that somehow there is a 60-vote requirement, and it has always been that way, because the facts demonstrate that both of those conclusions are clearly incorrect.

Finally, he said something I do more or less agree with, although I would differ a little bit on the contentious tone. He said: We're hopeful they'll bring them to the floor so there will be a fair fight. Well, I think I knew what he meant. I hope he meant a fair debate. Frankly, the American people are tired of obstruction and what they see as partisan wrangling and fighting over judicial nominees.

In the end, that is what happened during the Clinton administration when, perhaps, judges who were not necessarily favored by our side of the aisle did receive an up-or-down vote and did get confirmed. And that is, of course, what happened during the Carter administration. In fact, that is what has happened throughout American history—until our worthy adversaries on the other side of the aisle decided to obstruct the President's judicial nominees and they were denied the courtesy of that fair process, that fair debate, and an up-or-down vote.

Let me just conclude by saying this really should not be a partisan fight. Indeed, what we want is a fair process. We want a process that applies the same when a Democrat is in the White House and Democrats are in the majority in the Senate as we do when a Republican is in the White House and Republicans are in the majority in the Senate.

We want good judges. The American people deserve to have judges who will strictly interpret the law and will rule without regard to some of the political passions of the day. A judge understands that they are not supposed to take sides in a controversy. That is what Congress, the so-called political branch, is for. That is why debate is so important in this what has been called the greatest deliberative body on Earth. But we do not want judges who make political decisions. Rather, we want judges who will enforce those decisions because they are sworn to uphold the law and enforce the law as written. Members of Congress write the laws, the President signs or vetoes the laws, and judges are supposed to enforce them but not participate in the rough and tumble of politics.

So it is important that the process I have described produces a truly independent judiciary because we want judges who are going to be umpires, who are going to call balls and strikes regardless of who is up at bat. So I think the process we have seen over the last couple years, which, unfortunately, it sounds like, if what I am hearing out of the Democratic leader is any indication, is a process that has not only been unfair because it has denied bipartisan majorities an opportunity to confirm judges who have been nominated by the President, but it is one which, frankly, creates too much of a political process, one where it appears that judges who are sworn to uphold the law, and who will be that impartial umpire—it has made them part of an inherently political process.

Now, I want to be clear. It is the Senate's obligation to ask questions and to seriously undertake our obligation to perform our duty under the Constitution to provide advice and consent. But, ultimately, it is our obligation to vote, not to obstruct, particularly when we have distinguished nominees being put forward for our consideration, when they are unnecessarily besmirched and, really, tainted by a process that is beneath the dignity of the United States. Certainly none of these individuals who are offering themselves for service to our Nation's courts in the judiciary deserve to be treated this way.

So, basically, Mr. President, what we are talking about is a process that works exactly the same way when Democrats are in power as it does when Republicans are in power. That, indeed, is the only principled way we can approach this deadlock and this obstructionism. I hope the Democratic leader—who I know has a very difficult job because he, no doubt, has to deal with and reflect the views of his caucus on this issue—I hope he will encourage his caucus, the Democrats in the caucus, and we will all, as a body, look at the opportunity to perhaps view this as a chance for a fresh start, a chance for a fair process, one that is more likely to produce an independent judiciary that is going to call balls and strikes regardless of who is at bat.

Mr. President, I thank you for the opportunity. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Journal clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as a Senator from the State of South Dakota, I ask unanimous consent that the order for the quorum call be dispensed with.

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. In my capacity as a Senator from the State of South Dakota, I ask unanimous consent that the Senate stand in recess until 4 p.m. today.

There being no objection, the Senate, at 3:02 p.m., recessed until 4 p.m. and reassembled when called to order by the Presiding Officer (Mr. COBURN).

The PRESIDING OFFICER. The Senator from Massachusetts.

THE NOMINATION PROCESS

Mr. KENNEDY. Mr. President, before going up to the 3 o'clock briefing, I heard my friend—he is a friend and colleague of mine—Senator CORNYN make comments about our leader, Senator REID, accusing him and Democratic Senators of obstruction in the judicial nomination process earlier today.

That sort of rhetoric may be good for sound bites, but it doesn't match the reality of the Senate's tradition or the Founding Fathers' vision in creating the checks and balances of our constitutional system.

In the Constitutional Convention, they considered four different times who should have the authority about naming justices. On three of those four times, it was unanimous that the Senate of the United States was named. The last important decision the Constitutional Convention made was dividing the authority between the President and the Senate of the United States. Any reading of those debates will reaffirm that.

With all respect to my colleague making comments about our leader, the Senator from Nevada, he clearly has not read carefully that Constitutional Convention. It says that we have a responsibility, a constitutional responsibility to exercise our will on these matters. Historically, the record shows more than 98 percent of the President's nominees have been approved. In fairness to my friend who can speak for himself and does that very well and does not need me here, as to these attacks on Senator REID, it is important to understand the facts and

get them correct if we are going to have those interventions in the Senate.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENZI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

GENETIC INFORMATION NONDISCRIMINATION ACT OF 2005

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 3, S. 306, the Genetic Information Nondiscrimination Act of 2005; provided that there be 90 minutes of debate equally divided between the chairman and ranking member of the HELP committee; provided further that the only amendment in order, other than the committee-reported amendment, be a substitute which is at the desk, and following the use or yielding back of time the substitute amendment be agreed to, the committee-reported amendment, as amended, be agreed to, the bill, as amended, be read a third time, and the Senate proceed to a vote on passage without any intervening action or debate at a time determined by the majority leader, after consultation with the Democratic leader.

The PRESIDING OFFICER. Is there any objection? Without objection, it is so ordered.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 306) to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

The Senate proceeded to consider the bill which had been reported from the Committee on Health, Education, Labor, and Pensions with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 306

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 ''Genetic Information Nondiscrimination Act of 2005''.

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

[SEC. 2. FINDINGS.

[Congress makes the following findings:

[(1) Deciphering the sequence of the human genome and other advances in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often before symptoms have begun. Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.

[(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic ''defects'' such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to ''correct'' apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

[(3) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information. This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African-Americans. Once again, State legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear. To alleviate some of this stigma, Congress in 1972 passed the National Sickle Cell Anemia Control Act, which withholds Federal funding from States unless sickle cell testing is voluntary.

[(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of pre-employment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case *Norman-Bloodsaw v. Lawrence Berkeley Laboratory* (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

[(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

[TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

[SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

[(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

[(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

[(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 702(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b)) is amended—

[(A) in paragraph (2)(A), by inserting before the semicolon the following: ''except as provided in paragraph (3)''; and

[(B) by adding at the end the following:

[''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

[(b) LIMITATIONS ON GENETIC TESTING.—Section 702 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182) is amended by adding at the end the following:

[''(c) GENETIC TESTING.—

[''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

[''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

[''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

[''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 732(a).''.

[(c) REMEDIES AND ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

[''(n) ENFORCEMENT OF GENETIC NONDISCRIMINATION REQUIREMENTS.—

[''(1) INJUNCTIVE RELIEF FOR IRREPARABLE HARM.—With respect to any violation of subsection (a)(1)(F), (b)(3), or (c) of section 702, a participant or beneficiary may seek relief under subsection 502(a)(1)(B) prior to the exhaustion of available administrative remedies under section 503 if it is demonstrated to the court, by a preponderance of the evidence, that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Any determinations that already have been made under section 503 in such case, or that are made in such case while an action under this paragraph is pending, shall be given due consideration by the court in any action under this subsection in such case.

[''(2) EQUITABLE RELIEF FOR GENETIC NONDISCRIMINATION.—

[''(A) REINSTATEMENT OF BENEFITS WHERE EQUITABLE RELIEF HAS BEEN AWARDED.—The recovery of benefits by a participant or beneficiary under a civil action under this section may include an administrative penalty under subparagraph (B) and the retroactive reinstatement of coverage under the plan involved to the date on which the participant or beneficiary was denied eligibility for coverage if—

[''(i) the civil action was commenced under subsection (a)(1)(B); and

[''(ii) the denial of coverage on which such civil action was based constitutes a violation of subsection (a)(1)(F), (b)(3), or (c) of section 702.

[''(B) ADMINISTRATIVE PENALTY.—

[''(i) IN GENERAL.—An administrator who fails to comply with the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702 with respect to a participant or beneficiary may, in an action commenced under subsection (a)(1)(B), be personally liable in the discretion of the court, for a penalty in the amount not more than $100 for each day in the noncompliance period.

[''(ii) NONCOMPLIANCE PERIOD.—For purposes of clause (i), the term 'noncompliance period' means the period—

[''(I) beginning on the date that a failure described in clause (i) occurs; and

[''(II) ending on the date that such failure is corrected.

[''(iii) PAYMENT TO PARTICIPANT OR BENEFICIARY.—A penalty collected under this subparagraph shall be paid to the participant or beneficiary involved.

[''(3) SECRETARIAL ENFORCEMENT AUTHORITY.—

[''(A) GENERAL RULE.—The Secretary has the authority to impose a penalty on any failure of a group health plan to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702.

[''(B) AMOUNT.—

[''(i) IN GENERAL.—The amount of the penalty imposed by subparagraph (A) shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

[''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

[''(I) beginning on the date such failure first occurs; and

[''(II) ending on the date such failure is corrected.

[''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

[''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

[''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

[''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

[''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

[''(D) LIMITATIONS.—

[''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

[''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

[''(I) such failure was due to reasonable cause and not to willful neglect; and

[''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

[''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

[''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

[''(II) $500,000.

[''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

[(d) DEFINITIONS.—Section 733(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(d)) is amended by adding at the end the following:

[''(5) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

[''(A) the spouse of the individual;

[''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

[''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

[''(6) GENETIC INFORMATION.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

[''(i) an individual's genetic tests;

[''(ii) the genetic tests of family members of the individual; or

[''(iii) the occurrence of a disease or disorder in family members of the individual.

[''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

[''(7) GENETIC TEST.—

[''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

[''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

[''(8) GENETIC SERVICES.—The term 'genetic services' means—

[''(A) a genetic test;

[''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[''(C) genetic education.''.

[(e) REGULATIONS AND EFFECTIVE DATE.—

[(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor shall issue final regulations in an accessible format to carry out the amendments made by this section.

[(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

[SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

[(a) AMENDMENTS RELATING TO THE GROUP MARKET.—

[(1) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

[(A) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

[(B) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg–1(b)) is amended—

[(i) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

[(ii) by adding at the end the following:

[''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including

information about a request for or receipt of genetic services by an individual or family member of such individual).''.

[(2) LIMITATIONS ON GENETIC TESTING.—Section 2702 of the Public Health Service Act (42 U.S.C. 300gg–1) is amended by adding at the end the following:

[''(c) GENETIC TESTING.—

[''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

[''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

[''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

[''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 2721(a).''.

[(3) REMEDIES AND ENFORCEMENT.—Section 2722(b) of the Public Health Service Act (42 U.S.C. 300gg–22(b)) is amended by adding at the end the following:

[''(3) ENFORCEMENT AUTHORITY RELATING TO GENETIC DISCRIMINATION.—

[''(A) GENERAL RULE.—In the cases described in paragraph (1), notwithstanding the provisions of paragraph (2)(C), the following provisions shall apply with respect to an action under this subsection by the Secretary with respect to any failure of a health insurance issuer in connection with a group health plan, to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 2702.

[''(B) AMOUNT.—

[''(i) IN GENERAL.—The amount of the penalty imposed under this paragraph shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

[''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

[''(I) beginning on the date such failure first occurs; and

[''(II) ending on the date such failure is corrected.

[''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

[''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

[''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

[''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

[''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

[''(D) LIMITATIONS.—

[''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

[''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

[''(I) such failure was due to reasonable cause and not to willful neglect; and

[''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

[''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

[''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

[''(II) $500,000.

[''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

[(4) DEFINITIONS.—Section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg–91(d)) is amended by adding at the end the following:

[''(15) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

[''(A) the spouse of the individual;

[''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

[''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

[''(16) GENETIC INFORMATION.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

[''(i) an individual's genetic tests;

[''(ii) the genetic tests of family members of the individual; or

[''(iii) the occurrence of a disease or disorder in family members of the individual.

[''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

[''(17) GENETIC TEST.—

[''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

[''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

[''(18) GENETIC SERVICES.—The term 'genetic services' means—

[''(A) a genetic test;

[''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[''(C) genetic education.''.

[(b) AMENDMENT RELATING TO THE INDIVIDUAL MARKET.—

[(1) IN GENERAL.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–51 et seq.) (relating to other requirements) is amended—

[(A) by redesignating such subpart as subpart 2; and

[(B) by adding at the end the following:

[''SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION.

[''(a) PROHIBITION ON GENETIC INFORMATION AS A CONDITION OF ELIGIBILITY.—A health insurance issuer offering health insurance coverage in the individual market may not establish rules for the eligibility (including continued eligibility) of any individual to enroll in individual health insurance coverage based on genetic information (including information about a request for or receipt of genetic services by an individual or family member of such individual).

[''(b) PROHIBITION ON GENETIC INFORMATION IN SETTING PREMIUM RATES.—A health insurance issuer offering health insurance coverage in the individual market shall not adjust premium or contribution amounts for an individual on the basis of genetic information concerning the individual or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).

[''(c) GENETIC TESTING.—

[''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A health insurance issuer offering health insurance coverage in the individual market shall not request or require an individual or a family member of such individual to undergo a genetic test.

[''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

[''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(B) limit the authority of a health care professional who is employed by or affiliated with a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.''.

[(2) REMEDIES AND ENFORCEMENT.—Section 2761(b) of the Public Health Service Act (42 U.S.C. 300gg–61)(b)) is amended to read as follows:

[''(b) SECRETARIAL ENFORCEMENT AUTHORITY.—The Secretary shall have the same authority in relation to enforcement of the provisions of this part with respect to issuers of health insurance coverage in the individual market in a State as the Secretary has under section 2722(b)(2), and section 2722(b)(3) with respect to violations of genetic nondiscrimination provisions, in relation to the enforcement of the provisions of part A with respect to issuers of health insurance coverage in the small group market in the State.''.

[(c) ELIMINATION OF OPTION OF NON-FEDERAL GOVERNMENTAL PLANS TO BE EXCEPTED FROM REQUIREMENTS CONCERNING GENETIC INFORMATION.—Section 2721(b)(2) of the Public

Health Service Act (42 U.S. C. 300gg–21(b)(2)) is amended—

[(1) in subparagraph (A), by striking ''If the plan sponsor'' and inserting ''Except as provided in subparagraph (D), if the plan sponsor''; and

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

[''(D) ELECTION NOT APPLICABLE TO REQUIREMENTS CONCERNING GENETIC INFORMATION.—The election described in subparagraph (A) shall not be available with respect to the provisions of subsections (a)(1)(F) and (c) of section 2702 and the provisions of section 2702(b) to the extent that such provisions apply to genetic information (or information about a request for or the receipt of genetic services by an individual or a family member of such individual).''.

[(d) REGULATIONS AND EFFECTIVE DATE.—

[(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor and the Secretary of Health and Human Services (as the case may be) shall issue final regulations in an accessible format to carry out the amendments made by this section.

[(2) EFFECTIVE DATE.—The amendments made by this section shall apply—

[(A) with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after the date that is 18 months after the date of enactment of this title; and

[(B) with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after the date that is 18 months after the date of enactment of this title.

[SEC. 103. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

[(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

[(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 9802(a)(1)(F) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

[(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 9802(b) of the Internal Revenue Code of 1986 is amended—

[(A) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

[(B) by adding at the end the following:

[''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

[(b) LIMITATIONS ON GENETIC TESTING.—Section 9802 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

[''(d) GENETIC TESTING AND GENETIC SERVICES.—

[''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan shall not request or require an individual or a family member of such individual to undergo a genetic test.

[''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

[''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

[''(e) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (d) shall apply to group health plans and health insurance issuers without regard to section 9831(a)(2).''.

[(c) DEFINITIONS.—Section 9832(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

[''(6) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

[''(A) the spouse of the individual;

[''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

[''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

[''(7) GENETIC SERVICES.—The term 'genetic services' means—

[''(A) a genetic test;

[''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[''(C) genetic education.

[''(8) GENETIC INFORMATION.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

[''(i) an individual's genetic tests;

[''(ii) the genetic tests of family members of the individual; or

[''(iii) the occurrence of a disease or disorder in family members of the individual.

[''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

[''(9) GENETIC TEST.—

[''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

[''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.''.

[(d) REGULATIONS AND EFFECTIVE DATE.—

[(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of the Treasury shall issue final regulations in an accessible format to carry out the amendments made by this section.

[(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

[SEC. 104. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SECURITY ACT RELATING TO MEDIGAP.

[(a) NONDISCRIMINATION.—

[(1) IN GENERAL.—Section 1882(s)(2) of the Social Security Act (42 U.S.C. 1395ss(s)(2)) is amended by adding at the end the following:

[''(E)(i) An issuer of a medicare supplemental policy shall not deny or condition the issuance or effectiveness of the policy, and shall not discriminate in the pricing of the policy (including the adjustment of premium rates) of an eligible individual on the basis of genetic information concerning the individual (or information about a request for, or the receipt of, genetic services by such individual or family member of such individual).

[''(ii) For purposes of clause (i), the terms 'family member', 'genetic services', and 'genetic information' shall have the meanings given such terms in subsection (v).''.

[(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to a policy for policy years beginning after the date that is 18 months after the date of enactment of this Act.

[(b) LIMITATIONS ON GENETIC TESTING.—

[(1) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following:

[''(v) LIMITATIONS ON GENETIC TESTING.—

[''(1) GENETIC TESTING.—

[''(A) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—An issuer of a medicare supplemental policy shall not request or require an individual or a family member of such individual to undergo a genetic test.

[''(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

[''(i) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(ii) limit the authority of a health care professional who is employed by or affiliated with an issuer of a medicare supplemental policy and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(iii) authorize or permit a health care professional to require that an individual undergo a genetic test.

[''(2) DEFINITIONS.—In this subsection:

[''(A) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

[''(i) the spouse of the individual;

[''(ii) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; or

[''(iii) any other individuals related by blood to the individual or to the spouse or child described in clause (i) or (ii).

[''(B) GENETIC INFORMATION.—

[''(i) IN GENERAL.—Except as provided in clause (ii), the term 'genetic information' means information about—

[''(I) an individual's genetic tests;

[''(II) the genetic tests of family members of the individual; or

[''(III) the occurrence of a disease or disorder in family members of the individual.

[''(ii) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

[''(C) GENETIC TEST.—

[''(i) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[''(ii) EXCEPTIONS.—The term 'genetic test' does not mean—

[''(I) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[''(II) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate

training and expertise in the field of medicine involved.

[''(D) GENETIC SERVICES.—The term 'genetic services' means—

[''(i) a genetic test;

[''(ii) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[''(iii) genetic education.

[''(E) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term 'issuer of a medicare supplemental policy' includes a third-party administrator or other person acting for or on behalf of such issuer.''.

[(2) CONFORMING AMENDMENT.—Section 1882(o) of the Social Security Act (42 U.S.C. 1395ss(o)) is amended by adding at the end the following:

[''(4) The issuer of the medicare supplemental policy complies with subsection (s)(2)(E) and subsection (v).''.

[(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to an issuer of a medicare supplemental policy for policy years beginning on or after the date that is 18 months after the date of enactment of this Act.

[(c) TRANSITION PROVISIONS.—

[(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due solely to failure to make such change until the date specified in paragraph (4).

[(2) NAIC STANDARDS.—If, not later than June 30, 2006, the National Association of Insurance Commissioners (in this subsection referred to as the ''NAIC'') modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act (referred to in such section as the 1991 NAIC Model Regulation, as subsequently modified) to conform to the amendments made by this section, such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

[(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall, not later than October 1, 2006, make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate regulation for the purposes of such section.

[(4) DATE SPECIFIED.—

[(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

[(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

[(ii) October 1, 2006.

[(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

[(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

[(ii) having a legislature which is not scheduled to meet in 2006 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2006. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

[SEC. 105. PRIVACY AND CONFIDENTIALITY.

[(a) APPLICABILITY.—Except as provided in subsection (d), the provisions of this section shall apply to group health plans, health insurance issuers (including issuers in connection with group health plans or individual health coverage), and issuers of medicare supplemental policies, without regard to—

[(1) section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191a(a));

[(2) section 2721(a) of the Public Health Service Act (42 U.S.C. 300gg–21(a)); and

[(3) section 9831(a)(2) of the Internal Revenue Code of 1986.

[(b) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.—

[(1) IN GENERAL.—The regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) shall apply to the use or disclosure of genetic information.

[(2) PROHIBITION ON UNDERWRITING AND PREMIUM RATING.—Notwithstanding paragraph (1), a group health plan, a health insurance issuer, or issuer of a medicare supplemental policy shall not use or disclose genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

[(c) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

[(1) IN GENERAL.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

[(2) LIMITATION RELATING TO THE COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) concerning a participant, beneficiary, or enrollee prior to the enrollment, and in connection with such enrollment, of such individual under the plan, coverage, or policy.

[(3) INCIDENTAL COLLECTION.—Where a group health plan, health insurance issuer, or issuer of a medicare supplemental policy obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning a participant, beneficiary, or enrollee, such request, requirement, or purchase shall not be considered a violation of this subsection if—

[(A) such request, requirement, or purchase is not in violation of paragraph (1); and

[(B) any genetic information (including information about a request for or receipt of genetic services) requested, required, or purchased is not used or disclosed in violation of subsection (b).

[(d) APPLICATION OF CONFIDENTIALITY STANDARDS.—The provisions of subsections (b) and (c) shall not apply—

[(1) to group health plans, health insurance issuers, or issuers of medicare supplemental policies that are not otherwise covered under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note); and

[(2) to genetic information that is not considered to be individually-identifiable health information under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

[(e) ENFORCEMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy that violates a provision of this section shall be subject to the penalties described in sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d–5 and 1320d–6) in the same manner and to the same extent that such penalties apply to violations of part C of title XI of such Act.

[(f) PREEMPTION.—

[(1) IN GENERAL.—A provision or requirement under this section or a regulation promulgated under this section shall supersede any contrary provision of State law unless such provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under this section or such regulations. No penalty, remedy, or cause of action to enforce such a State law that is more stringent shall be preempted by this section.

[(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to establish a penalty, remedy, or cause of action under State law if such penalty, remedy, or cause of action is not otherwise available under such State law.

[(g) COORDINATION WITH PRIVACY REGULATIONS.—The Secretary shall implement and administer this section in a manner that is consistent with the implementation and administration by the Secretary of the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

[(h) DEFINITIONS.—In this section:

[(1) GENETIC INFORMATION; GENETIC SERVICES.—The terms ''family member'', ''genetic information'', ''genetic services'', and ''genetic test'' have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), as amended by this Act.

[(2) GROUP HEALTH PLAN; HEALTH INSURANCE ISSUER.—The terms ''group health plan'' and ''health insurance issuer'' include only those plans and issuers that are covered under the regulations described in subsection (d)(1).

[(3) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term ''issuer of a medicare supplemental policy'' means an issuer described in section 1882 of the Social Security Act (42 insert 1395ss).

[(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

[SEC. 106. ASSURING COORDINATION.

[(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall

ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

[(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under this title (and the amendments made by this title) are administered so as to have the same effect at all times; and

[(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.

[(b) AUTHORITY OF THE SECRETARY.—The Secretary of Health and Human Services has the sole authority to promulgate regulations to implement section 105.

[SEC. 107. REGULATIONS; EFFECTIVE DATE.

[(a) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury shall issue final regulations in an accessible format to carry out this title.

[(b) EFFECTIVE DATE.—Except as provided in section 104, the amendments made by this title shall take effect on the date that is 18 months after the date of enactment of this Act.

[TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

[SEC. 201. DEFINITIONS.

[In this title:

[(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission as created by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

[(2) EMPLOYEE; EMPLOYER; EMPLOYMENT AGENCY; LABOR ORGANIZATION; MEMBER.—

[(A) IN GENERAL.—The term ''employee'' means—

[(i) an employee (including an applicant), as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

[(ii) a State employee (including an applicant) described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

[(iii) a covered employee (including an applicant), as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301);

[(iv) a covered employee (including an applicant), as defined in section 411(c) of title 3, United States Code; or

[(v) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies.

[(B) EMPLOYER.—The term ''employer'' means—

[(i) an employer (as defined in section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b));

[(ii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

[(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

[(iv) an employing office, as defined in section 411(c) of title 3, United States Code; or

[(v) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

[(C) EMPLOYMENT AGENCY; LABOR ORGANIZATION.—The terms ''employment agency'' and ''labor organization'' have the meanings given the terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

[(D) MEMBER.—The term ''member'', with respect to a labor organization, includes an applicant for membership in a labor organization.

[(3) FAMILY MEMBER.—The term ''family member'' means with respect to an individual—

[(A) the spouse of the individual;

[(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

[(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

[(4) GENETIC INFORMATION.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''genetic information'' means information about—

[(i) an individual's genetic tests;

[(ii) the genetic tests of family members of the individual; or

[(iii) the occurrence of a disease or disorder in family members of the individual.

[(B) EXCEPTIONS.—The term ''genetic information'' shall not include information about the sex or age of an individual.

[(5) GENETIC MONITORING.—The term ''genetic monitoring'' means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

[(6) GENETIC SERVICES.—The term ''genetic services'' means—

[(A) a genetic test;

[(B) genetic counseling (such as obtaining, interpreting or assessing genetic information); or

[(C) genetic education.

[(7) GENETIC TEST.—

[(A) IN GENERAL.—The term ''genetic test'' means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[(B) EXCEPTION.—The term ''genetic test'' does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

[SEC. 202. EMPLOYER PRACTICES.

[(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer—

[(1) to fail or refuse to hire or to discharge any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee); or

[(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee).

[(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee (or information about a request for the receipt of genetic services by such employee or a family member of such employee) except—

[(1) where an employer inadvertently requests or requires family medical history of the employee or family member of the employee;

[(2) where—

[(A) health or genetic services are offered by the employer, including such services offered as part of a bona fide wellness program;

[(B) the employee provides prior, knowing, voluntary, and written authorization;

[(C) only the employee (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees;

[(3) where an employer requests or requires family medical history from the employee to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

[(4) where an employer purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

[(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

[(A) the employer provides written notice of the genetic monitoring to the employee;

[(B)(i) the employee provides prior, knowing, voluntary, and written authorization; or

[(ii) the genetic monitoring is required by Federal or State law;

[(C) the employee is informed of individual monitoring results;

[(D) the monitoring is in compliance with—

[(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

[(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

[(E) the employer, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees;

[(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

[SEC. 203. EMPLOYMENT AGENCY PRACTICES.

[(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency—

[(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual);

[(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment

any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

[(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

[(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

[(1) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

[(2) where—

[(A) health or genetic services are offered by the employment agency, including such services offered as part of a bona fide wellness program;

[(B) the individual provides prior, knowing, voluntary, and written authorization;

[(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

[(3) where an employment agency requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

[(4) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

[(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

[(A) the employment agency provides written notice of the genetic monitoring to the individual;

[(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

[(ii) the genetic monitoring is required by Federal or State law;

[(C) the individual is informed of individual monitoring results;

[(D) the monitoring is in compliance with—

[(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

[(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

[(E) the employment agency, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

[(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

[SEC. 204. LABOR ORGANIZATION PRACTICES.

[(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization—

[(1) to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member);

[(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any member, in any way that would deprive or tend to deprive any member of employment opportunities, or otherwise adversely affect the status of the member as an employee, because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member); or

[(3) to cause or attempt to cause an employer to discriminate against a member in violation of this title.

[(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member (or information about a request for the receipt of genetic services by such member or a family member of such member) except—

[(1) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

[(2) where—

[(A) health or genetic services are offered by the labor organization, including such services offered as part of a bona fide wellness program;

[(B) the member provides prior, knowing, voluntary, and written authorization;

[(C) only the member (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the labor organization except in aggregate terms that do not disclose the identity of specific members;

[(3) where a labor organization requests or requires family medical history from the members to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

[(4) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

[(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

[(A) the labor organization provides written notice of the genetic monitoring to the member;

[(B)(i) the member provides prior, knowing, voluntary, and written authorization; or

[(ii) the genetic monitoring is required by Federal or State law;

[(C) the member is informed of individual monitoring results;

[(D) the monitoring is in compliance with—

[(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

[(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

[(E) the labor organization, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific members;

[(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

[SEC. 205. TRAINING PROGRAMS.

[(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs—

[(1) to discriminate against any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or a family member of such individual) in admission to, or employment in, any program established to provide apprenticeship or other training or retraining;

[(2) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or receipt of genetic services by such individual or family member of such individual); or

[(3) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this title.

[(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a) to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request

for the receipt of genetic services by such individual or a family member of such individual) except—

[(1) where the employer, labor organization, or joint labor-management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

[(2) where—

[(A) health or genetic services are offered by the employer, labor organization, or joint labor-management committee, including such services offered as part of a bona fide wellness program;

[(B) the individual provides prior, knowing, voluntary, and written authorization;

[(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services;

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

[(3) where the employer, labor organization, or joint labor-management committee requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

[(4) where the employer, labor organization, or joint labor-management committee purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

[(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

[(A) the employer, labor organization, or joint labor-management committee provides written notice of the genetic monitoring to the individual;

[(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

[(ii) the genetic monitoring is required by Federal or State law;

[(C) the individual is informed of individual monitoring results;

[(D) the monitoring is in compliance with—

[(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

[(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

[(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

[(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

[SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

[(a) TREATMENT OF INFORMATION AS PART OF CONFIDENTIAL MEDICAL RECORD.—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member), such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member.

[(b) LIMITATION ON DISCLOSURE.—An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member) except—

[(1) to the employee (or family member if the family member is receiving the genetic services) or member of a labor organization at the request of the employee or member of such organization;

[(2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;

[(3) in response to an order of a court, except that—

[(A) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

[(B) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-management committee shall provide the employee or member with adequate notice to challenge the court order;

[(4) to government officials who are investigating compliance with this title if the information is relevant to the investigation; or

[(5) to the extent that such disclosure is made in connection with the employee's compliance with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws.

[SEC. 207. REMEDIES AND ENFORCEMENT.

[(a) EMPLOYEES COVERED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—

[(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 705, 706, 707, 709, 710, and 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 et seq.) to the Commission, the Attorney General, or any person, alleging a violation of title VII of that Act (42 U.S.C. 2000e et seq.) shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(i), except as provided in paragraphs (2) and (3).

[(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice.

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(b) EMPLOYEES COVERED BY GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.—

[(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b, 2000e–16c) to the Commission, or any person, alleging a violation of section 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1)) shall be the powers, remedies, and procedures this title provides to the Commission, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(ii), except as provided in paragraphs (2) and (3).

[(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice.

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(c) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—

[(1) IN GENERAL.—The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be the powers, remedies, and procedures this title provides to that Board, or any person, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iii), except as provided in paragraphs (2) and (3).

[(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice.

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(4) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleging a practice described in paragraph (1), title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleging a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

[(d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE 3, UNITED STATES CODE.—

[(1) IN GENERAL.—The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Commission, the Merit Systems Protection Board, or any person, alleging a violation of

section 411(a)(1) of that title, shall be the powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iv), except as provided in paragraphs (2) and (3).

[(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice.

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(e) EMPLOYEES COVERED BY SECTION 717 OF THE CIVIL RIGHTS ACT OF 1964.—

[(1) IN GENERAL.—The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee or applicant described in section 201(2)(A)(v), except as provided in paragraphs (2) and (3).

[(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice.

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(f) DEFINITION.—In this section, the term ''Commission'' means the Equal Employment Opportunity Commission.

[SEC. 208. DISPARATE IMPACT.

[(a) GENERAL RULE.—Notwithstanding any other provision of this Act, ''disparate impact'', as that term is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–d(k)), on the basis of genetic information does not establish a cause of action under this Act.

[(b) COMMISSION.—On the date that is 6 years after the date of enactment of this Act, there shall be established a commission, to be known as the Genetic Nondiscrimination Study Commission (referred to in this section as the ''Commission'') to review the developing science of genetics and to make recommendations to Congress regarding whether to provide a disparate impact cause of action under this Act.

[(c) MEMBERSHIP.—

[(1) IN GENERAL.—The Commission shall be composed of 8 members, of which—

[(A) 1 member shall be appointed by the Majority Leader of the Senate;

[(B) 1 member shall be appointed by the Minority Leader of the Senate;

[(C) 1 member shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate;

[(D) 1 member shall be appointed by the ranking minority member of the Committee on Health, Education, Labor, and Pensions of the Senate;

[(E) 1 member shall be appointed by the Speaker of the House of Representatives;

[(F) 1 member shall be appointed by the Minority Leader of the House of Representatives;

[(G) 1 member shall be appointed by the Chairman of the Committee on Education and the Workforce of the House of Representatives; and

[(H) 1 member shall be appointed by the ranking minority member of the Committee on Education and the Workforce of the House of Representatives.

[(2) COMPENSATION AND EXPENSES.—The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

[(d) ADMINISTRATIVE PROVISIONS.—

[(1) LOCATION.—The Commission shall be located in a facility maintained by the Equal Employment Opportunity Commission.

[(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

[(3) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

[(4) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the objectives of this section, except that, to the extent possible, the Commission shall use existing data and research.

[(5) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

[(e) REPORT.—Not later than 1 year after all of the members are appointed to the Commission under subsection (c)(1), the Commission shall submit to Congress a report that summarizes the findings of the Commission and makes such recommendations for legislation as are consistent with this Act.

[(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Equal Employment Opportunity Commission such sums as may be necessary to carry out this section.

[SEC. 209. CONSTRUCTION.

[Nothing in this title shall be construed to—

[(1) limit the rights or protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

[(2)(A) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this title; or

[(B) establish a violation under this title for an employer, employment agency, labor organization, or joint labor-management committee of a provision of the amendments made by title I;

[(3) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this title;

[(4) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains;

[(5) limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

[(6) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

[(7) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

[SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC INFORMATION.

[An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of this title based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

[SEC. 211. REGULATIONS.

[Not later than 1 year after the date of enactment of this title, the Commission shall issue final regulations in an accessible format to carry out this title.

[SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as may be necessary to carry out this title (except for section 208).

[SEC. 213. EFFECTIVE DATE.

[This title takes effect on the date that is 18 months after the date of enactment of this Act.

TITLE III—MISCELLANEOUS PROVISION

[SEC. 301. SEVERABILITY.

[If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provisions to any person or circumstance shall not be affected thereby.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Genetic Information Nondiscrimination Act of 2005''.

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

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Deciphering the sequence of the human genome and other advances in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often before symptoms have begun. Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.

(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic ''defects'' such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to ''correct'' apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

(3) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information. This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African-Americans. Once again, State legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear. To alleviate some of this stigma, Congress in 1972 passed the National Sickle Cell Anemia Control Act, which withholds Federal funding from States unless sickle cell testing is voluntary.

(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of pre-employment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case Norman-Bloodsaw v. Lawrence Berkeley Laboratory (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 702(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b)) is amended—

(A) in paragraph (2)(A), by inserting before the semicolon the following: ''except as provided in paragraph (3)''; and

(B) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

(b) LIMITATIONS ON GENETIC TESTING.—Section 702 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182) is amended by adding at the end the following:

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 732(a).''.

(c) REMEDIES AND ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

''(n) ENFORCEMENT OF GENETIC NONDISCRIMINATION REQUIREMENTS.—

''(1) INJUNCTIVE RELIEF FOR IRREPARABLE HARM.—With respect to any violation of subsection (a)(1)(F), (b)(3), or (c) of section 702, a participant or beneficiary may seek relief under subsection 502(a)(1)(B) prior to the exhaustion of available administrative remedies under section 503 if it is demonstrated to the court, by a preponderance of the evidence, that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Any determinations that already have been made under section 503 in such case, or that are made in such case while an action under this paragraph is pending, shall be given due consideration by the court in any action under this subsection in such case.

''(2) EQUITABLE RELIEF FOR GENETIC NONDISCRIMINATION.—

''(A) REINSTATEMENT OF BENEFITS WHERE EQUITABLE RELIEF HAS BEEN AWARDED.—The recovery of benefits by a participant or beneficiary under a civil action under this section may include an administrative penalty under subparagraph (B) and the retroactive reinstatement of coverage under the plan involved to the date on which the participant or beneficiary was denied eligibility for coverage if—

''(i) the civil action was commenced under subsection (a)(1)(B); and

''(ii) the denial of coverage on which such civil action was based constitutes a violation of subsection (a)(1)(F), (b)(3), or (c) of section 702.

''(B) ADMINISTRATIVE PENALTY.—

''(i) IN GENERAL.—An administrator who fails to comply with the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702 with respect to a participant or beneficiary may, in an action commenced under subsection (a)(1)(B), be personally liable in the discretion of the court, for a penalty in the amount not more than $100 for each day in the noncompliance period.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of clause (i), the term 'noncompliance period' means the period—

''(I) beginning on the date that a failure described in clause (i) occurs; and

''(II) ending on the date that such failure is corrected.

''(iii) PAYMENT TO PARTICIPANT OR BENEFICIARY.—A penalty collected under this subparagraph shall be paid to the participant or beneficiary involved.

''(3) SECRETARIAL ENFORCEMENT AUTHORITY.—

''(A) GENERAL RULE.—The Secretary has the authority to impose a penalty on any failure of a group health plan to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702.

''(B) AMOUNT.—

''(i) IN GENERAL.—The amount of the penalty imposed by subparagraph (A) shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

''(I) beginning on the date such failure first occurs; and

''(II) ending on the date such failure is corrected.

''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

''(D) LIMITATIONS.—

''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

''(I) such failure was due to reasonable cause and not to willful neglect; and

''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

''(II) $500,000.

''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

(d) DEFINITIONS.—Section 733(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(d)) is amended by adding at the end the following:

''(5) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(6) GENETIC INFORMATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(7) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(8) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.''.

(e) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

(a) AMENDMENTS RELATING TO THE GROUP MARKET.—

(1) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(A) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

(B) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg–1(b)) is amended—

(i) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

(ii) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

(2) LIMITATIONS ON GENETIC TESTING.—Section 2702 of the Public Health Service Act (42 U.S.C. 300gg–1) is amended by adding at the end the following:

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 2721(a).''.

(3) REMEDIES AND ENFORCEMENT.—Section 2722(b) of the Public Health Service Act (42 U.S.C. 300gg–22)(b)) is amended by adding at the end the following:

''(3) ENFORCEMENT AUTHORITY RELATING TO GENETIC DISCRIMINATION.—

''(A) GENERAL RULE.—In the cases described in paragraph (1), notwithstanding the provisions of paragraph (2)(C), the following provisions shall apply with respect to an action under this subsection by the Secretary with respect to any failure of a health insurance issuer in connection with a group health plan, to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 2702.

''(B) AMOUNT.—

''(i) IN GENERAL.—The amount of the penalty imposed under this paragraph shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

''(I) beginning on the date such failure first occurs; and

''(II) ending on the date such failure is corrected.

''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

''(D) LIMITATIONS.—

''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

''(I) such failure was due to reasonable cause and not to willful neglect; and

''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

''(II) $500,000.

''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

(4) DEFINITIONS.—Section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg–91(d)) is amended by adding at the end the following:

''(15) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(16) GENETIC INFORMATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(17) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(18) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.''.

(b) AMENDMENT RELATING TO THE INDIVIDUAL MARKET.—

(1) IN GENERAL.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–51 et seq.) (relating to other requirements) is amended—

(A) by redesignating such subpart as subpart 2; and

(B) by adding at the end the following:

''SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION.

''(a) PROHIBITION ON GENETIC INFORMATION AS A CONDITION OF ELIGIBILITY.—A health insurance issuer offering health insurance coverage in the individual market may not establish rules for the eligibility (including continued eligibility) of any individual to enroll in individual health insurance coverage based on genetic information (including information about a request for or receipt of genetic services by an individual or family member of such individual).

''(b) PROHIBITION ON GENETIC INFORMATION IN SETTING PREMIUM RATES.—A health insurance issuer offering health insurance coverage in the individual market shall not adjust premium or contribution amounts for an individual on the basis of genetic information concerning the individual or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A health insurance issuer offering health insurance coverage in the individual market shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.''.

(2) REMEDIES AND ENFORCEMENT.—Section 2761(b) of the Public Health Service Act (42 U.S.C. 300gg–61)(b)) is amended to read as follows:

''(b) SECRETARIAL ENFORCEMENT AUTHORITY.—The Secretary shall have the same authority in relation to enforcement of the provisions of this part with respect to issuers of health insurance coverage in the individual market in a State as the Secretary has under section 2722(b)(2), and section 2722(b)(3) with respect to violations of genetic nondiscrimination provisions, in relation to the enforcement of the provisions of part A with respect to issuers of health insurance coverage in the small group market in the State.''.

(c) ELIMINATION OF OPTION OF NON-FEDERAL GOVERNMENTAL PLANS TO BE EXCEPTED FROM REQUIREMENTS CONCERNING GENETIC INFORMATION.—Section 2721(b)(2) of the Public Health Service Act (42 U.S. C. 300gg–21(b)(2)) is amended—

(1) in subparagraph (A), by striking ''If the plan sponsor'' and inserting ''Except as provided in subparagraph (D), if the plan sponsor''; and

(2) by adding at the end the following:

''(D) ELECTION NOT APPLICABLE TO REQUIREMENTS CONCERNING GENETIC INFORMATION.—The election described in subparagraph (A) shall not be available with respect to the provisions of subsections (a)(1)(F) and (c) of section 2702 and the provisions of section 2702(b) to the extent that such provisions apply to genetic information (or information about a request for or the receipt of genetic services by an individual or a family member of such individual).''.

(d) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor and the Secretary of Health and Human Services (as the case may be) shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply—

(A) with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after the date that is 18 months after the date of enactment of this title; and

(B) with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after the date that is 18 months after the date of enactment of this title.

SEC. 103. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 9802(a)(1)(F) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 9802(b) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

(B) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

(b) LIMITATIONS ON GENETIC TESTING.—Section 9802 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(d) GENETIC TESTING AND GENETIC SERVICES.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(e) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (d) shall apply to group health plans and health insurance issuers without regard to section 9831(a)(2).''.

(c) DEFINITIONS.—Section 9832(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(6) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(7) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.

''(8) GENETIC INFORMATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(9) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.''.

(d) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of the Treasury shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

SEC. 104. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SECURITY ACT RELATING TO MEDIGAP.

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—Section 1882(s)(2) of the Social Security Act (42 U.S.C. 1395ss(s)(2)) is amended by adding at the end the following:

''(E)(i) An issuer of a medicare supplemental policy shall not deny or condition the issuance or effectiveness of the policy, and shall not discriminate in the pricing of the policy (including the adjustment of premium rates) of an eligible individual on the basis of genetic information concerning the individual (or information about a request for, or the receipt of, genetic services by such individual or family member of such individual).

''(ii) For purposes of clause (i), the terms 'family member', 'genetic services', and 'genetic information' shall have the meanings given such terms in subsection (x).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to a policy for policy years beginning after the date that is 18 months after the date of enactment of this Act.

(b) LIMITATIONS ON GENETIC TESTING.—

(1) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following:

''(x) LIMITATIONS ON GENETIC TESTING.—

''(1) GENETIC TESTING.—

''(A) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—An issuer of a medicare supplemental policy shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

''(i) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(ii) limit the authority of a health care professional who is employed by or affiliated with an issuer of a medicare supplemental policy and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(iii) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(2) DEFINITIONS.—In this subsection:

''(A) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(i) the spouse of the individual;

''(ii) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; or

''(iii) any other individuals related by blood to the individual or to the spouse or child described in clause (i) or (ii).

''(B) GENETIC INFORMATION.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'genetic information' means information about—

''(I) an individual's genetic tests;

''(II) the genetic tests of family members of the individual; or

''(III) the occurrence of a disease or disorder in family members of the individual.

''(ii) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(C) GENETIC TEST.—

''(i) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(ii) EXCEPTIONS.—The term 'genetic test' does not mean—

''(I) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(II) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(D) GENETIC SERVICES.—The term 'genetic services' means—

''(i) a genetic test;

''(ii) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(iii) genetic education.

''(E) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term 'issuer of a medicare supplemental policy' includes a third-party administrator or other person acting for or on behalf of such issuer.''.

(2) CONFORMING AMENDMENT.—Section 1882(o) of the Social Security Act (42 U.S.C. 1395ss(o)) is amended by adding at the end the following:

''(4) The issuer of the medicare supplemental policy complies with subsection (s)(2)(E) and subsection (x).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to an issuer of a medicare supplemental policy for policy years beginning on or after the date that is 18 months after the date of enactment of this Act.

(c) TRANSITION PROVISIONS.—

(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due solely to failure to make such change until the date specified in paragraph (4).

(2) NAIC STANDARDS.—If, not later than June 30, 2006, the National Association of Insurance Commissioners (in this subsection referred to as the ''NAIC'') modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act (referred to in such section as the 1991 NAIC Model Regulation, as subsequently modified) to conform to the amendments made by this section, such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall, not later than October 1, 2006, make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate regulation for the purposes of such section.

(4) DATE SPECIFIED.—

(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

(ii) October 1, 2006.

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

(ii) having a legislature which is not scheduled to meet in 2006 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2006. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 105. PRIVACY AND CONFIDENTIALITY.

(a) APPLICABILITY.—Except as provided in subsection (d), the provisions of this section shall apply to group health plans, health insurance issuers (including issuers in connection with group health plans or individual health coverage), and issuers of medicare supplemental policies, without regard to—

(1) section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191a(a));

(2) section 2721(a) of the Public Health Service Act (42 U.S.C. 300gg–21(a)); and

(3) section 9831(a)(2) of the Internal Revenue Code of 1986.

(b) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.—

(1) IN GENERAL.—The regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) shall apply to the use or disclosure of genetic information.

(2) PROHIBITION ON UNDERWRITING AND PREMIUM RATING.—Notwithstanding paragraph (1), a group health plan, a health insurance issuer, or issuer of a medicare supplemental policy shall not use or disclose genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(c) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

(1) IN GENERAL.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(2) LIMITATION RELATING TO THE COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) concerning a participant, beneficiary, or enrollee prior to the enrollment, and in connection with such enrollment, of such individual under the plan, coverage, or policy.

(3) INCIDENTAL COLLECTION.—Where a group health plan, health insurance issuer, or issuer of a medicare supplemental policy obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning a participant, beneficiary, or enrollee, such request, requirement, or purchase shall not be considered a violation of this subsection if—

(A) such request, requirement, or purchase is not in violation of paragraph (1); and

(B) any genetic information (including information about a request for or receipt of genetic services) requested, required, or purchased is not used or disclosed in violation of subsection (b).

(d) APPLICATION OF CONFIDENTIALITY STANDARDS.—The provisions of subsections (b) and (c) shall not apply—

(1) to group health plans, health insurance issuers, or issuers of medicare supplemental policies that are not otherwise covered under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note); and

(2) to genetic information that is not considered to be individually-identifiable health information under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(e) ENFORCEMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy that violates a provision of this section shall be subject to the penalties described in sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d–5 and 1320d–6) in the same manner and to the same extent that such penalties apply to violations of part C of title XI of such Act.

(f) PREEMPTION.—

(1) IN GENERAL.—A provision or requirement under this section or a regulation promulgated under this section shall supersede any contrary provision of State law unless such provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under this section or such regulations. No penalty, remedy, or cause of action to enforce such a State law that is more stringent shall be preempted by this section.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to establish a penalty, remedy, or cause of action under State law if such penalty, remedy, or cause of action is not otherwise available under such State law.

(g) COORDINATION WITH PRIVACY REGULATIONS.—The Secretary shall implement and administer this section in a manner that is consistent with the implementation and administration by the Secretary of the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(h) DEFINITIONS.—In this section:

(1) GENETIC INFORMATION; GENETIC SERVICES.—The terms ''family member'', ''genetic information'', ''genetic services'', and ''genetic test'' have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), as amended by this Act.

(2) GROUP HEALTH PLAN; HEALTH INSURANCE ISSUER.—The terms ''group health plan'' and ''health insurance issuer'' include only those plans and issuers that are covered under the regulations described in subsection (d)(1).

(3) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term ''issuer of a medicare supplemental policy'' means an issuer described in section 1882 of the Social Security Act (42 insert 1395ss).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 106. ASSURING COORDINATION.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under this title (and the amendments made by this title) are administered so as to have the same effect at all times; and

(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.

(b) AUTHORITY OF THE SECRETARY.—The Secretary of Health and Human Services has the sole authority to promulgate regulations to implement section 105.

SEC. 107. REGULATIONS; EFFECTIVE DATE.

(a) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury shall issue final regulations in an accessible format to carry out this title.

(b) EFFECTIVE DATE.—Except as provided in section 104, the amendments made by this title shall take effect on the date that is 18 months after the date of enactment of this Act.

TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

SEC. 201. DEFINITIONS.

In this title:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission as created by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(2) EMPLOYEE; EMPLOYER; EMPLOYMENT AGENCY; LABOR ORGANIZATION; MEMBER.—

(A) IN GENERAL.—The term ''employee'' means—

(i) an employee (including an applicant), as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

(ii) a State employee (including an applicant) described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(iii) a covered employee (including an applicant), as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301);

(iv) a covered employee (including an applicant), as defined in section 411(c) of title 3, United States Code; or

(v) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies.

(B) EMPLOYER.—The term ''employer'' means—

(i) an employer (as defined in section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b));

(ii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(iv) an employing office, as defined in section 411(c) of title 3, United States Code; or

(v) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

(C) EMPLOYMENT AGENCY; LABOR ORGANIZATION.—The terms ''employment agency'' and ''labor organization'' have the meanings given the terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(D) MEMBER.—The term ''member'', with respect to a labor organization, includes an applicant for membership in a labor organization.

(3) FAMILY MEMBER.—The term ''family member'' means with respect to an individual—

(A) the spouse of the individual;

(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

(4) GENETIC INFORMATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''genetic information'' means information about—

(i) an individual's genetic tests;

(ii) the genetic tests of family members of the individual; or

(iii) the occurrence of a disease or disorder in family members of the individual.

(B) EXCEPTIONS.—The term ''genetic information'' shall not include information about the sex or age of an individual.

(5) GENETIC MONITORING.—The term ''genetic monitoring'' means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

(6) GENETIC SERVICES.—The term ''genetic services'' means—

(A) a genetic test;

(B) genetic counseling (such as obtaining, interpreting or assessing genetic information); or

(C) genetic education.

(7) GENETIC TEST.—

(A) IN GENERAL.—The term ''genetic test'' means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(B) EXCEPTION.—The term ''genetic test'' does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

SEC. 202. EMPLOYER PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee); or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee).

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee (or information about a request for the receipt of genetic services by such employee or a family member of such employee) except—

(1) where an employer inadvertently requests or requires family medical history of the employee or family member of the employee;

(2) where—

(A) health or genetic services are offered by the employer, including such services offered as part of a bona fide wellness program;

(B) the employee provides prior, knowing, voluntary, and written authorization;

(C) only the employee (or family member if the family member is receiving genetic services) and

the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees;

(3) where an employer requests or requires family medical history from the employee to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where an employer purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employer provides written notice of the genetic monitoring to the employee;

(B)(i) the employee provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the employee is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 203. EMPLOYMENT AGENCY PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency—

(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual);

(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

(1) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

(A) health or genetic services are offered by the employment agency, including such services offered as part of a bona fide wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

(3) where an employment agency requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employment agency provides written notice of the genetic monitoring to the individual;

(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employment agency, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 204. LABOR ORGANIZATION PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member);

(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any member, in any way that would deprive or tend to deprive any member of employment opportunities, or otherwise adversely affect the status of the member as an employee, because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member); or

(3) to cause or attempt to cause an employer to discriminate against a member in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member (or information about a request for the receipt of genetic services by such member or a family member of such member) except—

(1) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

(2) where—

(A) health or genetic services are offered by the labor organization, including such services offered as part of a bona fide wellness program;

(B) the member provides prior, knowing, voluntary, and written authorization;

(C) only the member (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the labor organization except in aggregate terms that do not disclose the identity of specific members;

(3) where a labor organization requests or requires family medical history from the members to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the labor organization provides written notice of the genetic monitoring to the member;

(B)(i) the member provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the member is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et

seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the labor organization, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific members;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 205. TRAINING PROGRAMS.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs—

(1) to discriminate against any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or a family member of such individual) in admission to, or employment in, any program established to provide apprenticeship or other training or retraining;

(2) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or receipt of genetic services by such individual or family member of such individual); or

(3) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a) to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

(1) where the employer, labor organization, or joint labor-management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

(A) health or genetic services are offered by the employer, labor organization, or joint labor-management committee, including such services offered as part of a bona fide wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services;

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

(3) where the employer, labor organization, or joint labor-management committee requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where the employer, labor organization, or joint labor-management committee purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employer, labor organization, or joint labor-management committee provides written notice of the genetic monitoring to the individual;

(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

(a) TREATMENT OF INFORMATION AS PART OF CONFIDENTIAL MEDICAL RECORD.—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member), such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member.

(b) LIMITATION ON DISCLOSURE.—An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member) except—

(1) to the employee (or family member if the family member is receiving the genetic services) or member of a labor organization at the request of the employee or member of such organization;

(2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;

(3) in response to an order of a court, except that—

(A) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

(B) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-management committee shall provide the employee or member with adequate notice to challenge the court order;

(4) to government officials who are investigating compliance with this title if the information is relevant to the investigation; or

(5) to the extent that such disclosure is made in connection with the employee's compliance with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws.

SEC. 207. REMEDIES AND ENFORCEMENT.

(a) EMPLOYEES COVERED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 705, 706, 707, 709, 710, and 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 et seq.) to the Commission, the Attorney General, or any person, alleging a violation of title VII of that Act (42 U.S.C. 2000e et seq.) shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(i), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(b) EMPLOYEES COVERED BY GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b, 2000e–16c) to the Commission, or any person, alleging a violation of section 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1)) shall be the powers, remedies, and procedures this title provides to the Commission, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(ii), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(c) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be the powers, remedies, and procedures this title provides to that Board, or any person, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iii), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(4) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleging a practice described in paragraph (1), title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleging a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

(d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE 3, UNITED STATES CODE.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Commission, the Merit Systems Protection Board, or any person, alleging a violation of section 411(a)(1) of that title, shall be the powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iv), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(e) EMPLOYEES COVERED BY SECTION 717 OF THE CIVIL RIGHTS ACT OF 1964.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee or applicant described in section 201(2)(A)(v), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(f) DEFINITION.—In this section, the term ''Commission'' means the Equal Employment Opportunity Commission.

SEC. 208. DISPARATE IMPACT.

(a) GENERAL RULE.—Notwithstanding any other provision of this Act, ''disparate impact'', as that term is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–d(k)), on the basis of genetic information does not establish a cause of action under this Act.

(b) COMMISSION.—On the date that is 6 years after the date of enactment of this Act, there shall be established a commission, to be known as the Genetic Nondiscrimination Study Commission (referred to in this section as the ''Commission'') to review the developing science of genetics and to make recommendations to Congress regarding whether to provide a disparate impact cause of action under this Act.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 8 members, of which—

(A) 1 member shall be appointed by the Majority Leader of the Senate;

(B) 1 member shall be appointed by the Minority Leader of the Senate;

(C) 1 member shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate;

(D) 1 member shall be appointed by the ranking minority member of the Committee on Health, Education, Labor, and Pensions of the Senate;

(E) 1 member shall be appointed by the Speaker of the House of Representatives;

(F) 1 member shall be appointed by the Minority Leader of the House of Representatives;

(G) 1 member shall be appointed by the Chairman of the Committee on Education and the Workforce of the House of Representatives; and

(H) 1 member shall be appointed by the ranking minority member of the Committee on Education and the Workforce of the House of Representatives.

(2) COMPENSATION AND EXPENSES.—The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(d) ADMINISTRATIVE PROVISIONS.—

(1) LOCATION.—The Commission shall be located in a facility maintained by the Equal Employment Opportunity Commission.

(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(3) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(4) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the objectives of this section, except that, to the extent possible, the Commission shall use existing data and research.

(5) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) REPORT.—Not later than 1 year after all of the members are appointed to the Commission under subsection (c)(1), the Commission shall submit to Congress a report that summarizes the findings of the Commission and makes such recommendations for legislation as are consistent with this Act.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Equal Employment Opportunity Commission such sums as may be necessary to carry out this section.

SEC. 209. CONSTRUCTION.

Nothing in this title shall be construed to—

(1) limit the rights or protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(2)(A) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this title; or

(B) establish a violation under this title for an employer, employment agency, labor organization, or joint labor-management committee of a provision of the amendments made by title I;

(3) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this title;

(4) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains;

(5) limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

(6) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

(7) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC INFORMATION.

An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of this title based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

SEC. 211. REGULATIONS.

Not later than 1 year after the date of enactment of this title, the Commission shall issue final regulations in an accessible format to carry out this title.

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title (except for section 208).

SEC. 213. EFFECTIVE DATE.

This title takes effect on the date that is 18 months after the date of enactment of this Act.

TITLE III—MISCELLANEOUS PROVISION

SEC. 301. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provisions to any person or circumstance shall not be affected thereby.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, this is a bill that has been about 5 years in the works. It was introduced by Senator SNOWE, who was joined by Senators FRIST, GREGG, KENNEDY, myself, and others. It has been introduced a number of times, but in 2003 this bill was passed by a vote of 95 to nothing. The only difference between that bill and the one before you today is deletion of a provision that makes conforming changes to the Internal Revenue Code to ensure that a small number of health insurance plans, known as church plans, do not discriminate on the basis of genetic information.

We are removing the church plan provision because at the last minute yesterday a concern was raised that the language caused what is called a blue slip problem, which relates to the constitutional requirement that revenue measures originate in the House. There is considerable disagreement as to whether the church plan provision has a revenue impact and whether there is, in fact, a blue slip problem. In my opinion, there is no jurisdictional or constitutional problem with this simple conforming amendment.

The Health, Education, Labor, and Pensions Committee in the Senate took great pains to draft the bill within its own jurisdiction and was disappointed that these concerns were raised at this late date. In the interest of moving this bill and creating the important protections that it guarantees, we are removing the questioned language.

It is my understanding and hope that the House of Representatives will address the question of church plans when it takes up genetic information nondiscrimination legislation. Certainly no one believes that health insurance plans run by churches and other religious organizations should discriminate against individuals on the basis of genetic information. I am confident that when Congress has worked its will and delivered a genetic information bill to President Bush, which he requested, church plans will be treated the same as employer group health plans and individual health plans.

I am pleased that this bill is finally here for debate and we will be able to take it through the process. Again, it is an important step toward eliminating discrimination based on genetic information in both health insurance and employment decisions.

This bill was reported unanimously last week by the Health, Education, Labor, and Pensions Committee. It is identical to S. 2283 in the last Congress, which passed 95 to nothing with strong administration support. The purpose of this legislation is to protect individuals from discrimination in health insurance and employment on the basis of genetic information. It would accomplish this by preventing health insurers and employers from taking any action that would affect an employee's health or employment benefits based on genetic information an employer might discover.

Establishing these protections will allay concerns about the potential for discrimination, and it will encourage individuals to participate in genetic research and to take advantage of genetic testing, new technologies, and new therapies. The legislation will provide substantial protections to those individuals who may suffer from actual genetic discrimination now, or may have some reason to be concerned about it in the future. These steps are essential to fulfilling the tremendous promise of genetic research and science.

The science of genetic technology has seen an explosion of progress in the past few years.

Just 2 years ago, for example, scientists at the National Institutes of Health and elsewhere finally completed assembly of the human genome. What had seemed impossible for so long came to pass. Suddenly, with great fanfare and the attention of the international scientific community, the announcement was made. The human genetic code had been broken.

Among other effects, the work of the Human Genome Project and sister efforts elsewhere has accelerated the ability of scientists to discover genetic ''markers'' for many serious and significant diseases that we may be able to avoid with the proper care and preventive treatment.

Unfortunately, great change such as this sometimes carries with it not only great promise, but also a potential for misuse. That occurs when what should be an exciting breakthrough becomes at the same time a source of fear. For example, some individuals who should have welcomed the new ability to test for markers of inherited diseases instead encountered fear that such information might also be used to deny them insurance coverage or employment security.

Ironically, for some, what could have been a life-saving tool became instead a means to harm the very people it was designed to protect. For too many, it was simply better not to know. Allow me to recount just a few real-life examples, drawn from testimony before NIH panels investigating this issue:

One woman, who suffers from a rare liver disorder, found that both she and her children were rejected by a major insurance company, even though both children were only passive carriers of the disease and would never suffer from it. Only after a news organization contacted the insurer was the denial reversed.

In another example, a woman with a family history of breast cancer found that she, too, carried the genetic marker for that disease—and as a result chose to have a precautionary mastectomy and hysterectomy. After that, her employer received a $13,000 annual increase in his small company's health insurance bill.

As a result, this woman's employer asked her to switch to her husband's insurance and told her that if she did so she would get a raise. Fearing that a switch in coverage would jeopardize her ability to be covered at all, she refused. The employer then raised the premium amounts charged to all his employees.

These accounts, and others like them, make the point very strongly for the need for us to act. Simply put, we need to act now to save lives.

We have before us today an important bill that will address the fault in the system and correct it. It was carefully crafted to alleviate the problems faced by people like those I have mentioned. It was designed to calm the fears of those who are hesitant to subject themselves to genetic tests, knowing that what safeguards are in place may prove to be inadequate. It is a bill to restore their confidence in the system and their faith that the process is fair.

Only if we pass this legislation now will we truly be able to encourage the scientific progress in this field. The science of genetics may well hold our best hope for combating many of our worst afflictions. However, genetics, like the rest of science, will progress best when ideas and information are freely exchanged.

As a former small businessman, I am sensitive to the concerns raised by some in the business community that this legislation might impose new liabilities on employers. I am confident, however, that after they become familiar with the provisions of this bill, such critics will see that it has been carefully written such that its enactment will reduce the risk that an employer will ever be dragged into court to face a claim of genetic discrimination.

It will not do this by letting employers and insurers off the hook. Far from it. Rather, what this bill will do is reduce litigation because its rules are clear, the exceptions are responsible, and the procedure is fair.

Simply put, neither will employees become victims of discrimination nor will employers be sued unreasonably. Why? Because this bill sets a standard for conduct that is easy to understand and easy to follow. We are far better off setting the rules of the road clearly and ''up front,'' rather than allowing them to be set piecemeal through litigation.

We also must act now to ensure legal uniformity and consistency nationwide. About half the States today have laws governing genetic information. However, these laws differ significantly from one another and do not always fully address the problem.

Once this legislation is signed into law we will have a clear, concise and uniform policy on genetic information that will make clear what is and is not an acceptable use for genetic information.

Over the course of the last Congress, I had the pleasure of working on this legislation with colleagues on both sides of the aisle. I thank the majority leader and Senators SNOWE, GREGG, KENNEDY, JEFFORDS, and others for their good efforts to reach a bipartisan agreement on this bill. It will make a difference in more lives than we will ever know.

If we pass this legislation, and pass it we must, we will have taken a great step forward and ensured that the initial breakthroughs of Dr. Watson and Dr. Crick, and the more recent ones by the National Genome Project, will continue to reap benefits for generations to come.

We will finally have a uniform policy in place to ensure that information retrieved from genetic testing will remain confidential and off limits to those who would be tempted to use it to discriminate.

As genetic technology continues to develop in the years to come, the beneficial impact on the public health and our individual lifestyles promises to be enormous. Enactment of the bill before us today will help America secure the realization of that promise.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. KENNEDY. Mr. President, first I commend my friend and chairman of the Health, Education, Labor, and Pensions Committee, Senator ENZI, for his leadership in reporting out this legislation. As he has outlined, and as I will speak to in a moment, it is a matter of enormous importance to millions of Americans. He has outlined the reasons for that.

When we think back to the time Senator SNOWE and others introduced this legislation a number of years ago, there was a great deal of apprehension, a great deal of concern, and a good deal of opposition to this over that period of time. Due to a good deal of very hard, diligent work by the chairman here, by our staffs, and by many others on our committees, especially Senator JEFFORDS and Senator GREGG, Senator DODD, Senator HARKIN, Senator CLINTON, as well as Senator OLYMPIA SNOWE, we are about to successfully pass this legislation in a very strong bipartisan way, and they deserve great commendation at this time. I hope that with very strong bipartisan support it will send a good message to the House of Representatives that it is worthy to be done, necessary to be done, and has the great and overwhelming support of the American people. I hope we will see action.

I also thank the majority leader for scheduling this bill and giving it priority. As all of us know, BILL FRIST, a physician, knows the extraordinary potential of genetic research and its importance in improving the quality of medical care and in preventing, treating, and curing disease. I want to express our great appreciation to him for giving us the opportunity to speak this afternoon, with the completion of this bill either this evening or tomorrow. We thank him as well.

Throughout our history, the Nation has moved toward a more fair and more just society, often with great difficulty. Along the way, we had setbacks, even some failures. But we have had significant triumphs, too, especially in this past half century.

In 1964 the Congress enacted the Civil Rights Act to end one of the great evils of our time, discrimination against millions of our fellow citizens based on their race, color, religion, sex, or national origin. In 1965 we passed the Voting Rights Act to end discrimination in the right to vote.

In 1967, we passed another important law prohibiting age discrimination in employment.

In 1990, we passed the Americans with Disabilities Act to end discrimination against citizens with mental or physical handicaps.

In 1991, we strengthened the vital protections against job discrimination established in the 1964 Act.

Today we take another step in our national journey to a fairer and more just America by approving important legislation to end another insidious form of bias—discrimination based on the most personal aspect of any individuals, their unique genetic code.

Four years ago, we celebrated an accomplishment that once seemed unimaginable—deciphering the entire sequence of the human DNA code. This amazing accomplishment may well affect the 21st century as profoundly as the invention of the computer or the splitting of the atom affected the 20th century.

I personally believe this is the century of the life sciences with the greatest kind of hope and opportunity for progress in the life science area.

To cite but one example of why this legislation is so important, it was this new knowledge that enabled scientists to decipher the DNA sequence of the SARS virus only weeks after it was first identified.

The extraordinary promise of science to improve health and relieve suffering is in jeopardy, however, if our laws fail to provide adequate protections against abuse and misuse of genetic information.

The bipartisan bill the Senate considers today prohibits health insurers from using genetic information to deny health coverage or raise premiums.

It bars employers from using genetic information to make employment decisions. It prohibits insurers and employers from seeking genetic information, or requesting or requiring individuals to take genetic tests. It bars disclosure of genetic information by an insurer or employer, and provides effective remedies so that anyone who has suffered genetic discrimination can obtain relief.

Congress took an initial step in the right direction when we passed the Health Insurance Portability and Accountability Act. That landmark law established important protections to ensure that those who change their job or lose their job would not also lose their health insurance. It included also a prohibition on genetic discrimination in group health insurance.

The pending bill extends that prohibition to many other types of genetic discrimination, and I commend our colleague from Maine, Senator SNOWE, has been a principal leader on this vital issue for many years.

I also commend our distinguished chairman of the HELP Committee, Senator ENZI, for his impressive commitment to enacting this needed legislation by making it one of the very first items for committee action under his leadership. Other members of our committee have given time, energy and ideas to this important issue, especially Senator JEFFORDS, Senator GREGG, Senator DODD, and Senator HARKIN.

Our majority leader deserves great credit as well. As a physician, he knows the extraordinary potential of genetic research to improve the quality of medical care and prevent, treat, and cure disease. Hopefully, the bipartisan momentum will lead to an enactment of legislation this year.

Few kinds of information are more personal or more private than a person's genetic makeup. This information should not be shared by insurers or employers, or be used in decisions about health coverage or a job. It should only be used by patients and their doctors to make the best possible decisions on diagnosis and treatment.

I hope we can all agree that discrimination on the basis of a person's genetic traits is as unacceptable as discrimination on the basis of race or religion. No American should be denied health insurance or fired from a job because of a genetic test.

Last fall, witnesses on a panel of the National Institutes of Health testified about their first hand accounts of genetic discrimination. Even though they will never develop the disease, Heidi Williams' children were denied health insurance coverage because they are carriers for a genetic disorder. Phil Hardt's children feared discrimination so much that they sought genetic tests in secret, paying out of their own pockets and not using their real names.

During hearings in the House, Gary Avary told how his employer, the Burlington Northern Santa Fe Railroad, required any employee with carpal tunnel syndrome to have a genetic test. Employees who refused were threatened with penalties, or even the loss of their jobs.

Terri Seargent was discharged from her job at a private firm in North Carolina in 1999, 2 months after beginning very expensive treatment for a disease that was covered by her employer's health insurance plan. Since joining her employer in 1996, she had received positive annual performance ratings and generous annual raises. Yet she lost her job soon after the special treatment began.

Fear of genetic discrimination also prevents people from having genetic tests for hereditary cancer, which would provide them with life-saving information to help them prevent the onset of cancer or increase the likelihood of early diagnosis. In a recent study, only 57 percent of women decided to undergo testing for mutations in the breast cancer genes and only 43 percent of those at risk for colon cancer chose to have genetic testing. People fear cancer, but many also fear losing their jobs or their health insurance even more.

Experts in genetics are united in calling for strong protections to prevent this misuse and abuse of science.

The HHS advisory panel on genetic testing—with experts in law, science, medicine and business—has recommended unambiguously that federal legislation is needed to prohibit discrimination in employment or health insurance based on genetic information.

Francis Collins, the leader of the NIH project to sequence the human genome, said:

Genetic information and genetic technology can be used in ways that are fundamentally unjust . . . Already, people have lost their jobs, lost their health insurance, and lost their economic well-being because of the misuse of genetic information.

Genetic tests are becoming even cheaper today and more widely available. If we don't ban discrimination now, it may soon be routine for employers to use genetic tests to deny jobs to employees, based on their risk for disease.

When Congress enacts clear protections against genetic discrimination in employment and health insurance, all Americans will be able to enjoy the benefits of genetic research, free from the fear that their personal genetic information will be used against them.

If Congress fails to guarantee that genetic information is used only for legitimate purposes, we will squander the vast potential of genetic research to improve the nation's health.

Effective enforcement of the ban will also be essential. It makes no sense to enact legislation giving the American people the promise of protection against this form of discrimination, and then deny them the reality of that protection.

President Bush recognizes the seriousness of this problem, and supports a ban on genetic discrimination. As he said on June 26, 2001, ''genetic information should be an opportunity to prevent and treat disease, not an excuse for discrimination. Just as our nation addressed discrimination based on race, we must now prevent discrimination based on genetic information.''

I commend the President for his support, and I look forward to working with the administration to see that a strong bill on genetic discrimination is signed into law this year.

It is time for Congress to act, and I urge the Senate to pass this bipartisan bill with the broadest possible support.

I ask unanimous consent to have printed in the RECORD the strong statement of the American Academy of Pediatrics. They are concerned that discrimination will deny families access to health insurance for their children.

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

AMERICAN ACADEMY OF PEDIATRICS,
Elk Grove Village, IL, February 14, 2005.

Hon. EDWARD KENNEDY,
Ranking Member, Committee on Health, Education, Labor and Pensions, Washington, DC.

DEAR SENATOR KENNEDY: The American Academy of Pediatrics, an organization of 60,000 primary care pediatricians, pediatric medical subspecialists and pediatric surgical specialists dedicated to the health and well being of all infants, children, adolescents, and young adults, would like to express its strong support for S. 306, the Genetic Information Nondiscrimination Act.

The American Academy of Pediatrics strongly supports efforts to enhance, improve and expand the ability to provide newborn screening, counseling and health care services. Advances in genetic research promise great strides in the diagnosis and treatment of many childhood diseases, detected as early as the newborn period or later in childhood. With early identification and timely intervention, we have the ability to significantly reduce morbidity, mortality and associated disabilities in infants and children affected with certain genetic, metabolic and infectious conditions.

With these opportunities, however, we also have a responsibility to ensure that careful consideration is given to the testing and screening of children so that emerging technologies are used in ways that promote the best interest of patients and their families. Potential benefits of genetic screening and testing are limited by the risks of harm that may be done by gaining certain genetic information, including potential for discrimination by insurers and employers. Furthermore, the American Academy of Pediatrics is concerned that genetic discrimination is a barrier for families to access health insurance for their children. More than 9 million children are currently uninsured in this country, and millions more are underinsured. We will never achieve our goal of ensuring that every child has health insurance coverage if genetic discrimination is permitted.

For these reasons, the American Academy of Pediatrics supports passage of S. 306, which would protect children and families from genetic discrimination in health insurance and employment. The American Academy of Pediatrics commends you for your timely action on this legislation, and looks forward to working with you toward its passage into law.

Sincerely,

CAROL BERKOWITZ, M.D.,
President.

Mr. KENNEDY. Mr. President, the American Cancer Society supports our legislation. The American Osteopathic Association says access to health care should not be restricted on the basis of genetic testing. The American Society for Human Genetics; the biotechnology industry—all have made very important statements in support of this legislation, along with other organizations.

We suggest, for those who are following this debate, to refer to a July 2004 report titled ''Faces of Genetic Discrimination'' from the Coalition for Genetic Fairness. This is a wonderful document that I think has so much information. It lists the wide range of groups supporting this legislation, including the American Academy of Pediatrics, the American Cancer Society, the American Medical Association, the American Osteopathic Association, the American Society for Human Genetics, the Biotechnology Industry Organization, Hadassah, the Juvenile Diabetes Research Foundation, the National Organizations of Rare Disorders, the National Workrights Institute, and the Society for Women's Health Research. It is a wonderful document that outlines the history and the opportunity of genetic research and technology.

Mr. ENZI. I yield 10 minutes to the Senator from Maine, Ms. SNOWE.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, I thank, first and foremost, the chairman of the Health, Education, Labor, and Pensions Committee, the HELP Committee, Senator ENZI, for his commitment and for moving this legislation out of the committee as the first of a group of health-related bills to be referred out of his committee as the new leader, the chair of this committee this year. I thank the chairman for doing so and I express my gratitude to him. This sends a very significant message to the House of Representatives of the importance and the value of this initiative. Senator ENZI not only as chair of this committee but previously was instrumental for participating in negotiations for more than 16 months to help fashion a consensus on the legislation now before the Senate and that was enacted through his committee, as well. I thank him for his leadership that made it possible to bring this legislation to the Senate.

I also express my appreciation to my colleague on the other side of the aisle, Senator KENNEDY, as ranking member of the HELP Committee, who has been a longtime champion of protection for an individual's private health information, dedicating himself over the past year and a half toward forging a bipartisan solution to this issue.

Also, as a result of the considerable yeoman efforts of the Senate majority leader, a major breakthrough occurred on this legislative initiative. The Senate majority leader agreed to the necessity of this legislation the last few years in making it possible. It was due in large measure to his stalwart efforts in working with me and others such as

Senator ENZI and Senator KENNEDY, and Senator JEFFORDS, who has been a collaborator on this issue for 8 years, which made it possible to forge this bipartisan effort. I thank the Senate majority leader because he, obviously, was pivotal in ensuring we could pave the way for the passage of this legislation as we did last fall in October with unanimous support. Hopefully, we will receive the same support for this initiative today, as well. I thank the leader for giving his support and vital efforts to making this possible. I thank him for his vision and tireless support.

Also, I thank Senator GREGG who last year dedicated significant time and staff resources when he was the previous chair of the committee and for helping to make it a priority of his committee last year when he chaired the HELP Committee.

Also, Senator DODD has been deeply committed to fighting to ensure that consumers have the strongest possible protections afforded to them with the passage of this legislation.

Since April of 1996 when I first introduced the Genetic Information Nondiscrimination Health Insurance Act, along with my colleague, Senator JEFFORDS, science has continued to hurtle forward, further opening the door to early detection and medical intervention through the discovery and identification of specific genes linked to diseases such as breast cancer, Huntington's disease, glaucoma, colon cancer, and cystic fibrosis.

We recognized in 1996 with progress in the field of genetics accelerating at a breathtaking pace that we must ensure the fast arriving scientific advances in treatment and prevention of diseases do not advance a new basis for discrimination. As with countless scientific breakthroughs in history, the eventual completion of the genome project not only brought the prospects of medical advances such as improved detection and earlier intervention but also the potential for harm and abuse.

Every day since that breakthrough, the American people have been vulnerable to this type of discrimination. The everyday risk of discrimination has inhibited the full use of this vast, still untapped reservoir of knowledge.

As I have said previously, the fear of repercussions from one's genetic makeup was brought home to me through the real-life experience of one of my constituents, Bonnie Lee Tucker. In 1997, Bonnie Lee wrote to me and told me she was too afraid to have the BRCA test for breast cancer, even though nine women in her immediate family were diagnosed with breast cancer and she herself was a survivor. She was worried that knowledge might damage her daughter's ability to obtain insurance in the future.

Bonnie Lee was not alone in her fear. When the National Institutes of Health offered women genetic testing, nearly 32 percent of those who were offered a test for breast cancer risk declined to take it, citing concerns about health insurance discrimination.

What value is scientific progress if it cannot be applied to those who would most benefit?

I recall the testimony before Congress of Dr. Francis Collins, the Director of the National Human Genome Research Institute, without whom we would not have reached this day. In speaking of the next step for those involved in the genome project, he explained the project scientists were engaged in a major endeavor to ''uncover the connections between particular genes and particular diseases,'' to apply the knowledge they just unlocked. In order to accomplish this, he said:

> We need a vigorous research enterprise with the involvement of large numbers of individuals, so that we can draw more precise connections between a particular spelling of a gene and a particular outcome.

With all this tremendous potential, this effort cannot reach its full promise if patients have a reason to feel repercussions of genetic test results. Given the advances in science, there are two distinct concerns at hand. The first, of course, is discrimination by health insurance. The second is employment discrimination based simply upon an individual's genetic information. This legislation addresses both of these issues based on the firm foundation of current law.

With regard to health insurance, these are clear and familiar issues which the Senate has previously debated in the context of larger patient privacy issues. Indeed, as Congress considered what now is known as the Health Insurance Portability and Accountability Act of 1996, we also addressed medical information privacy. Moreover, any legislation that seeks to fully address these issues must consider the interaction of the new protections with the privacy rule which was mandated by HIPAA and our legislation which accomplishes just that.

Specifically, we clarify the protections of genetic information as well as the request to receive a genetic test from being used by the insurer against the patient. The fact is, genetic information only detects the potential for genetically linked disease or disorder. And potential does not equal a diagnosis of disease.

It is critical this information be available to health care professionals to diagnosis or treat an illness. Without the protection which this bill offers, patients will not be able to take advantage of our ever-increasing knowledge of genetics.

On the subject of employment discrimination, unlike our legislative history in debating health privacy matters, the issue surrounding protecting genetic information from workplace discrimination is not as extensive.

To that end, our bipartisan bill institutes these protections in the workplace. There should be no question of this necessity. Indeed, it is an imperative. The threat of employment discrimination is not hypothetical, and therefore it is essential that we take this information off the table, so to speak, before such abuse becomes widespread. While Congress has not yet debated this specific type of employment discrimination, we have considerable case law and legislative history on which to build.

Indeed, as we considered the necessity for this type of protection, we agreed that we must extend current discrimination protections to genetic information. We reviewed current employment discrimination law and possible remedies for instances of genetic discrimination and whether they should differ from existing remedies under current law, such as the American Disabilities Act or the EEOC. This bill creates new protections by paralleling current law and clarifying the remedies available to victims of discrimination. So regardless of their religion, race, or DNA, people will all receive the same protections under the law. There will be an across-the-board Federal standard which becomes so critical to fundamental protections under the law.

It has been more than 4 years since the completion of the working draft of the human genome. Like a book that sits unopened, the wonders of the human genome are useless if it is compromised by the fear of discrimination. This legislation is a shining example of what can be accomplished when we set aside partisan differences in order to address the challenges facing the American people.

I urge my colleagues to support this legislation. Again, I thank the chair of the committee for his instrumental and pivotal leadership to bring this legislation to the floor.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from Maine for her persistence, her enthusiasm, her perseverance, and particularly her reasonableness in dealing with this issue, recognizing how important it is and how important it is to get it done now.

I say to the Senator, you have just done tremendous work at pulling everybody together. I recognize that effort. Without your efforts, this would not have been possible. So I thank you for bringing it to this point.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 4 minutes.

I had mentioned earlier the great leadership that the Senator from Maine has been providing. She has been a noble soul since the very cold winter when she first introduced this legislation. Now she deserves great credit that we are at point.

Just on that point, I wish to recognize Representative SLAUGHTER in the House of Representatives. She has been a great advocate over a long period of

time. I want the Senate Record to reflect that.

I also want the Record to reflect the fact that President Clinton issued an Executive order banning genetic discrimination against Federal employees in the year 2000. It was limited, obviously, with his authority and power, to just Federal employees but, nonetheless, it was a significant step at that time.

I also draw attention to the strong support President Bush has given to this undertaking. In a radio broadcast, actually in 2001, he stated:

Genetic discrimination is unfair to workers and their families.

In that same radio broadcast he also stated:

To deny employment or insurance to a healthy person based only on predisposition violates our country's belief in equal treatment and individual merit.

We also have the strong letter of support from the Secretary of HHS, Tommy Thompson, from last year. There is also the statement from the administration, this year, in support.

I just mention one final point. Out at the National Institutes of Health, where they really do the best of the research—it is really the gold standard of research—they have important genetic research out there. In their information sheet, they have what we call the consent form. This is the consent form that any individual who wants to participate in genetic research at NIH signs. It says:

We will not release any information about you or your family to your insurance company or employer without your permission. However, instances are known in which genetic information has been obtained through legal means by third parties. This may affect you or your family's ability to get health insurance and/or a job.

Here is the premier workplace in the world doing the most significant, important research in genetics, which is so incredibly important, just raising this as a very real potential danger. It will not be a danger when we get this legislation passed into law.

Finally, I also commend my friend, and our former leader, Senator Daschle, who had introduced important legislation in 1997 on this very subject matter. He was one of the early leaders in this battle.

Mr. President, I think we have speakers who are on their way. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENZI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. SNOWE). Without objection, it is so ordered.

Mr. ENZI. Madam President, I yield 3 minutes for purposes of a colloquy with my friend, the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Madam President, I thank Senator ENZI and all those who have worked hard on this bill. I have a few questions in terms of my concern about prenatal testing.

Do I understand from the remarks of the Senator from Wyoming that this legislation is directed against a wide range of cases with which individuals of families may be discriminated against in health insurance coverage based on the results of genetic tests conducted on any family member?

Mr. ENZI. Yes, that is correct.

Mr. COBURN. One example of such discrimination cited in the past is based on prenatal testing. A 1996 report by the National Academy of Sciences cited a case in which a California HMO threatened to deny health care coverage to a child because that child, before being born, antenatal, tested positive for a genetic defect associated with cystic fibrosis. Would this legislation protect against this type of discrimination?

Mr. ENZI. Madam President, yes. In the type of situation described, the legislation would prohibit the insurer from discriminating against both the mother and the child because of the result of the genetic test of the child. It is the intent of the legislation to prohibit insurers from denying coverage to either a child or the child's family members based on the results of prenatal testing.

Mr. COBURN. I thank the Senator. Based on that interpretation and my understanding that the Senator will ensure the conference report includes language that makes clear that a dependent child will be protected from discrimination under this legislation regardless of when the genetic information was acquired, including any information gained from ante- and prenatal testing, I will support the bill. I congratulate Senator ENZI and thank him for his hard work and for the colloquy.

Mr. ENZI. Madam President, I thank the Senator from Oklahoma for his careful concern and the depth with which he has been into the bill and the vast knowledge he has as a doctor which helps to get all those different perspectives that bring bills together. We thank him for his efforts.

I yield myself 6 minutes.

Answering the question of ''why do this bill now'' is very important. The most persistent question from the business community about this bill, and the most reasonable, is why now? Why should we create a new basis for lawsuits for a subject area where there is no record of abuse, on information that employers do not want or need, to prevent fear over hypothetical situations? Let me address this critical question head on because I asked it myself at the onset, and I have answered it to my satisfaction.

First, we are not legislating in the area of the unknown but in the area of hope. Genetic information holds the key to better diagnosis, better cures, better lives for all of the world's population. We have determined that a serious impediment to this progress is fear, fear that the information derived from the genetic tests will be used to harm the individual, fear that the usage of the information is creating reluctance and that it is leading to refusal to take tests. Every refused test is progress delayed for all mankind because it is only through testing that scientists will amass the knowledge to find the diagnostic tools and cures we so desperately desire. Considering the potential for discovery and the employer protections we have built into this legislation, I am confident we have struck the right balance. But the question remains, why now? Why not wait for greater proof of fear and abuse?

There are several reasons. For well over half the States, it is not too early to take action. We are seeing developed a hodgepodge of State laws that address the handling of genetic information and the banning of its use in the workplace and in insurance. There are patterns to these laws, but there are enormous inconsistencies. Likewise, Federal law is inconsistent. The Americans with Disabilities Act covers genetic matters if they are ''regarded as'' a disability, but the determination is subjective and likely to evolve on a case-by-case basis. The Civil Rights Acts of 1964, as amended in 1991, are also implicated.

In short, many questions remain over what is and what is not covered by existing Federal and State law. And history has taught us that unanswered questions breed lawsuits. With this legislation, we seek to answer questions and prevent litigation. We have the opportunity to write a clearly defined set of rules for the collection and preservation of genetic information and carefully proscribe its usage. That will prevent mistakes and abuse. Before anyone develops the desire or reason to harm our fellow citizens, a clear-cut set of rules established at the infancy of this amazing field of science will do greater good for businesses and insurers and the public than waiting for common law to develop.

I remind my colleagues and my friends in the private sector that lawyers are already looking for opportunities to sue for genetic discrimination under State laws, under the Americans With Disabilities Act, and under many other laws written for other purposes—hoping to cash in on this developing area of the law. This is one area where it is not appropriate to let nature take its course. I am not willing to abdicate this policymaking function and wait for the courts to decide on how laws should apply to a field of science that didn't exist when the laws we are talking about were written. That is the job of Congress.

It is also important to observe that there are few victims as of yet in this field of science and law, and that is a good thing. We want to keep it that way. The rules established in the Genetic Information Nondiscrimination

Act are clear and fair. We distinguish between the legitimate and illegitimate use of genetic information in the workplace. We ensure confidentiality and make it clear how employers are to do that. And from my perspective, most importantly, we have included every essential safeguard and exception to prevent this law from becoming a litigation nightmare for businesses.

In conclusion, let me state that it is no coincidence that the first major civil rights bill of this new Congress deals with a truly 21st century issue. While genetic discrimination may not be widespread at this time, this legislation ensures that discriminatory practices will never become common practice.

From the past, we have learned from employees, employers, insurers, and others all work best together when the rules are clear and opportunities for personal achievement and health are available. This legislation tells everyone what is expected of them and avoids the trip wires and uncertainty of some of our existing laws.

I reserve the remainder of my time. I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER (Mr. COBURN). Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENZI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ENZI. Mr. President, I have here a copy of the Genetic Information Nondiscrimination Act 2003, which was submitted by Senator GREGG, who was chairman at that time. We did not do a new report this time. The reason we did not is because the bill has not changed between then and now.

I strongly urge my colleagues to consult this report, Senate Committee Report 108–122, not only because of its excellent background and analysis, but also because it clearly illustrates much of the thinking and work behind why this bill was drafted as it was.

Mr. President, I ask unanimous consent that a Statement of Administration Policy, issued today, regarding genetic information be printed in the RECORD. The administration favors enactment of the statement this legislation and this statement gives some explanation.

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, February 16, 2005.

STATEMENT OF ADMINISTRATION POLICY, S. 306—GENETIC INFORMATION NONDISCRIMINATION ACT OF 2005

The administration favors enactment of legislation to prohibit the improper use of genetic information in health insurance and employment. The administration supports Senate passage of S. 306 as reported, which would prohibit group health plans and health insurers from denying coverage to a healthy individual or charging that person higher premiums based solely on a genetic predisposition to developing a disease in the future. The legislation also would bar employers from using individuals' genetic information when making hiring, firing, job placement, or promotion decisions.

The mapping of the human genome has led to more information about diseases and a better understanding of our genetic code. Scientists are pursuing new diagnostics, treatments, and cures based on this information, but the potential misuse of this information raises serious moral and legal issues. Concern about unwarranted use of genetic information threatens access to utilization of existing genetic tests as well as the ability to conduct further research. The administration wants to work with Congress to make genetic discrimination illegal and provide individuals with fair, reasonable protections against improper use of their genetic information.

Mr. ENZI. Mr. President, I yield the floor, reserve the remainder of the time, and suggest the absence of a quorum, and ask that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. GREGG. Mr. President, I ask unanimous consent I be allowed to speak for up to 10 minutes on the bill.

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

Mr. GREGG. Mr. President, first I rise to congratulate the Senator from Wyoming for assuming the chairmanship of the HELP Committee and moving forward on this exceptionally important piece of information, the Genetic Information Nondiscrimination Act of 2005. Quickly moving this legislation forward shows the priority the Senator from Wyoming places on straightening out our medical situation in this country, making delivery of health care more affordable, more thoughtful, and in this case free of discrimination.

This is the first civil rights act, really, of this century, for all intents and purposes. It is a major commitment to people of our country that they will not be discriminated against on the basis of their genetic code. Last year we celebrated the discovery by Dr. Watson and Dr. Crick of the double helix. Then we also celebrated the fact that NIH had mapped the human genome, that the DNA project was completed. Those were huge milestones which have had an exceptional impact on the quality of health care in this country. They will continue to have an expanding impact; the breadth and depth of influence on how we deliver health care and how people's health care is affected within our Nation cannot even be predicted. That is because, if you can define what your genetic code is, you can obviously make huge strides toward curing diseases which might potentially afflict anyone.

But this new science also created issues for us, public policy issues. One of the big public policy issues it created is the issue of discrimination based on your genetic code. Everybody has this problem—or has this benefit—or has this situation. We all have genes. This is a universal issue. It is something that impacts everyone.

So Congress has taken a long and in-depth look at how we should address this from a public health policy standpoint, working in a very bipartisan way under the leadership of Senator ENZI. Prior to that, I was chairman of this committee and we worked on this very aggressively with help across the aisle, of course, of Senator KENNEDY and members of the Democratic leadership on the committee.

Then, outside the committee itself, Senator FRIST and Senator SNOWE and others have played a major role in making sure that what we did in this area was thoughtful and had a purpose and accomplished the goal. The goal was to make sure that discrimination did not occur in the science of the human genome and that the science of the use of this information that genetics was going to produce could be best implemented so we didn't end up retarding the development and implementation of new cures. The goal was to address the concerns of people relative to their genetic history and the potential it has for them as they move forward in their lives so they are not impacted negatively by acts of discrimination which might chill people's willingness to use this genetic information or even obtain this genetic information in their interfacing with the health community.

This act is an effort, after a tremendous amount of work, to thoughtfully and intelligently address the issue of how we effectively promote the use of genetic information. It actually encouraged people to take advantage of this new science rather than have an atmosphere where people are limited or are discouraged from taking advantage of this new science.

We know, unfortunately, that the potential is there, and it has actually occurred. We have instances—a few, I admit, but there are specific instances—of discrimination occurring as a result of the person's genetic history or potential genetic history in the area of employment and in the area of health insurance. This is where this bill addresses those concerns.

It specifically addresses the issue of health insurance underwriting, and it specifically addresses the issue of employment. Its impact is that health insurance plans will not be able to deny eligibility for an employee into a health plan based on genetic information, and it prohibits health insurance

plans from charging higher premiums based on an individual's, or his or her family's, genetic information. It is very important.

It also does not allow an individual health insurance employer to request genetic information or to use a person's genetic information in their decisions on the hiring and firing of an individual.

It recognizes that all individuals, whether they are healthy or sick, and all medical information, whether genetic or otherwise, should be afforded the same protection under the law. And that is a critical point.

The practical implication of it is, if you have a family history where you sense or may think there may be a problem that you have because of your genetic makeup and you are not going forward and being tested, your willingness to see a doctor to see if that genetic problem may actually exist for you is not going to be limited because you are not going to be concerned with the fact, if that information comes forward or is obtained that it might be used to limit your ability to get a job, keep a job, or get health insurance, or keep health insurance, or, alternatively, that your children or children's children might also, if the genetic information is confirmed, be subject to discrimination for work or for obtaining insurance.

It will allow people to be much more aggressive in using this brand new science to assist them in getting their health in order and making sure that people and their children are properly screened for what can be produced from genetic information.

This is going to be such a hugely valuable tool for our society and for people. There should be nothing in our society which says to people you really can't afford to do this, because if you take this type of test, you see this doctor, if you have this type of review, you are going to find out something that might lead to your quality of life being dramatically reduced because you lose your job or you lose your insurance.

The legislation is appropriate. Those who questions its need, do so out of legitimate concern that it is a new Government law, new Federal legislation, and they do not see that the problem exists, I guess, in many instances or, if it does exist, they don't think it is significant enough to address. To those folks, I would simply say this: Yes, the problem does exist. Yes, we have instances of discrimination occurring both in the workplace and in the insurance industry. They have been limited but, more importantly than that, this is a science which holds such tremendous potential for dramatically improving the way we deliver health care as a society that we do not want anything to stand in its way to chill its use or to undermine the willingness of Americans to participate in studies of themselves or their families or their genealogy which might undermine the advantage which this new science gives them in getting better health care.

It is an appropriate piece of legislation. I think it puts the emphasis in the right place, which is reasoned and appropriate in how we handle genetic information and we avoid discrimination in the use of that information.

Again, I congratulate Senator ENZI for setting this out as the first item he has moved out of the HELP Committee under his chairmanship. It reflects his commitment to making sure health care in this country is not only of a better quality, but that the science that backs up health care continues to be robust as it pursues cures for all Americans.

I yield the floor.

Mr. ENZI. Mr. President, I thank and congratulate the Senator from New Hampshire, Mr. GREGG, for his efforts on this bill. He was actually the committee chairman who made sure that all the parties came together, which around here is no small task, and came up with this package that does what our purpose was. He did it with such diligence, care, and completeness.

Rather than take the time to put out a new committee book about the bill, we used his book. It gives an explanation, and it also shows that the bill didn't need to be changed from what he had. So it is actually Senator GREGG's efforts that brought this bill to the floor and brought it in this complete fashion and moved it along so quickly. We thank him for all of his information and help.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, we are now considering a bill that I am pleased to have cosponsored and which I worked on with my colleagues for a number of years, the Genetic Information Nondiscrimination Act of 2005.

I thank our chairman, Senator ENZI, for expeditiously bringing this to the floor and guiding it, hopefully, to early passage tomorrow.

I also compliment Senator SNOWE on being the chief sponsor of this bill, and for being in the forefront of this fight to protect people who want to understand perhaps the predispositions they might have for any illnesses because of their genetic history.

As we know, the bill makes it illegal for an employer or health insurer to discriminate against an individual based on genetic information.

The good news is that advances in genetics have opened major opportunities for medical programs. We are now able to diagnose and treat diseases earlier and more efficiently than ever before.

Again, my deepest thanks to Francis Collins for his great leadership at the National Human Genome Institute, for guiding and directing the mapping and the sequencing of the human gene. He has provided great leadership. I have followed it since Dr. Collins first took over, I think back in 1993, if I am not mistaken. It has just been amazing to watch this happen.

Some people said it was going to take 15 to 20 years to get this done, but thanks to Dr. Collins and his leadership and the great staff that he assembled at the National Human Genome Institute, we completed the entire mapping and sequencing by April of 2003.

We have this great information. You can go right on the Internet and you can find it all right there. It is all out there for the entire world to use. Quite frankly, they are using this genetic information on the human gene to understand and to do more research into the background of many of our illnesses that have genetic markers for them.

As a result, we are now able to diagnose and treat diseases earlier and more efficiently than ever before. I can daresay that in the years to come we are going to have more and more breakthroughs by scientists who are using this toolbox—as I have often called it—of genetic information that we have derived from the mapping and sequencing of the human genome.

That is the good news. The bad news is that this same genetic information could be used by employers or insurance companies to discriminate in hiring or in insurance decisions. Health insurers could charge higher copayments or deny coverage altogether to individuals who have a genetic predisposition for certain diseases.

When we passed the Americans With Disabilities Act in 1990, we had little understanding of the range of genetic information that could be used by employers and health insurers to discriminate.

The problem is that the ADA does not expressly address genetic discrimination. What is more, the Supreme Court has made it more difficult to apply the ADA to discrimination based on the genetic information.

I think there have been mistaken decisions of the Supreme Court, but, nonetheless, they have spoken.

It is incumbent upon us to pass legislation to clarify this. That is what this bill is all about—prohibiting enrollment restrictions and premium adjustments based on an insurer's ability to determine someone's genetic makeup. The bill prohibits employers from discriminating and hiring discrimination.

We want people to access the diagnostic tools scientists and researchers have and will come up with in the future so they can take steps to protect themselves to prevent perhaps the onset of an illness that can be caused by a genetic predisposition. For example, there could be a genetic marker, as we know, for breast cancer. Both of my sisters passed away from breast cancer at too early an age. They had families and their children are grown up; now they have children who are growing up. Of course, there is a great concern among them about the genetic background of their mother, or grandmother in this case. They should, if they want to, be able to access information to better protect themselves. They should know if they get early screening, early mammograms, and

whether they might want to control their diet so they would be more acutely aware the earlier they detected this, if, God forbid, it should happen to one of them, that they would be able to address that and to live full and meaningful lives.

We know if breast cancer is addressed early, the chances of someone surviving and living a whole, full life is great. So many people do not detect it early is the problem. We want people to access the diagnostic tools and not be afraid that if they get this information, they might lose their job, their health care premiums would go up, that sort of thing. That is what this bill is about.

I thank my colleague and my friend from Wyoming, the chairman of our committee, for bringing this expeditiously to the Senate floor. Hopefully, the House will take steps also to pass it very soon, and we can send it to the President. It is incumbent upon the House to take prompt action and get it to the President's desk as soon as possible.

WELLNESS

While I am here, I diverge a little bit, but not a lot, to briefly mention an issue that does not relate directly to the provisions of the bill but does relate to the issue of prevention and the issue of health and how much money we are spending in this country. I will talk about the issue of wellness and the role that Government can play in promoting wellness and prevention in order to help address a crisis in our health care system, the crisis of exploding costs.

As the Senate takes important bipartisan steps forward to prohibit discrimination based on genetic information, as we are doing here today, we can and must take bipartisan steps forward to promote wellness. We have heard a lot recently about the projected shortfall in Social Security over the next 75 years of $3.7 trillion. That is a lot of money in anyone's book. That is over the next 75 years. That pales compared to the shortfall in Medicare, which is estimated to be $17 trillion. That is the real crisis. Social Security is not a crisis; the real crisis is Medicare.

It is not only the Federal budget that is being eaten alive, it is State budgets, family budgets, it is corporate budgets. Look at the numbers: Some 75 percent of health care costs in the United States are accounted for by chronic conditions and diseases, many of which are preventable. Last year, nationally, we spent more than $100 billion on obesity alone. Medicare and Medicaid picked up almost half that tab. There was an address the other day by the chairman of General Motors talking about what it is doing to their company: $1,500 of the cost of every car they produce is now because of health care insurance costs.

It is unwise uneconomic and totally unsustainable. If we are going to control Medicare and Medicaid costs and private sector health care costs as well, we need a significant, even a radical change of course in our country. We need a fundamental paradigm shift away from a sick care system. That is what we have now. In other words, if you get sick, you get care, but there is precious little out there now that encourages and gives incentives to stay healthy in the first place. We need a paradigm shift toward preventing disease, promoting good nutrition, encouraging fitness and wellness. This will be good for the physical health of the American people, and it will be good for the fiscal health of government, corporations, private businesses, and family budgets.

I believe strongly in personal responsibility. I believe people should take charge of their own health. I also believe in corporate responsibility, community responsibility, and government responsibility. I make no bones about it: It is past time for the Federal Government to step to the plate in a very robust way.

To that end, I introduced the HELP America Act last year, otherwise known as the Healthier Lifestyle and Prevention Act. This legislation takes a comprehensive approach to wellness and prevention. It provides tools and incentives to schools, employers, and communities. It aims to create better nutrition, physical activity, and mental health opportunities for kids in schools. I saw some data recently that said that 80 percent of elementary school kids in America today get less than 1 hour of physical exercise a week in school. That is unconscionable. We have to have better physical activity and nutrition for our kids in school.

The bill creates better nutrition, physical activity, and mental health opportunities for kids in school. It gives the Federal Trade Commission authority to regulate unfair marketing to children, especially junk food. It provides incentives to build paths, safe sidewalks and bike paths. It requires nutrition labeling on menus in chain restaurants. It does a lot more than that.

The HELP America Act is comprehensive. It is ambitious. But it is only at the beginning of a long legislative process. I am confident over time we can build a bipartisan consensus to move the Federal Government toward wellness, prevention, away from sickness, more in keeping people healthy. We have already made some progress.

Several elements of the HELP America Act passed late last year. For example, we secured $440 million for research at the National Institutes of Health into the causes and cures of obesity. We sent more than $50 million in grants to States to fund programs to address nutrition, physical activity, and obesity. We secured some $114 million for tobacco prevention and cessation activities at the Centers for Disease Control and Prevention. We also expanded the fresh fruit and vegetable program.

Three years ago when we passed the farm bill, I put a provision in there to test a theory. My theory was if we gave kids in school free fresh fruits and vegetables—not just at lunch but anytime during the day—they would eat them, they would like them, they would not be putting money in the vending machine to buy junk food, they would study better, they would be better behaved, and everyone would benefit. So we tried out the theory. We got a small amount of money in the farm bill. We took 4 States, 25 schools in each State, 100 schools, and 1 Indian reservation in Arizona. We provided enough money to bring free fresh fruits and vegetables into these schools. What has happened? In each one of those schools, it has been a resounding success. Not one of those schools has asked to be taken off the program. In fact, every single one of them has asked, please, don't take this away.

We have now gone from four States to nine States. We have gone from 100 schools to a little over 200 schools. It is growing. Visit one of these schools where these kids get the free fresh fruits and vegetables.

These little kids in school, at about 9:30 in the morning, get the ''growlies,'' they get a little antsy. If they have an apple to eat or an orange or a clementine or kiwi fruit or a banana or grapes, or they get fresh broccoli in the afternoon or cauliflower or carrot sticks, you would be amazed how much they eat of these fruits and vegetables.

As I said, the teachers love it. The principals find it is a great system. Even parents now are weighing in. Parents love it. Kids are even going home and asking their parents to buy these at grocery stores. Again, I mention that because this is getting to the early part, getting kids to eat the proper foods, getting them tuned in to fresh fruits and vegetables at an early age. But there is so much we have to do. It is time for the Federal Government to start moving in that direction. If we do not, we are never going to be able to save Medicare and Medicaid, we are never going to be able to pay for it. It is going to bust us.

So we have to start preventing, we have to start keeping people healthy in the first place. That is what this is all about—so that we have taken some positive steps forward. They are small steps, kind of baby steps, but I am convinced there is a solid, bipartisan consensus to pursue this course of wellness and prevention. I know that Senator FRIST has been one of the great leaders in this area of prevention and wellness. I look forward to working on this agenda with my colleagues of both parties in the months ahead. I hope we can get a strong, bipartisan effort.

I hope the President, who, by the way, is a great example of physical fitness—though I may have some disagreements with the President on some things, that is one thing I agree with him on. He is good at physical fitness. He does not smoke. He does not drink.

As far as I know, he eats well and exercises well.

WISHING SENATOR SPECTER WELL

Mr. President, I understand this is now on the news wires, so I want to comment on something that has just come to my attention this afternoon. I received a call from one of the best friends I have ever had, a close friend here in the Senate, someone whom I have admired for his personal qualities as well as for his senatorial qualities for so many years. I have been privileged to work with him side by side now going back almost 20 years.

I received a call a little while ago from Senator SPECTER of Pennsylvania, who informed me that doctors at the University of Pennsylvania Hospital had diagnosed him with Hodgkin's disease. Well, it kind of took my breath away. There is no one for whom I have a higher regard than Senator ARLEN SPECTER. I think how hard he has worked to double the funding for NIH for basic research, and then to have this happen. But he assured me that it is at an early stage. The doctors have said he has an excellent chance of full recovery and will be back here very soon after our break next week. He will have to undergo some treatments, but I understand the doctors say that ARLEN SPECTER has an excellent chance of full recovery.

I know all of my colleagues wish him the best. Our prayers are with him. We know he is a strong person. He has a strong will. He is a person of strong faith. And we know that his will and his faith will carry him through. I know we will have Senator SPECTER back here with us leading the charge to make sure we address the real needs of health care and biomedical research, to make sure we fulfill our obligations in education in this country, where he has been a great leader.

Again, Mr. President, we wish Senator SPECTER well, a full and speedy recovery, and look forward to having him back here as soon as possible.

With that, Mr. President, I yield the floor.

TITLE XVIII

Mr. GRASSLEY. Mr. President, it has come to my attention that S. 306 includes a provision to amend title XVIII of the Social Security Act. As chairman of the committee, I am obligated to point out that the Finance Committee has primary jurisdiction over title XVIII, as amended. The provision in S. 306 that is within the jurisdiction of the Finance Committee amends title XVIII relating to Medicare supplemental policies. I ask Chairman ENZI to acknowledge that the Senate Finance Committee has jurisdiction over title XVIII of the Social Security Act and ask that he endeavor to consult on matters before the Health, Education, Labor & Pensions Committee that touch on the Senate Finance Committee's jurisdiction.

In order to avoid unnecessary confusion as to the jurisdiction of the Finance Committee or further delay in the consideration of this bill, I would agree to accommodate your request to withhold any objection to the Senate's consideration of S. 306 with the acknowledgment that this provision and title XVIII generally are in the jurisdiction of the Finance Committee. This does not represent any waiver of jurisdiction on the part of the Finance Committee on this subject.

I ask the chairman of the HELP Committee, Senator ENZI, whether he would agree to this request.

Mr. ENZI. Mr. President, I tell my friend that I do acknowledge that title XVIII of the Social Security Act is within the jurisdiction of the Senate Finance Committee. The matter before the Senate makes amendments to the Employee Retirement and Income Security Act and the Public Health Service Act. The section to which you have raised concerns was included as a conforming amendment to ensure consistency in Federal policy. I want to reassure my friend that I have every intention of respecting the jurisdiction of all Senate committees and will endeavor to consult with him on all matters before my committee that touch on the jurisdiction of the Senate Finance Committee. I ask my friend to provide me the same courtesy.

Mr. GRASSLEY. I agree and will also endeavor to consult with the Senator on matters before the Senate Finance Committee that are in the jurisdiction of the HELP Committee.

Mr. JEFFORDS. Mr. President, all of us are privileged to be living in an era of unprecedented scientific discovery in the biological sciences. Since 1953, when James Watson and Francis Crick first identified the structure of DNA or the double helix we have relentlessly increased our ability to decipher an individual's hereditary information. At the time of their discovery, Watson and Crick said that they had ''found the secret of life'' and to be certain, life, as we know it, has not been the same since.

Today, we have the entire genetic map—the human genome—that is revealing a greater understanding of a range of diseases and their treatment. We also have a much greater capacity to know an individual's biological destiny as it is encoded in their DNA, which is essentially a personal genetic blueprint of their current biology as well as a predictor of their biological future. The benefit of knowing this information cannot be overstated. It can save countless lives. Part of the challenge of having this information is to ensure that it not be used unfairly to influence an individual's sociological destiny.

This is the reason I am joining with Senator SNOWE and our other colleagues in support of S. 306, the Genetic Information Nondiscrimination Act of 2005. S. 306 will prohibit discrimination against individuals based on their genetic makeup in both health insurance and employment. This legislation represents a major contribution to civil rights law. It is a victory for consumers, health insurers and health care providers; and it is a victory for employees and employers. It is the result of almost seven years of effort and it is identical to a measure that passed the Senate during the 108th Congress by a vote of 95 to 0.

Together with the much-deserved excitement over the potential of genetic research, there have also been longstanding concerns that genetic information, in the wrong hands, could be misused. Many people have argued that an individual's genetic information which may indicate a predisposition to a particular disease could be used to deny that individual health insurance or employment opportunities. The promise of better health would instead become a potential for greater discrimination and disadvantage. The Genetic Information Nondiscrimination Act of 2005 is designed to address those concerns.

Existing antidiscrimination law has been enacted over the years as a means of correcting longstanding abuses in voter rights, employment, housing and education. However, under current law a person who has suffered employment or health insurance discrimination because of their genetic makeup has very little, if any, recourse to legal remedies. This legislation addresses this problem by creating new enforceable rights for individuals similar to those available under existing civil rights, education and fair employment law.

It is important to note that to date, there has not been a pattern or clear prevalence of genetic discrimination. However, there is anecdotal evidence that people have refused to take genetic tests because of their fear that the predictive information would lead to discrimination. We know the science is rapidly moving forward and we are learning more every day about the ''predictive'' correlation between genetic markers and certain diseases. It is not difficult to imagine such discrimination occurring in the near future. So in a sense, we can take that rare opportunity to be ahead of the curve and enact legislation to preempt discriminatory practices and prevent them from ever happening.

I believe the compromise legislation we consider today will be successful in preventing abuses in the insuring of health services and employment. However, it is extremely important that we remain vigilant against this type of discrimination from ever getting a foothold in our society and if this measure proves insufficient and needs to be strengthened, then we will be back to correct the problems and that effort will have my support.

As I mentioned earlier, the genesis of this legislation links to many years of effort on the part of several of our colleagues. My friend, Senator SNOWE, has for many years been the leader of one

effort in which I was proud to join, together with Senators FRIST, ENZI, COLLINS and HAGEL. In another keystone effort, the previous minority leader, Senator Daschle, joined with Senators KENNEDY, DODD and HARKIN to delineate the need for employment protections. All have contributed extensively to a better understanding of the many critical and complex definitions that are the heart of this legislation. We could not have been successful last Congress in weaving an agreement between these bills without the commitment of Senator GREGG, who as chairman of the HELP Committee during the 108th Congress, devoted his energies to finding a middle ground that made today's bipartisan agreements possible. Finally, I commend Senator ENZI, the current chairman of the HELP Committee, not only because he elevated the importance of this bill by moving it to the front of the legislative calendar, but also for the many years of effort he has dedicated to seeing this measure enacted. It is wholly appropriate that he is there as chairman to see it cross the legislative finish line.

Mr. President, I am pleased at the willingness both sides have shown to work through the many difficult aspects of this key issue. Through many meetings and discussions, we have been able to reach agreements on an array of important issues that have improved and strengthened the legislation. I look forward to continuing this cooperative approach as we move to enact this important and landmark initiative and I urge our colleagues in the House to pass it in the near. The President supports this legislation, and it is my hope that we can enact it into law before the end of this Congress. I urge all of my colleagues to vote in its favor.

Mrs. CLINTON. I rise today to express my support for S. 306, the Genetic Nondiscrimination Act. I am proud to be an original cosponsor of this bill, and I thank Senator SNOWE for her leadership on this issue. I urge my colleagues to vote for passage of this important legislation.

The Genetic Nondiscrimination Act is a crucial first step to protecting individuals and families from genetic discrimination. This legislation prevents insurers from denying coverage or raising premiums based upon the results of genetic tests. It prohibits insurance companies and employers from requiring individuals to undergo genetic testing. And finally, this legislation protects workers from employment discrimination based on their genetic information.

Genetic testing holds great promise for medicine. Knowing you are prone to cancer or heart disease or Lou Gehrig's disease may give you a fighting chance. But just try, with that information in hand, to get health insurance in a system without strong protections against discrimination for pre-existing or genetic conditions. As genetic information allows us to predict illness with greater certainty, these tests threaten to turn the most susceptible patients into the most vulnerable.

Each vaunted scientific breakthrough brings with it new challenges to our health system and this legislation will help maximize advancing technology's benefits while protecting Americans from the use of genetic information as a tool for discrimination. With this bill, we can help patients access the latest advances in science without sacrificing their personal privacy.

Genetic discrimination has many victims: those who are denied health coverage, those who lose job opportunities, and those who forego important tests out of fear that they will be victimized. We should encourage people to learn more about their health so that they can make informed decisions about treatment and care, not discourage them from seeking information with threats of unemployment or loss of insurance.

By passing the Genetic Nondiscrimination Act into law, we will address at the Federal level an issue that has been recognized by a majority of states. More than 40 States have enacted genetic nondiscrimination provisions, and I believe that it is far past the time for Congress to follow suit.

I would also like to note that the Genetic Nondiscrimination Act, while a good first step, is only the beginning of our work in this area. Many who have long championed genetic nondiscrimination support stronger protections and tough enforcement provisions.

Passing the Genetic Nondiscrimination Act will help to put a necessary framework in place and we will need the same commitment to action in the future to reinforce this framework, and provide strong, reliable enforcement for the important civil right that we are defending today.

Again, I would urge my colleagues to support the passage of the Genetic Nondiscrimination Act. I also urge the House to take up this matter as quickly as possible, to protect the millions of patients that might benefit from genetic testing.

Mr. CORZINE. Mr. President, I am pleased that today the Senate is considering legislation designed to prohibit discrimination in health insurance and employment based on genetic information.

In the last decade, biomedical researchers have made great strides in genetic research. While these discoveries are critical to researching treatments and, ultimately, discovering cures for many diseases, this information also has the potential to be used to deny health care insurance or employment to an individual who has a genetic predisposition to an illness. That is why we must make it illegal for employers and health insurers to discriminate against individuals on the basis of their genetic information.

S. 306 is an important step, but it is only a first step. Any legislation addressing this issue must include strong enforcement and deterrence mechanisms. As this legislation moves forward, I hope its enforcement provisions will be strengthened. Without strong accountability provisions, there is little to deter employers and health insurers from using genetic information inappropriately.

In addition, I hope that when this legislation is conferenced, the conferees will find ways to strengthen the privacy provisions. It is essential that our laws keep pace with technological advances and that we continue to protect the privacy of our citizens. Advances in technology cannot place fundamental American rights at risk.

Despite my concerns about the enforcement and privacy provisions, I believe this legislation is a critical first step and look forward to working with my colleagues to continue addressing the important issue of genetic discrimination.

Mr. DODD. Mr. President, I rise today to speak in support of S. 306, the Genetic Information Nondiscrimination Act. Before I talk about why this bill is so crucial, I want to thank the chairman and ranking member of the HELP Committee, Senator ENZI and Senator KENNEDY, for their efforts on this bill, and for making it one of their first priorities in the 109th Congress. Their action sends a strong signal about the importance of this legislation.

I would be remiss if I did not also mention the dedication to this issue shown by our former Democratic leader, Senator Tom Daschle. We are in a position to pass this bill today as a direct result of the work done by Senator Daschle.

Many of us, on both sides of the aisle, saw the need several years ago for legally enforceable rules to maximize the potential benefits of genetic information—and minimize its potential dangers. I have worked on this issue with many of my colleagues since the 105th Congress. I have chaired a hearing in the HELP Committee, and I have introduced legislation with several of my colleagues, notably Senator Daschle, Senator KENNEDY, and Senator HARKIN, going back to the 106th Congress.

The legislation that we will consider today is a bipartisan compromise between our bill, and a similar bill introduced by Senator SNOWE and others. It represents a culmination of the efforts of many of us to establish such rules. It is an enormous step forward, and I would like to acknowledge the hard work of everyone who was involved in crafting this legislation.

Over the past decade, the science of genetics has developed at an astonishing pace. The mapping of the human genome is undoubtedly one of the greatest scientific achievements of this generation. We have not even completely grasped the wide array of potential benefits that may come from our newfound genetic knowledge.

Certainly, the impact on our health will be profound. Doctors will be able

to read our unique genetic blueprints and predict the likelihood of developing diseases such as cancer, Alzheimer's, or Parkinson's. They will also be able to use an individual's genetic information to develop treatments for these same diseases, and target individuals with the treatment that will work best for them. This is not science fiction. It is already beginning to happen.

For all the promise of the genetic age, there is also an inherent threat. Science has outpaced the law and Americans are worried, and rightly so, that their genetic information will be used—not to improve their health—but to deny them health insurance or employment. There is no information more personal and private than genetic information—and no information more worthy of special protection. Our genetic code is the very blueprint of our selves. It is with us from birth, and to some extent it determines who we will become. What an incredibly powerful tool, with its vast potential to help us live healthier lives. But the nature of genetic information also makes it dangerous to the individual if used incorrectly.

This bill provides significant new protections against the misuse of genetic information. It ensures that Americans who are genetically predisposed to health conditions will not lose or be denied health insurance, jobs, or promotions based on their genetic makeup. Reaching an agreement on this legislation means that our laws dealing with genetic information can begin to catch up to the reality of our technological capability in the field.

With these protections in place, individuals need not feel reluctant to get the tests that may save or improve their lives. Although the Americans with Disabilities Act, ADA, and the Health Insurance Portability and Accountability Act, HIPAA, took important steps towards preventing genetic discrimination, this legislation is more specifically tailored to prohibiting its misuse. Health plans and health insurance issuers will not be allowed to underwrite, determine premiums, or decide on eligibility for enrollment based on genetic information. Employers will not be allowed to alter hiring practices based on genetic information. The American public can feel secure in the knowledge that their genetic blueprint will not be used to harm them, that a genetic marker indicating a possible illness later in life will not cause them to lose a job or health insurance.

Like any compromise, this bill is not perfect. In particular, while it poses some important limitations on the collection of personal genetic information by insurance companies, it would allow them to collect this information, without consent, once an individual is enrolled in a health plan. While insurers are expressly prohibited from using this information for the purposes of underwriting, I am concerned that once they have this information, it may be difficult to control how it is used and who has access to it. We all know from experience that the difficulty of protecting information increases exponentially with each additional person who has access to that information. As this bill becomes law—and I sincerely hope it will—I will monitor closely how it is implemented, and the extent to which privacy is protected. We may need to revisit this issue in the future.

Mr. President, despite this shortcoming, I support this bill, as it represents a vast improvement over current law in many ways. I hope that it will become law in the very near future. This Chamber passed a similar bill last year by a vote of 95 to 0. Unfortunately, the House did not take up this important legislation. I urge them to do so as soon as possible. We all should feel free to make our health care decisions based on our health care needs, not based on fear. Today, we are close to making that goal a reality.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I ask unanimous consent for an additional 2 minutes to finish this up.

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

Mr. ENZI. Mr. President, I thank the Senator from Iowa and all others who have spoken today. It has been a very positive day. I thank the Presiding Officer for the care with which he reviewed this bill and the issues he brought up and the resolution that I am sure we have gotten.

I would be very remiss if I did not thank the staffs of all of those people who help us dig into these issues to be sure we are doing the right thing. They bring some different perspectives that add to coming up with the right solution.

I particularly thank those people from the committee on both sides of the aisle for their efforts. I thank Kim Monk, David Thompson, Bill Pewen, David Bowen, Holly Fechner, Sean Donohue, Ilyse Schuman, Andrew Patzman, David Nexon, Adam Gluck, Carolyn Holmes, Kate Leone, Ben Berwick, Jennifer Duck, and Steve Northrup.

I particularly mention Katherine McGuire, who is the new staff director, who was able to put together all of the personnel we needed and then a committee retreat, as well as coordinating and moving all these things along, so we could be at this point this soon.

We thank all those people for their individual efforts as well as the team efforts they put in.

At this point, I think we are ready to move on. I yield the floor and thank everybody for their participation.

AMENDMENT NO. 13

(Purpose: To provide a complete substitute)

The PRESIDING OFFICER. Under the previous order, amendment No. 13 is agreed to.

The amendment (No. 13) was agreed to.

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

The PRESIDING OFFICER. The substitute, as amended, is agreed to.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

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

Mr. ENZI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

NOTICE OF PROPOSED RULEMAKING

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be printed in the RECORD today pursuant to section 304(b)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)(1)).

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

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

Notice of Proposed Rulemaking, and Request for Comments From Interested Parties

NEW PROPOSED REGULATIONS IMPLEMENTING CERTAIN SUBSTANTIVE EMPLOYMENT RIGHTS AND PROTECTIONS FOR VETERANS, AS REQUIRED BY 2 U.S.C. 1316a, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED (CAA).

Background

The purpose of this Notice is to issue proposed substantive regulations which will implement the 1998 amendment to the CAA which applies certain veterans' employment rights and protections to employing offices and employees covered by the CAA.

What is the authority under the CAA for these proposed substantive regulations? In 1998, the CAA was amended through addition of 2 U.S.C. 1316a, a provision of the Veterans' Employment Opportunities Act of 1998 (VEOA), which states in relevant part: ''The rights and protections established under section 2108, sections 3309 through 3312, and subchapter I of chapter 35 of Title 5, shall apply to covered employees.'' As will be described in greater detail below, these sections of Title 5 accord certain hiring and retention rights to veterans of the uniformed services. Section 1316a(4)(B) states that ''The regulations issued . . . shall be the same as the most relevant substantive regulations (applicable with respect to the Executive Branch)

promulgated to implement the statutory provisions . . . except insofar as the Board may determine for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

Will these regulations, if approved, apply to all employees otherwise covered by the CAA? No. Subsection (5) of 2 U.S.C. 1316a, states that, for the purpose of application of these veterans' employment rights, the term ''covered employee'' shall not apply to any employee of an employing office: (A) whose appointment is made by the President with the advice and consent of the Senate; (B) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress; or (C) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position. . . .'' These regulations would apply to all other covered employees.

Do other veterans' employment rights apply via the CAA to Legislative Branch employing offices and covered employees? Yes. Another statutory scheme regarding veterans' and armed forces members' employment rights is incorporated in part through section 206 of the Congressional Accountability Act of 1995 (CAA). Section 206 of the CAA, 2 U.S.C. 1316, applies certain provisions of Title 38 of the U.S. Code regarding ''Employment and Reemployment Rights of Members of the Uniformed Services.'' Section 206 of the CAA also requires the Board of Directors to issue substantive regulations patterned upon the regulations promulgated by the Secretary of Labor to implement the Title 38 rights of members of the uniformed services. As of this date, the Secretary of Labor has not finally promulgated any such regulations. Therefore, regulations implementing CAA section 206 rights will not be proposed by the Board until the Labor Department regulations have been promulgated. The proposed regulations in this Notice are not based on section 206 of the CAA, but solely on the other veterans' rights referenced in 2 U.S.C. 1316a.

What are the veterans' employment rights applied to covered employees and employing offices in 2 U.S.C. 1316a? In recognition of their duty to country, sacrifice, and exceptional capabilities and skills, the United States government has accorded veterans a preference in federal employment through a series of statutes and Executive Orders, beginning as the Civil War drew to a close. While interpreting regulations have been modified over time, many of the current core statutory protections have remained largely unchanged since they were first codified in the historic Veterans' Preference Act of 1944, Act of June 27, 1944, ch. 287, 58 Stat. 387, amended and codified in various provisions of Title 5, U.S.C. In 1998, Congress passed the Veterans Employment Opportunities Act (''VEOA''), Pub. L. 105–339, 112 Stat. 3186 (October 31, 1998), which ''strengthen[s] and broadens''(Sen. Rept. 105–340, 105 Cong., 2d Sess. at 19 (Sept. 21, 1998)) the rights and remedies available to military veterans who are entitled to preferred consideration in hiring and in retention during reductions in force (''RIFs''). Among other provisions of the VEOA, Congress clearly stated, in the law itself, that henceforth the ''rights and protections'' of certain veterans' preference law provisions, originally drafted to cover certain Executive Branch employees, ''shall apply'' to certain ''covered employees'' in the Legislative Branch. VEOA §§4(c)(1) and (5) (emphasis added).

The selected statutory sections which Congress determined ''shall apply'' to covered employees in the Legislative Branch include, first, a definitional section describing the categories of military veterans who are entitled to preference (''preference eligibles''). 5 U.S.C. §2108. Generally, a veteran must be disabled or have served on active duty in the Armed Forces during certain specified time periods or in specified military campaigns to be entitled to preference. In addition, certain family members (mainly spouses, widow[er]s, and mothers) of preference eligible veterans are entitled to the same rights and protections.

The VEOA also makes applicable to the Legislative Branch certain statutory preferences in hiring. In the hiring process, a preference eligible individual who is tested or otherwise numerically evaluated for a position is entitled to have either 5 or 10 points added to his/her score, depending on his/her military service, or disabling condition. 5 U.S.C. §3309. Where experience is a qualifying element for a job, a preference eligible individual is entitled to credit for having relevant experience in the military or in various civil activities. 5 U.S.C. §3311. Where physical requirements (age, height, weight) are a qualifying element for a position, preference eligible individuals (including those who are disabled) may obtain a waiver of such requirements in certain circumstances. 5 U.S.C. §3512.

For certain positions (guards, elevator operators, messengers, custodians), only preference eligible individuals may be considered for hiring so long as such individuals are available. 5 U.S.C. §3310. (These statutory provisions on hiring in the Executive Branch apply specifically to the competitive service; this point will be discussed further below.)

Finally, in prescribing retention rights during Reductions In Force for Executive Branch positions (in both the competitive and in the excepted service), the sections in subchapter I of chapter 35 of Title 5, U.S.C., with a slightly modified definition of ''preference eligible,'' require that employing agencies retain an employee with retention preference in preference to other competing employees, provided that the employee's performance has not been rated unacceptable. 5 U.S.C. §3502(c) (emphasis added).

Along with this explicit command to retain qualifying employees with retention preference, agencies are to follow regulations governing the release of competing employees, giving ''due effect'' to the following factors: (a) employment tenure (i.e., type of appointment); (b) veterans' preference; (c) length of service; and, (d) performance ratings. 5 U.S.C. §3502(a). 5 U.S.C. §3502 also requires certain notification procedures, providing, inter alia, that an employing agency must provide an employee with 60 days written notice (the period may be reduced in certain circumstances) prior to being released during a RIF. 5 U.S.C. §3502(d)(1). Certain protections also apply in connection with a transfer of agency functions from one agency to another. 5 U.S.C. §3503. In addition, where physical requirements (age, height, weight) are a qualifying element for retention, preference eligible individuals (including those with disabilities) may obtain a waiver of such requirements in certain circumstances. 5 U.S.C. §3504.

Are there veterans' employment regulations already in force under the CAA? No.

Procedurals Summary

How are substantive regulations proposed and approved under the CAA? Pursuant to section 304 of the CAA, 2 U.S.C. 1384, the procedure for promulgating such substantive regulations requires that: (1) the Board of Directors adopt proposed substantive regulations and publish a general notice of proposed rulemaking in the *Congressional Record*; (2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking; (3) after consideration of comments by the Board of Directors, that the Board adopt regulations and transmit notice of such action together with the regulations and a recommendation regarding the method for Congressional approval of the regulations to the Speaker of the House and President pro tempore of the Senate for publication in the *Congressional Record*; (4) committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and (5) final publication of the approved regulations in the *Congressional Record*, with an effective date prescribed in the final publication. For more detail, please reference the text of 2 U.S.C. 1384. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the House of Representatives, and the Deputy Executive Director for the Senate? As required by section 304(b)(1) of the CAA, 2 U.S.C. 1384(b)(1), the substance of these regulations is also recommended by the Executive Director, the Deputy Executive Director for the House of Representatives and the Acting Deputy Executive Director for the Senate.

Has the Board of Directors previously proposed substantive regulations implementing these veterans' employment rights and benefits pursuant to 2 U.S.C. 1316a? Yes. On February 28, 2000, and March 9, 2000, the Office published an Advanced Notice of Proposed Rulemaking (''ANPR'') in the *Congressional Record* (144 Cong. Rec. S862 (daily ed., Feb. 28, 2000), H916 (daily ed., March 9, 2000)). On December 6, 2001, upon consideration of the comments to the ANPR, the Office published a Notice of Proposed Rulemaking (''NPR'') in the *Congressional Record* (147 Cong. Rec. S12539 (daily ed. Dec. 6, 2001), H9065 (daily ed. Dec. 6, 2001)). The Board has not acted further on those earlier Notices, and has decided to issue this Notice as the first step in a new effort to promulgate implementing regulations.

As noted above, 2 U.S.C. 1316a mandates application to the Legislative Branch of certain statutory provisions originally drafted for the Executive Branch. In its initial proposed rules, the Board noted that this statutory command raised the quandary of determining which Legislative Branch employees should be covered by which statutory provisions. There are longstanding and significant differences between the personnel policies and practices within these two branches. For instance, the Executive Branch distinguishes between employees in the ''competitive service'' and the ''excepted service,'' often with differing personnel rules applying to these two services. The Legislative Branch has no such dichotomy.

When Congress directed in the VEOA that certain veterans' employment rights and protections currently applicable to Executive Branch employees shall be made applicable to Legislative Branch employees, the Board took note of a central distinction made in the underlying statute: certain veterans' preference protections (regarding hiring) applied only to Executive Branch employees in the ''competitive'' service, while others (governing reductions in force and transfers) applied both to the ''competitive'' and ''excepted'' service.

The Board's initial approach in 2000 was to maintain this distinction by attempting to discern which Legislative Branch employees should be considered as working in positions equivalent to the ''competitive'' service, and

which should be considered equivalent to the ''excepted'' service. At that point, the Board concluded that all Legislative Branch employees, with certain possible exceptions (such as those of the Office of the Architect of the Capitol) should be considered excepted service employees. The Board therefore issued regulations, closely following Office of Personnel Management (''OPM'') regulations for the various statutory provisions, with the caveat that the regulations governing hiring would apply only to those employees whom the Board currently deemed working at jobs equivalent to the competitive service (e.g. the Office of the Architect of the Capitol). The NPR acknowledged: ''The Board recognizes that the adoption of these definitions (e.g., competitive and excepted services], consistent with the mandate of section 225 [of the CAA], yields an unusual result in that no ''covered employee'' in the Legislative Branch currently satisfies the definition of ''competitive service.'' Moreover, as the substantive protections of veterans'' preference in Legislative Branch appointment apply only to ''competitive service' positions, the regulations which the Board proposes regarding preference in appointment would with one noted exception [employees appointed under the Architect of the Capitol Human Resources Act], currently apply to no one. . . .'' This left the Board in the position of drafting intricate regulations that may have applied to only a minority of ''covered employees,'' or perhaps even to no ''covered employees'' at all—a result in obvious tension with the VEOA's statutory mandate that these veterans' protections ''shall apply'' to ''covered employees'' in the Legislative Branch.

The Board received Comments to its initial proposed regulations from the Office of the Architect of the Capitol, the Office of House Employment Counsel, and the Office of the Senate Chief Counsel for Employment, all finding fault with the initial approach. The Comments generally included the following observations. First, commenting offices noted that the Board's approach of drafting intricate regulations that may not apply to any covered employees creates more problems than it solves. This approach was seen as ''impracticable,'' ''obfuscating'' the true sense of the VEOA and what requirements in fact must apply to employing offices; it was seen, in effect, as an attempt to ''place a square peg in a round hole.'' Others charged that the adoption of such regulations went beyond the Board's statutory authorization, and would require, without basis in law, the employing offices to adopt complicated procedures, some governing employment decisions that affected only non-veteran applicants or employees. A commenting office also complained about the application of terms ''foreign and inapplicable'' to its personnel system. Employing offices also submitted that statutes drafted for the Executive Branch competitive service should not apply at all to any Legislative Branch employee.

Furthermore, one employing office commented that such modification of OPM regulations does not constitute an adoption of the ''most relevant regulations,'' as regulations that apply to no covered employees can not possibly be the most relevant regulations applicable. As another commenting office aptly put it, ''Unfortunately, the unintended result could very well be that the underlying principles of the veterans' preference laws would lie fallow while the affected legislative branch entities struggle with the task of adopting civil-service type personnel management systems.'' Comments of the Office of House Employment Counsel, Feb. 6, 2002 at 9. Additionally, all three employing offices argued that the Board should issue three individual sets of regulations (to pertain to the Senate, House, and covered Congressional instrumentalities), rather than one set. Finally, the Office of the Architect of the Capitol also argued that the Architect of the Capitol Human Resources Act did not create a competitive service in the sense of the veterans' preference laws.

How are the regulations being proposed in this Notice different from those regulations which the Board previously proposed? In the period since the initial proposed regulations were issued by the Board of Directors and commented upon by various stakeholders, the Office of Compliance has engaged in extensive informal discussions with various stakeholders across Congress and the Legislative Branch, in an effort to ascertain how best to effect the basic purposes of veterans' employment rights in the Legislative Branch.

After careful consultation and deliberation, the Board is issuing new proposed regulations which differ in many respects from the initial proposed regulations. The new approach is responsive to the clear statutory mandate contained in the VEOA, and to various Comments regarding the initial proposed regulations. This approach also applies insights gained from the informal discussions with stakeholders.

The Board has decided to apply the plain language of the statutory provisions to all covered employees in the Legislative Branch. By doing so, the Board avoids what commenting employing offices styled as the ''anomaly'' of complicated regulations which would practically apply to no employees, an anomaly which not only poorly served the clear Congressional intent that protections ''shall apply to covered employees,'' but which also created confusion for the employing offices.

Not only is application of these rights to all covered employees compelled by the plain language of the statute, the legislative history of the VEOA also clearly indicates that the principles of veterans' preference protections must be applied in the Legislative Branch. The authoritative report of the Senate Committee on Veterans' Affairs (Senate Report 105–340, pages 15 & 17), recognized that the competitive service did not exist in the Legislative Branch, and that 2 U.S.C. 1316a did not require the establishment of such a competitive service. Nonetheless, the Committee noted that veterans' preference principles should be incorporated into the Legislative Branch personnel systems.

For these reasons, the Board is persuaded that Congress, in enacting the VEOA's extension of veterans' employment rights to the Legislative Branch, intended a broad application to all CAA covered employees, except for the staff of those employing offices in the House of Representatives and the Senate which Congress specifically excluded from coverage in section 206a(5) of the CAA (2 U.S.C. §1316a(5)).This result is faithful to the statutory language. Furthermore, the Board has concluded, for the reasons stated above, that the most relevant substantive Executive Branch OPM regulations are at times inapposite to a meaningful implementation of the VEOA in the Legislative Branch, such that a modification of the regulations is necessary for the effective implementation of the rights and protections under the VEOA. As a result, the Office is proposing regulations that reflect the principles of the veterans' preference laws, as discussed by the Senate Committee on Veterans Affairs, without linking such coverage to employees or positions with competitive service status.

Furthermore, the Board has also taken note of the legislative history suggesting that employing offices with employees covered by the VEOA should create systems incorporating these veterans' preference principles: ''The Committee notes that the requirement that veterans' preference principles be extended to the legislative and judicial branches does not mandate the creation of civil service-type evaluation or scoring systems by these hiring entities. It does require, however, that they create systems that are consistent with the underlying principles of veterans' preference laws.'' Sen. Comm. Report at 17. The implementation of that provision in the Senate Report can only be accomplished by the employing offices.

In their Comments, employing offices strongly expressed their need to preserve their autonomy in determining and administering their respective personnel systems. For example, the Office of the Architect of the Capitol commented that it was incumbent upon the employing offices to create ''systems that are consistent with the underlying principles of veterans'' preference laws,'' pursuant to the Senate Committee Report. The Board agrees, and the newly proposed regulations allow employing offices to do so. What the regulations also do is clearly define the ''underlying principles of veterans'' preference laws'' made applicable to these employing offices, so as to provide a benchmark for the employing offices, applicants, and covered employees, as to whether the systems developed are consistent with these principles.

What is the approach taken by these revamped proposed substantive regulations? The Board has taken great heed to avoid the intricate, OPM-like regulations that formed the basis for its first proposed regulations. Under the current proposed regulations, employing offices will retain their wide latitude, not similarly enjoyed by many employing agencies in the Executive Branch, to devise and administer their own unique and often flexible personnel systems. However, employing offices with covered employees must incorporate into these individual personnel systems the basic veterans' preference protections under the specific statutory mandate that Congress issued in the VEOA, and they must carry out the administration of these veterans' preference provisions in a manner consistent with the Board's commitment to promoting administrative transparency and accountability.

Under this approach, employing offices with the specified covered employees must meet the requirements contained in the statutory mandate of the VEOA, but need not necessarily adopt any of the trappings of an OPM-like personnel system. Thus, should such an employing office choose to administer numeric evaluations of applicants for a position, it must add to a preference eligible's evaluation the points called for in the veterans' preference statutes. If it does not numerically evaluate applicants, it must determine how it will factor veterans' preference status into its employee evaluations and hiring decisions at a level commensurate with the statutory directive. Similarly, should an employing office currently have a policy of placing covered employees who may be potentially subject to a reduction in force on a retention register, it must rank said employees taking into account the directives of the veterans' preference statute. Should an employing office elect not to keep formal retention registers, nothing in these regulations requires it to start doing so. It still must, however, follow the statutory mandate to provide certain veterans' preferences in the course of a reduction in force that affects employees covered by the VEOA.

The goal of preserving employing office autonomy in fashioning personnel systems has

further compelled the Board to minimize the impact of these proposed regulations on employment decisions not directly involving preference eligibles. Thus, unlike the initial proposed regulations, should an employing office properly determine that no preference eligibles are qualified applicants, or that no preference eligibles are subject to a RIF, these proposed regulations are designed so as not to govern the employment decisions taken by the employing office. By allowing for such employing office autonomy, the Board hopes to allay the concerns of some of the employing offices, expressed in the initial Comments, that a ''morass'' of intricate regulations would apply to decisions that did not affect preference eligibles. (One isolated, but necessary exception to this approach limiting the effect of the regulations to personnel actions involving preference eligibles is proposed §1.115, governing the transfer of functions between one employing office and another, and the replacement of one employing office by another. This section provides protections for all covered employees, as the term is defined and limited in the VEOA, including non-preference eligibles. The clear statutory language of 5 U.S.C. §3503 (applying to both the competitive and excepted services) commands this result. Congress chose to include this broad statutory provision in the set of provisions made applicable to the Legislative Branch in the VEOA.)

The overall discretion and autonomy reserved to employing offices to administer veterans' preference protections within the context of their personnel systems comes with a responsibility on the part of the employing offices to provide all applicants for covered positions and all covered employees with certain notice and informational rights, as discussed below. This is to ensure that employing offices are equipped with all information necessary to determine and administer veterans' preference eligibility and that such applicants and employees are properly informed of how their employing office has chosen to give life to the veterans' preference protections.

In sum, should an employing offices already use personnel policies and procedures similar to those in the competitive service, it must factor in the various veterans' preference protections with respect to applicants for covered positions and covered employees. If an employing office chooses to follow more flexible, or merely different, personnel policies from those referenced in the competitive service, it may do so—but may not refuse to apply the veterans' preferences called for in the statute. This would contravene the clear statutory directive to affirmatively apply the veterans' preference protections to the specified covered employees in the Legislative Branch.

In proposing these regulations, the Board has sought to remain faithful to the explicit statutory language of the VEOA. In some cases, we have been guided by OPM veterans' preference implementing regulations. In many cases, ''for good cause shown,'' we have not adopted the OPM regulations so as to tailor simpler and more streamlined regulations. We have issued proposed regulations based on the direct statutory language whenever possible, reserving implementation to the individual employing offices, who then are charged with crafting their own processes and procedures for integrating veterans' preference protections within their personnel systems.

Therefore, in accord with 2 U.S.C.1316a(4)(B), which mandates that ''the Board may determine, for good cause shown and stated . . . a modification of such regulations would be more effective for the implementation of the rights and protections under this section,'' these proposed regulations may not track the most relevant substantive regulations applicable with respect to the Executive Branch. However, the proposed regulations endeavor, to the maximum practical extent, to effect the veterans' preference principles that Congress made applicable to the Legislative Branch through section 206a(2) of the CAA, 2 U.S.C. §1316a(2).

What responsibilities would employing offices have in effectively implementing these regulations? The Board is charging the employing offices with the responsibility of duly factoring the veterans' preference principles into their individualized hiring and retention processes. We will require that such measures be substantive and verifiable. Otherwise, VEOA implementation would be illusory and the Office's remedial responsibility under 2 U.S.C.1316a(3) might be compromised.

Therefore, the proposed regulations would require that all employing offices with covered employees or seeking applicants for covered positions develop a written program, within 120 days of the Congressional approval of the regulations, setting forth each employing office's modality for effecting the veterans' preference principles in its hiring and retention systems. These programs would demonstrate each employing office's efforts to comply with the VEOA. However, technical promulgation of such procedures does not per se relieve an employing office of substantive compliance with the VEOA.

Similarly, Subpart E of the proposed regulations contains various important provisions governing recordkeeping, dissemination of VEOA policies, written notice prior to a RIF, and informational requirements regarding veterans' preference determinations. Certain of these provisions (notably that requiring written notice prior to a RIF) derive directly from statutory provisions made applicable to covered employees by the VEOA. The Board has adopted others so as to ensure that the employing offices, which have significant autonomy and discretion in integrating the veterans' preference requirements into their personnel systems, administer the preferences in a way that promotes accountability and transparency. In response to the earlier Comments of the employing offices, however, the Board has refrained from adopting more burdensome procedural requirements, such as keeping formal retention registers (see 5 CFR §351.505).

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices? No. The Board of Directors has identified no ''good cause'' for varying the text of these regulations. Therefore, if these proposed regulations are approved as proposed, there will be one text applicable to all employing offices and covered employees.

Are these proposed substantive regulations available to persons with disabilities in an alternate format? This Notice of Proposed Regulations is available on the Office of Compliance web site, www.compliance.gov, which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794d. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Alma Candelaria, Deputy Executive Director, Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, D.C. 20540; 202–724–9226; TDD: 202–426–1912; FAX: 202–426–1913.

30 Day Comment Period Regarding the Proposed Regulations

How can I submit comments regarding the proposed regulations? Comments regarding the proposed new regulations of the Office of Compliance set forth in this NOTICE are invited for **a period of thirty (30) days** following the date of the appearance of this NOTICE in the *Congressional Record*. In addition to being posted on the Office of Compliance's section 508 compliant web site (www.compliance.gov) this NOTICE is also available in the following alternative formats: Large Print, Braille. Requests for this NOTICE in an alternative format should be made to: Bill Thompson, Executive Director, or Alma Candelaria, Deputy Executive Director, Office of Compliance, at 202–724–9250 (voice) or 202–426–1912 (TDD).

Submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. It is requested, but not required, that an electronic version of any comments be provided on an accompanying computer disk. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non-toll-free number.) Those wishing to receive confirmation of the receipt of their comments must provide a self-addressed, stamped post card with their submission.

Copies of submitted comments will be available for review on the Office's web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Supplementary Information: The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 11 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. The CAA was amended by adding 2 U.S.C. 1316a as part of the enactment of the Veterans' Employment Opportunities Act of 1998 (VEOA), PL 105–339, section 4(c), to provide additional substantive employment rights for veterans. Those additional rights are the subject of these regulations. Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within the Legislative Branch.

More Detailed Discussion of the Text of the Proposed Regulations

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 4 OF THE VEOA

1.101 Purpose and scope. This section clarifies that the purpose of these regulations is to ensure that the principles of the veterans' preference laws are integrated into the employing offices' existing employment and retention policies and processes, as per the explicit statutory mandate contained in the VEOA. Additionally, through these regulations, the Board seeks to fulfill its goal of achieving transparency in the application of veterans' preference in covered appointment and retention decisions.

Finally, it is noted that nothing in these regulations shall be construed to require an employing office to reduce any existing veterans' preference rights and protections that it may currently afford to preference eligible individuals. Any employing agencies that currently provide greater veterans' preferences than required by these regulations may retain them. Note also that, while the VEOA does not directly cover the GAO, GPO, or Library of Congress, should Congress extend Board jurisdiction over any of these entities in the future, it should take their existing veterans' preference policies into account, which may be based on independent statutory mandates. Note, for example, that 31 U.S.C. §732(h)(1) already mandates that the GAO must afford veterans' preferences

(largely similar to those in subchapter I of chapter 35 of title 5 U.S.C.).

1.102 General definitions. This section provides straightforward definitions of key terms referred to in the regulations. Several of the definitions are derived from the statutory provisions made applicable via the VEOA, including ''veteran,'' from 5 U.S.C. §2108(1), ''disabled veteran'' from 5 U.S.C. §2108(2), and ''preference eligible'' from 5 U.S.C. §2108(3). It also contains several other definitions included for explanatory purposes.

The term ''appointment'' is defined as an individual's appointment to employment in a covered position. Consistent with the OPM regulations in 5 C.F.R. §211.102(c), the term excludes inservice placement actions such as promotions. The term ''covered employee'' follows the language of section 101(3) of the CAA, as limited by section 4(c)(5) of the VEOA. Section 4(c)(5) of the VEOA excludes employees whose appointment is made by a committee or subcommittee of either House of Congress. The Board believes this statutory exclusion extends to joint committees and has expressly excluded such employees from the definition of ''covered employee''.

The term ''qualified applicant,'' while not directly originating in the text of U.S.C. Title V, is used to capture the principle in 5 U.S.C. §3309 that only a preference eligible applicant who has received a passing grade in an examination or evaluation for entrance into the competitive service need receive additional points accorded to his or her application (except for certain ''restricted'' positions, discussed below). ''Qualified applicant'' is borrowed from the Americans with Disabilities Act (''ADA,'' 42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3). The ADA's reference to ''requisite skill, experience, education and other minimum job-related requirements'' has been shortened to ''requisite minimum job-related requirements,'' as not every job may require a particular level of acquired skill, experience, or education.

As will be discussed further, we are not requiring an employing office to establish any particular prerequisites or type of evaluation or examination system for applicants. Instead, the term ''qualified applicant'' serves as a means of implementing the statutory mandate that only preference eligible applicants with ''passing scores'' receive preference in the hiring process in the context of appointment processes that do not involve ''scoring'' or similar numeric evaluation.

Where the employing office does not use a numerically scored entrance examination or evaluation, we have authorized the employing office to make the determination of whether the applicant is minimally ''qualified'' for a covered position. In doing so, the employing office may rely on any job-related requirements or on any evaluation system, formal or otherwise, which it chooses to employ in assessing and rating applicants for covered positions, provided that the employing office in no way seeks to create or manipulate a standard as to whether an applicant is ''qualified'' so as to avoid obligations imposed upon it by the VEOA.

If, however, the employing office uses an entrance examination or evaluation that is numerically scored, the term ''qualified applicant'' shall mean that the applicant has obtained a passing score on the examination or evaluation. The Board notes that it expects the level of ''passing scores'' to be roughly comparable to that in the OPM regulations (70 points on a 100 point scale; 5 CFR §337.101). We are not requiring employing offices to administer entrance exams at all, or to model an exam or the grading thereof after OPM's models. However, employing offices may not set the bar on a scored entrance examination or evaluation for a covered position so high that minimally qualified preference eligible applicants cannot pass. Moreover, the determination of what will constitute a ''passing score'' should be made and communicated to applicants before they are evaluated or sit for the entrance examination.

1.103 Adoption of regulations. This section details the process by which the regulations shall be adopted. It also clarifies that, as discussed extensively in the prefatory comments, supra, the Board has at times deviated from the regulations which otherwise were most applicable, i.e. the regulations issued by OPM implementing these selected provisions of U.S.C. Title V. When the Board has so deviated from the OPM regulations, it has done so in an effort to implement the statutory language of the VEOA in a way that respects the autonomy of employing offices' personnel systems and avoids placing undue administrative burdens upon these offices, and that otherwise respects the legislative intent of the VEOA.

1.104 Coordination with section 225 of the Congressional Accountability Act. This section notes that the VEOA requires that regulations promulgated are consistent with section 225 of the CAA. These proposed regulations are consistent with section 225; the regulations follow CAA principles contained therein, including applying CAA definitions and exemptions, and reserving enforcement through CAA procedures, rather than through recourse to the Executive Branch.

SUBPART B—VETERANS' PREFERENCE—GENERAL PROVISIONS

1.105 Responsibility for administration of veterans' preference. This section clarifies that employing offices have responsibility for administering veterans' preference, within the parameters of the VEOA and these regulations.

1.106 Procedures for bringing claims under the VEOA. This section establishes the procedures for contesting an adverse determination.

SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

1.107 Veterans' preference in appointments to restricted covered positions. The VEOA makes 5 U.S.C. §3310 applicable to the Legislative Branch, thereby extending an absolute preference to veterans who apply for the positions of guard, elevator operator, messenger and custodian. Despite concerns raised by certain employing offices regarding the singling out of these particular positions, the Board may not ignore the statutory requirement that veterans who apply for them be afforded an absolute preference over non-veteran applicants.

We have based our definitions of the restricted position terms ''guards,'' ''elevator operators,'' ''custodians,'' and ''messengers,'' upon the definitions employed in the veterans'' preference context by the U.S. Office of Personnel Management in its ''Delegated Examining Operations Handbook.'' See http://www.opm.gov/deu/Handbook_2003. The definitions of custodian and messenger have been modified to include a ''primary duty'' requirement, to allow the performance of some custodial or messenger duties in positions having other primary duties without transforming those positions into restricted positions.

1.108 Veterans' preference in appointments to non-restricted covered positions. This section clarifies that preference eligible status is an affirmative factor in the hiring process for covered positions. The requirement that preference eligible status be applied as an ''affirmative factor'' is derived from the directive of the VEOA that the underlying principles of the veterans' preference laws be applied within the Legislative Branch.

Where an employing office assigns points to applicants competing for appointment to a covered position, it should add commensurate points for veterans' preference eligible applicants consistent with 5 U.S.C. §3309, one of the sections made applicable to the Legislative Branch by the VEOA. Should the office choose not to conduct formal evaluations on a point scale, it must apply veterans' preference as an affirmative factor, to a degree consistent with the level of preference applied in 5 U.S.C. §3309.

In no way does this require the creation of any particular type of system of examining or evaluating applicants, and an employing office may properly choose to not assign points at all to applications for covered positions. Rather, this regulation merely states that, whatever system the employing office uses to choose among qualified applicants for a covered position, it must accord a level of preference to preference eligible qualified applicants consistent with the point system indicated in the statute. Thus, the preference must be comparable to affording an additional 5 or 10 points (depending on the status of the preference eligible) on a 100 point scale to qualified applicants, while understanding that under such a point system the applicant must have attained at least 70 points to be considered qualified. (OPM provides a scale for converting other point scales (5 point, 10 point, 25 point, etc.) to a 100-point scale.)

Section 1.108 applies to both restricted and non-restricted positions. While restricted positions are limited to preference eligibles (should there be preference eligible applicants), in the event that more than one preference eligible applies, the employing office should apply the requirement in this section to provide a higher preference to a disabled preference eligible. Thus, 5 U.S.C. §3310, while restricting certain positions to preference eligibles (so long as preference eligibles are available), does not except these positions from this requirement in 5 U.S.C. §3309 to provide higher preference to a disabled preference eligible applicant.

1.109 Crediting experience in appointments to covered positions. This language is taken from 5 CFR §337.101(c), which interprets 5 U.S.C. §3311, one of the sections made applicable to the Legislative Branch by the VEOA. We have elected to use the regulatory language as it is more clearly written, and serves to better guide employing offices than does the direct statutory text. The statutory and regulatory provisions are laid out below for an easy comparison:

SEC. 3311. PREFERENCE ELIGIBLES; EXAMINATIONS; CREDITING EXPERIENCE

In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit—

(1) for service in the armed forces when his employment in a similar vocation to that for which examined was interrupted by the service; and

(2) for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

5 U.S.C. §3311

(c) When experience is a factor in determining eligibility, OPM shall credit a preference eligible with:

(1) Time spent in the military service (i) as an extension of time spent in the position in which he was employed immediately before his entrance into the military service, or (ii) on the basis of actual duties performed in

the military service, or (iii) as a combination of both methods. OPM shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(2) All valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

5 CFR §337.101(c). Section 1.109 does not require an employing office to consider experience as an element of qualification, but only requires that preference eligibles be afforded credit for certain experience if the employing office chooses to do so. Also, section 1.109 does not preclude an employing office from granting credit for experience to non-preference eligibles, so long as the credit afforded preference eligibles complies with the VEOA. Note also that section 1.109 of these proposed regulations applies equally to restricted and non-restricted positions.

Section 1.110 Waiver of physical requirements in appointments to covered positions. This section contains language derived directly from 5 U.S.C. §3312, one of the sections made applicable to the Legislative Branch by the VEOA. It requires an employing office to waive physical requirements for a position if it determines, after considering any recommendations of an accredited physician that may be submitted by such an applicant, that he or she is physically able to perform efficiently the duties of the position. Note that OPM has chosen to promulgate regulations interpreting 5 U.S.C. §3312 which make clear that: ''[A]gencies must waive a medical standard or physical requirement established under this part when there is sufficient evidence that an applicant or employee, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.''

5 CFR 339.204. The Board does not believe that these proposed regulations are the proper vehicle for issuing regulations concerning the Americans with Disabilities Act (''ADA,'' 42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3). Therefore, section 1.110(a)(2) tracks the statutory language rather than the OPM regulation. It also clarifies that the employing office need consider a recommendation of an accredited physician only if such a recommendation is submitted by the preference eligible.

The Board does note, however, that Congress passed the ADA subsequent to the veterans' preference protections contained in 5 U.S.C. §3312, and that, under the ADA as applied by the CAA, employing offices may have obligations towards applicants that may in some circumstances be greater than the protections accorded preference eligible applicants in 5 U.S.C. §3312. For example, these regulations do not relieve employing offices from complying with the restrictions imposed on disability-based inquiries under the ADA but, as is discussed in the comments to section 1.118, recognize that an employing office may use information obtained through voluntary self-identification of one's disabled status. Accordingly, the Board has made clear in section 1.110 that nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the ADA.

SUBPART D—VETERAN'S PREFERENCE IN REDUCTIONS IN FORCE

1.111 Definitions applicable in reductions in force. This section provides definitions of several terms used in the regulations applying veterans' preference principles in the context of reductions in force. Unless clearly stated otherwise, the general definitions in proposed regulation 1.102 continue to apply in the context of reductions in force. For example, as used in the proposed reduction in force regulations, the term ''covered employee'' excludes employees whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate and other employees excluded under the proposed regulation 1.202(f). The term ''reduction in force'' has been defined to encompass actions that result in termination of employment, reductions in grade or demotions expected to continue for more than 30 days. This definition derives from OPM regulations, which clearly interpret 5 U.S.C. §3502 to include demotions and include the requirement that the personnel action be for more than 30 days [5 CFR §351.201 (a)(2)], and from the statutory provisions of the VEOA that charge the Board to follow OPM's regulations except where the Board may determine that a modification of those regulations would be more effective for the implementation of the rights and protections under the VEOA. Caselaw interpreting the veterans' preference laws also indicates that the inclusion of demotions in what constitutes a reduction in force stems from statutory, not just regulatory, language. (See, e.g., AFGE Local 1904 v. Resor, 442 F. 2d 993, 994 (3rd Cir. 1971); Alder v. U.S., 129 Ct. Cl. 150 (1954).)

5 U.S.C. §3501, which has been included in the CAA through Section (c)(2) of the VEOA, contains special definitions for determining whether an employee is a ''preference eligible'' for purposes of applying veterans' preference in reductions in force. The definitions that appear in section 1.111(b) of the regulations are taken directly from the statutory language in 5 U.S.C. §3501. Note, however, that these definitions do not apply to the application of the provisions of 5 U.S.C. §3504 (and section 1.114 of these regulations) regarding the waiver of physical requirements in determining qualifications for retention. In that context, the definition of ''preference eligible'' set forth in 5 U.S.C. §2108 (and section 1.102(o) of the Board's regulations) shall apply.

As discussed below, 5 U.S.C. §3502(c) provides that preference eligibles are entitled to retention over other ''competing employees''. In the Executive Branch, the question of who are ''competing employees'' is answered by reference to detailed and rather complex retention registers that Executive Branch agencies are required to maintain. (See, e.g., 5 CFR §351.203, 5 CFR §351.404 and 5 CFR §351.501.) The Comments to our initial proposed regulations noted that few if any employing offices in the Legislative Branch maintain retention registers, and that many of the OPM regulations regarding retention registers rely on personnel practices and systems that do not exist in the Legislative Branch.

In keeping with our new approach to the implementation of the VEOA, these regulations do not impose a requirement that an employing office create or maintain OPM-like retention registers but instead provide a framework for determining groups of ''competing employees'' for purposes of applying retention preferences as mandated by 5 U.S.C. §3502(c). In this respect, the Board has determined that several of the terms in the OPM regulations may be used to implement the concept of ''competing employees'' in the Legislative Branch without imposing Executive Branch personnel practices or systems: generally, ''competing covered employees'' are the covered employees within a particular ''position classification or job classification,'' at or within a particular ''competitive area''.

The definition of ''position classification or job classification'' is derived from OPM's basic definition of ''competitive level'' in 5 CFR §351.403(a)(1). The remaining regulations in 5 CFR §351.403(a)(2)–(4), (b)(1)–(5) and (c)(1)–(4) prescribe the manner in which an Executive Branch agency may determine a covered employee's competitive level. While some of these rules could be adopted in the Legislative Branch, others are clearly inapplicable. The Board has decided not to adopt these portions of the OPM regulations in order to provide employing offices with a great amount of flexibility in determining an employee's ''position classification or job classification''. This is in keeping with our understanding that the personnel systems used by employing offices within the Legislative Branch vary significantly from those used in the Executive Branch. This flexibility is, of course, subject to the understanding that such determinations may not be manipulated in order to avoid the employing office's obligations under the VEOA.

The definition of ''competitive area'' more closely tracks OPM's definition of the same term in 5 CFR §351.402. We note that the OPM regulations define ''competitive area'' in terms of an agency's ''organizational units'' and ''geographical locations''. The Board is not adopting OPM definitions or descriptions of these terms, but will allow employing offices flexibility in applying these concepts to their own organizational structure. The Board has retained the OPM requirement that the minimum competitive area be a department or subdivision ''under separate administration''. In this respect, ''separate administration'' is not considered to require that the administration of a proposed competitive area has final authority to hire and fire but that it has the authority to administer the day to day operations of the department or subdivision in question.

The OPM regulations incorporate the term ''tenure'' in their definition of ''competitive group.'' We have used the term in our definition of ''position classification or job classification'' because the statutory language in 5 U.S.C. §3502 identifies ''tenure'' as a factor that will override veterans' preference in determining employee retention in a reduction in force. However, we have not adopted OPM's definition of tenure, as it is tied to Executive Branch service classifications that do not exist in the Legislative Branch. See 5 CFR 351.501. Instead, the use of the term ''tenure'' in these definitions refers only to the type of appointment. For example, an employing office may choose to make ''tenure'' distinctions between permanent and temporary employees, probationary and non-probationary employees, etc. By referring to ''permanent'' positions, we are referring to jobs that are not limited in advance to a specific temporal duration. Nothing in these Comments and Regulations is intended to address the ''at-will'' status of any covered position.

The Chief Counsel for the Senate noted, in her Comments to the prior proposed regulations, that the Senate does not employ the concept of ''tenure''. If an employing office chooses not to make such distinctions, nothing in these regulations requires it to do so. If the office does, that is one of the factors in the constitution of the ''position classifications or job classifications''. Again, the Board notes that an employing office should not manipulate the creation of tenure so as to avoid its obligations under the VEOA.

We have also included a definition of ''undue interruption'' that is taken directly from the definition of the same term in the OPM regulations, 5 CFR §351.203. The term is used in determining whether various jobs should be included within the same ''position classification'' or ''job classification,'' and is

meant to strike a balance between the interests of employing offices in retaining employees who will be able to perform the jobs remaining after a reduction in force, and the interests of preference eligibles whose jobs are being eliminated in remaining employed. OPM struck this balance by generally suggesting that an employee should be able to perform or ''complete'' required work within 90 days of being placed in the position, and the Board considers this time period to be appropriate in the Legislative Branch as well. For example, this protection against ''undue interruption'' would apply if a preference eligible would have to complete a training program of more than 90 days in order to safely and efficiently perform the covered position to which he or she would otherwise be transferred as a result of a RIF. Finally, we note that, since ''undue interruption'' is an affirmative defense, an employing office has the burden of raising it and proving that an employee may not perform work without ''undue interruption'' by objectively quantifiable evidence.

1.112 Application of reductions in force to veterans' preference eligibles. The crux of this regulation derives from 5 U.S.C. §3502(c), which provides:

An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees. (Emphasis added.)

This provision is the statutory lynchpin underlying veterans' preferences in RIF's. The statutory language in section 3502(c) above in effect requires the employing office to terminate covered employees subject to a RIF in inverse order of their veterans' preference status, within the appropriate group of covered employees with similar jobs, so long as the employees' performance has not been rated unacceptable. Under section 3502(c), a preference eligible covered employee (without an unacceptable performance appraisal) must be retained in preference to non-preference eligibles—even if the other covered employees in the group in fact have greater length of service or more favorable performance evaluations.

A separate provision in 5 U.S.C. §3502(a) requires Executive Branch agencies to give ''due effect'' to four factors: tenure, veterans'' preference, length of service, and performance or efficiency evaluations. OPM has promulgated regulations addressing these four factors, but which also incorporate the concept that, within the group of employees competing for retention, appropriate veteran's preference status is a factor that may override other factors such as length of service and performance or efficiency evaluations. (''Tenure,'' as discussed below, is factored in to the group of employees within which employees compete for retention during a RIF.)

Case law has also made abundantly clear that section 3502(c) requires that this preference eligible status ''trumps'' the ''due effect'' given to length of service and performance. Courts have interpreted the separate requirement under section 3502(a) to give ''due effect'' to these four enumerated factors as being relevant to retention determinations between two preference eligibles, or between two non-preference eligibles—and *not* relevant to retention determinations between a preference eligible and a non-preference eligible. *Hilton v. Sullivan*, 334 U.S. 323, 335, 336 (1948). The Board has chosen not to explicitly require that length of service or performance or efficiency evaluations be taken into account during RIF's—only that, if they are, veterans' preference remains the controlling factor in making retention decisions within ''position or job classifications'' in a competitive area (assuming other appropriate requirements are also met).

Federal courts have interpreted the present statutory language of section 3502(c) as providing preference eligible employees with an ''absolute preference,'' although only within the confines of their competing group. *Dodd v. TWA*, 770 F. 2d 1038, 1041 (Fed. Cir. 1985); see also *McKee v. TWA*, 1999 LEXIS 25663 at *5 (Fed. Cir. 1999) (unpublished). Additionally, the source of this key language in §3502(c), the Veterans' Preference Act of 1944 (in turn deriving from a series of historical statutes and executive orders, commencing in 1865), and the legislative history of this Act indicate that the section 3502(c) predecessor language was considered the ''heart of the section''. *Hilton v. Sullivan*, 334 U.S. 323, 338 (1948). To this effect, courts have interpreted §3502(c) (or its predecessor under the Veterans' Preference Act of 1944) as overriding such factors as length of service when considering retention standing. *Hilton v. Sullivan*, 334 U.S. at 335, 336, 339 (noting that ''Congress passed the bill with full knowledge that the long standing absolute retention preference of veterans would be embodied in the Act;'' *Elder v. Brannan*, 341 U.S. 277, 285 (1951). Thus, courts have interpreted section 3502(c) as requiring preference to be given to a minimally qualified preference eligible, within his or her competing group, regardless of the preference eligible's length of service or performance in comparison to non-preference eligibles.

To follow this clear statutory directive, the Board has decided that veterans' preference shall be the ''controlling'' factor (provided that the covered employee's performance was not rated unacceptable), in an employment decision taken within ''position or job classifications'' in ''competitive areas,'' as discussed in the Comments to section 1.111 of these proposed regulations, regardless of such factors as length of service or performance or efficiency ratings. Restricting the veterans' preference to RIF's taken within ''position or job classifications'' in ''competitive areas'' provides important limitations on the scope of the preference accorded. As noted above, the preference eligible does not normally compete for retention against all covered employees of an employing office; the definitional terms in section 1.111 restrict the scope of competition only to covered employees in similar occupational groupings (with the further qualification that the preference eligible must perform the position in question without ''undue interruption''(see discussion regarding section 1.111 of these proposed regulations)); in certain facilities involved; and with similar ''tenure,'' or employment status (such as, for example, whether the employee is a permanent or probationary employee). Note that OPM regulations incorporate the concept of ''tenure'' into the definition of ''competing group''; covered employees only compete for retention against co-workers of the same tenure type. As noted in the Comments to section 1.111 of these proposed regulations, employing offices may or may not incorporate the concept of ''tenure,'' and may choose not to make such distinctions as permanent, temporary, or probationary employees. Nothing in these proposed regulations requires employing offices to adopt such distinctions.

Another qualification on the veterans' preference as a ''controlling factor'' is that the preference eligible employee's performance must not have been rated ''unacceptable.'' While 5 U.S.C. §3502(c) contains a reference to performance appraisal systems implemented under 5 U.S.C. §4301 et seq., we are not requiring employing offices to implement a performance appraisal system following 5 U.S.C. §4301 et seq. An employing office may continue to use its own methods for evaluating covered employees and appraising performance, and need not adopt any formal policy regarding performance appraisal. However, the Board notes that employing offices should not manipulate performance appraisals or evaluations so as to avoid obligations under the VEOA.

Another significant qualification on this regulation is that it only governs retention decisions in so far as they affect preference eligible covered employees. In no way does it govern decisions that do not affect preference eligible covered employees; in such cases, an employing office is free to make whatever determinations it so chooses, provided that these determinations are consistent with any other applicable law, and are not used to avoid responsibilities imposed by the VEOA. (Of course, an employing office with covered employees must disseminate information regarding its VEOA policy to covered employees, so as to allow for self-identification of preference eligibles. Furthermore, the notice required by section 1.120 of these regulations will allow covered employees who have not been identified as preference eligibles to assert that status before the RIF becomes effective.) Nor does the regulation require the keeping of formal retention registers, as OPM (and these regulations, as initially proposed) generally requires. However, an employing office must preserve any records kept or made regarding these retention decisions, as detailed in Subpart E of these proposed regulations.

Note also that the Board has included the provision that a preference eligible covered employee who is a ''disabled veteran'' under section 1.102(h) above, who has a compensable service-connected disability of 30 percent or more, and whose performance has not been rated unacceptable by an employing office is entitled to be retained in preference to other preference eligibles. This provision derives from 5 U.S.C. §3502(b), which provides a higher level of preference to certain disabled preference eligibles with regard to other preference eligibles.

Finally, the Board notes that this section does not relieve an employing office of any greater obligation it may be subject to pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. §2101 et seq.) as applied by section 102(a)(9) of the CAA, 2 U.S.C. §1302(a)(9), which would of course apply to all employees covered by the CAA, not only to preference eligible employees covered by the VEOA.

1.113 Crediting experience in reductions in force. This section closely follows 5 U.S.C. §3502(a), one of the sections made applicable to the Legislative Branch by the VEOA, requiring the employing office to provide preference eligible covered employees with credit for certain specified forms of prior service as the office calculates ''length of service'' in the context of a RIF. This provision in no way requires an employing office to utilize ''length of service'' as a factor in its retention decisions regarding employees in the event that the RIF decision does not impact any preference eligible covered employees.

1.114 Waiver of physical requirements—retention. This provision closely follows 5 U.S.C. §3504, one of the sections made applicable to the Legislative Branch by the VEOA, requiring that, when making decisions regarding employee retention during a RIF, an employing office must waive physical requirements for a job for preference eligibles in certain specified circumstances. As discussed in the Comments to section 1.110, nothing in this regulation relieves an employing office of any greater obligation it may have pursuant to the Americans with

Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

1.116 Transfer of functions. The language in this section derives from 5 U.S.C. §3503, one of the sections made applicable to the Legislative Branch by the VEOA, requiring covered employees to be transferred to another employing office in the event of a transfer of functions from one employing office to the other, or in the event of the replacement of one employing office by another employing office. The Board expects that employing offices shall coordinate any such transfers in a way that respects both the requirements of this regulation and, to the greatest extent possible, the employing offices' own personnel systems and policies. This section is one of the rare instances where an employing office must follow the regulation even in the event that the personnel action taken does not involve any preference eligible covered employees; however, the clear statutory language of 5 U.S.C. §3503 requires such a result.

Employees and employing offices are reminded that the definition of ''covered employee'' in these proposed regulations does not include employees appointed by a Member of Congress, a committee or subcommittee of either House of Congress, or a joint committee of the House of Representatives and the Senate. *See* proposed regulation 1.102(f)(bb). Therefore, proposed regulation 1.116 will not apply to any such employees affected by the election of new Members of Congress or the transfer of jurisdiction from one committee to another.

SUBPART E: ADOPTION OF VETERANS' PREFERENCE POLICIES, RECORDKEEPING & INFORMATIONAL REQUIREMENTS

We note that, of the six sections in this Subpart, only section 1.120 derives directly from statutory language. The other sections are borrowed from various other employment statutes, and are promulgated pursuant to the authority granted the Board by section 4(c)(4)(A) of the VEOA because they are considered necessary to the implementation of the VEOA. For example, the informational regulations in sections 1.120 and 1.121 are derived from informational regulations promulgated under the Family and Medical Leave Act, which provides employers with some flexibility in determining how the FMLA will be implemented within their own workforce. The Board is strongly committed to transparency as a policy matter. Moreover, for the VEOA rights to become meaningful, applicants for covered positions and covered employees will have to participate in ensuring that this system works properly, since employing offices are permitted to have flexibility in determining their policies, and the Board will not be taking the same active role in policing the veterans' preference requirements that OPM takes in the Executive Branch.

We also note that while this approach differs from OPM's, it reflects the far greater flexibility that employing offices have to tailor substantive requirements to their existing personnel systems and imposes less burdensome obligations on employing offices than that which is imposed on executive agencies: under our regulatory approach, employing offices will have reduced procedural burdens in that they will not be subject to the more detailed requirements of keeping formal retention registers, to the more highly regulated requirements regarding employee access to files (see e.g., 5 CFR §293.101 et seq., 5 CFR §297.101 et seq., and 5 CFR §351.505(b)), or to examining or evaluating applicants on a 100-point scale, seeking prior OPM approval of RIF's, etc.

Section 1.116 Adoption of veterans' preference policy. As noted at the outset of these Comments, the regulations will require each employing office that employs one or more covered employees or seeks applicants for covered positions to develop, within 120 days of the Congressional approval of the regulations, a written program or policy setting forth that employing office's methods for implementing the VEOA's veterans' preference principles in the employing office's hiring and retention systems. Employing offices that have no employees covered by the VEOA are not required to adopt such a policy or program.

Because these regulations afford the employing offices a great amount of flexibility in determining how to implement veterans' preference within their own personnel systems, it is imperative that the methods chosen by the employing offices be reduced to writing and disseminated to covered applicants and employees. This will further the goals of accountability and transparency, as well as consistency in the application of the employing office's veterans' preference procedures. An existing policy may be amended or replaced by the employing office from time to time, as it deems necessary or appropriate to meet changing personnel practices and needs. We note, however, that the employing office's policy or program will at all times remain subject to the requirements of the VEOA and these regulations. Accordingly, while the adoption of a policy or program will demonstrate the employing office's efforts to comply with the VEOA, it will not relieve an employing office of substantive compliance with the VEOA.

Sections 1.117 Preservation of records kept or made. The requirements set forth in this section are derived from OPM regulations regarding retention of RIF records, 5 CFR §351.505, and EEOC regulations regarding the preservation of personnel and employment records kept or made by employers, 29 CFR §1602.14. This section requires that relevant records be retained for one year from the date of the making of the record or the date of the personnel action involved or, if later, one year from the date on which the applicant or employee is notified of the personnel action. In addition, where a claim has been brought under section 401 of the CAA against an employing office under the VEOA, the respondent employing office must preserve all personnel records relevant to the claim until final disposition of the claim.

Section 1.118 Dissemination of veterans' preference policies to applicants for covered positions. Section 1.118 requires that employing offices must furnish information to applicants for covered positions before appointment decisions are made. Before these decisions are made, it is important that applicants be given the opportunity to self-identify themselves as preference eligibles, and that they receive information regarding the employing office's policies and procedures for implementing the VEOA, in order to ensure that they are aware of the VEOA obligations that may apply to their situation. Accordingly, the regulations require that information regarding the employing office's policies and procedures for implementing the VEOA in appointments be furnished to applicants at various stages when the employing office is hiring into covered positions. We note that inviting applicants to voluntarily self-identify as a disabled veteran for purposes of the application of an employing office's veterans' preference policies, as outlined in the proposed regulation, is consistent with the EEOC's ADA *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* (EEOC Oct. 10, 1995).

This requirement does not prevent an employing office from appropriately modifying its veterans' preference policies when it sees fit to do so, but is intended to ensure that applicants will be made aware of the employing office's then-current policies and procedures. The requirement that an employing office allow applicants a ''reasonable time'' to provide information regarding their veterans' preference status is intentionally flexible. If an employing office must fill a covered position within a matter of days, one working day may be a ''reasonable time'' for submission of the information. However, if the employing office's appointment process is more prolonged, more time should be allowed.

Sections 1.119 and 1.120 Dissemination of information of veterans' preference policies to covered employees, and notice requirements applicable in RIFs. It is also important that covered employees receive information regarding the employing office's policies and procedures for implementing the VEOA in connection with RIFs, in order to ensure that they are aware of the VEOA obligations that may apply to that situation. Accordingly, section 1.119 requires that information regarding the employing office's policies and procedures for implementing the VEOA in appointments be disseminated through employee handbooks, if the employing office has covered employees and ordinarily distributes such handbooks to those employees, or through any other written policy or manual that the employing office may distribute to covered employees concerning their employee rights or reductions in force.

The notice requirements attendant to a RIF are set out separately in section 1.120 of the regulations. These regulations derive from the express statutory language in 5 USC §3502(d) and (e), which have been applied to the Legislative Branch by the VEOA. The language of section 3502(d) and (e) has been modified in section 1.120 to be consistent with the terms and approach used in the rest of these regulations. Among other changes, section 1.120 refers to ''covered employees'' and the provision in 5 U.S.C. §3502(e) that the ''President'' may shorten the 60 day advance notice period to 30 days has been changed to the ''director of the employing agency.'' Additionally, the provision regarding Job Training Partnership Act notice has been omitted. The requirement to inform the employee of the place where he or she may inspect regulations and records pertaining to this case derives from 5 CFR §351.802(a)(3).

The statutory language requiring notice of ''the employee's ranking relative to other competing employees, and how that ranking was determined'' has been modified to require that the notice state whether the covered employee is preference eligible and that the notice separately state the ''retention status'' (i.e., whether the employee will be retained or not) and preference eligibility of the other covered employees in the same job or position classification within the covered employee's competitive area. The Board is not requiring the keeping of retention registers or the ranking of employees within a job or position classification affected by a RIF. However, the statutory language clearly compels employing offices to provide employees who will be adversely affected by a reduction in force with advance notice of how and why the agency decided to subject that particular employee to the reduction in force. At a minimum, this includes whether the affected employee has preference eligible status, and an objective indication why the employee was not retained in relation to other employees in the affected position classifications or job classifications.

Section 1.121 Informational requirements regarding veterans' preference determinations. Once an appointment or reduction in force decision has been made, it is important that applicants for covered positions and

covered employees receive information regarding the employing office's decision, in order to ensure that the rights and obligations created by the VEOA may be effectively enforced under the CAA as contemplated by section 4(c)(3)(B) of the VEOA. Accordingly, section 1.121 of the regulations requires that certain limited information regarding the employing office's decision be made available to applicants for covered positions and to covered employees, upon request.

Proposed Substantive Regulations

PART 1—Extension of Rights and Protections Relating to Veterans' Preference Under Title 5, United States Code, to Covered Employees of the Legislative Branch (section 4(c) of the Veterans Employment Opportunities Act of 1998)

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 4 OF THE VEOA

Sec.
1.101 Purpose and scope.
1.102 Definitions.
1.103 Adoption of regulations.
1.105 Coordination with section 225 of the Congressional Accountability Act.

SEC. 1.101 PURPOSE AND SCOPE

(a) Section 4(c) of the VEOA. The Veterans Employment Opportunities Act (VEOA) applies the rights and protections of sections 2108, 3309 through 3312, and subchapter I of chapter 35 of title 5 U.S.C., to certain covered employees within the Legislative Branch.

(b) Purpose and scope of regulations. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 4(c)(4) of the VEOA, in accordance with the rulemaking procedure set forth in section 304 of the CAA (2 U.S.C. §1384). The purpose of subparts B, C and D of these regulations is to define veterans' preference and the administration of veterans' preference as applicable to Federal employment in the Legislative Branch. (5 U.S.C. §2108, as applied by the VEOA). The purpose of subpart E of these regulations is to ensure that the principles of the veterans' preference laws are integrated into the existing employment and retention policies and processes of those employing offices with employees covered by the VEOA, and to provide for transparency in the application of veterans' preference in covered appointment and retention decisions. Provided, nothing in these regulations shall be construed so as to require an employing office to reduce any existing veterans' preference rights and protections that it may afford to preference eligible individuals.

SEC. 1.102 DEFINITIONS

Except as otherwise provided in these regulations, as used in these regulations:

(a) Act or CAA means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) Active duty or active military duty means full-time duty with military pay and allowances in the armed forces, except (1) for training or for determining physical fitness and (2) for service in the Reserves or National Guard.

(c) Appointment means an individual's appointment to employment in a covered position, but does not include inservice placement actions such as promotions.

(d) Armed forces means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(e) Board means the Board of Directors of the Office of Compliance.

(f) Covered employee means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Board; (4) the Capitol Police Board; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; and (8) the Office of Compliance, but does not include an employee (aa) whose appointment is made by the President with the advice and consent of the Senate; (bb) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate; or (cc) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code). The term covered employee includes an applicant for employment in a covered position and a former covered employee.

(g) Covered position means any position that is or will be held by a covered employee.

(h) Disabled veteran means a person who was separated under honorable conditions from active duty in the armed forces performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public statute administered by the Department of Veterans Affairs or a military department.

(i) Employee of the Office of the Architect of the Capitol includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(j) Employee of the Capitol Police Board includes any member or officer of the Capitol police.

(k) Employee of the House of Representatives includes an individual occupying a position the pay of which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (f) above nor any individual described in subparagraphs (aa) through (cc) of paragraph (f) above.

(l) Employee of the Senate includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (f) above nor any individual described in subparagraphs (aa) through (cc) of paragraph (f) above.

(m) Employing office means: (1) the personal office of a Member of the House of Representatives or of a Senator; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance.

(n) Office means the Office of Compliance.

(o) Preference eligible means veterans, spouses, widows, widowers or mothers who meet the definition of ''preference eligible'' in 5 U.S.C. §2108(3)(A)–(G).

(p) Qualified applicant means an applicant for a covered position whom an employing office deems to satisfy the requisite minimum job-related requirements of the position. Where the employing office uses an entrance examination or evaluation for a covered position that is numerically scored, the term ''qualified applicant'' shall mean that the applicant has received a passing score on the examination or evaluation.

(q) Separated under honorable conditions means either an honorable or a general discharge from the armed forces. The Department of Defense is responsible for administering and defining military discharges.

(r) Uniformed services means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(s) VEOA means the Veterans Employment Opportunities Act of 1998 (Pub. L. 105–339, 112 Stat. 3182).

(t) Veteran means persons as defined in 5 U.S.C. §2108, or any superseding legislation.

SEC. 1.103 ADOPTION OF REGULATIONS

(a) Adoption of regulations. Section 4(c)(4)(A) of the VEOA generally authorizes the Board to issue regulations to implement section 4(c). In addition, section 4(c)(4)(B) of the VEOA directs the Board to promulgate regulations that are ''the same as the most relevant substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions referred to in paragraph (3)'' of section 4(c) of the VEOA. Those statutory provisions are section 2108, sections 3309 through 3312, and subchapter I of chapter 35, of title 5, United States Code. The regulations issued by the Board herein are on all matters for which section 4(c)(4)(B) of the VEOA requires a regulation to be issued. Specifically, it is the Board's considered judgment based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions referred to in paragraph (3)'' of section 4(c) of the VEOA that need be adopted.

(b) Modification of substantive regulations. As a qualification to the statutory obligation to issue regulations that are ''the same as the most substantive regulations (applicable with respect to the Executive Branch),'' section 4(c)(4)(B) of the VEOA authorizes the Board to ''determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under'' section 4(c) of the VEOA.

(c) Rationale for Departure from the Most Relevant Executive Branch Regulations. The Board concludes that it must promulgate regulations accommodating the human resource systems existing in the Legislative Branch; and that such regulations must take into account the fact that the Board does not possess the statutory and Executive Order based government-wide policy making authority underlying OPM's counterpart VEOA regulations governing the Executive Branch. OPM's regulations are designed for the competitive service (defined in 5 U.S.C. §2102(a)(2)), which does not exist in the employing offices subject to this regulation. Therefore, to follow the OPM regulations would create detailed and complex rules and procedures for a workforce that does not exist in the Legislative Branch, while providing no VEOA protections to the covered Legislative Branch employees. We have chosen to propose specially tailored regulations, rather than simply to adopt those promulgated by OPM, so that we may effectuate Congress' intent in extending the principles of the veterans' preference laws to the Legislative Branch through the VEOA.

SEC. 1.104 COORDINATION WITH SECTION 225 OF THE CONGRESSIONAL ACCOUNTABILITY ACT

Statutory directive. Section 4(c)(4)(D) of the VEOA requires that promulgated regulations must be consistent with section 225 of

the CAA. Among the relevant provisions of section 225 are subsection (f)(1), which prescribes as a rule of construction that definitions and exemptions in the laws made applicable by the CAA shall apply under the CAA, and subsection (f)(3), which states that the CAA shall not be considered to authorize enforcement of the CAA by the Executive Branch.

SUBPART B—VETERANS' PREFERENCE—GENERAL PROVISIONS

SEC. 1.105 RESPONSIBILITY FOR ADMINISTRATION OF VETERANS' PREFERENCE

Subject to Section 1.106, employing offices are responsible for making all veterans' preference determinations, consistent with the VEOA.

SEC. 1.106 PROCEDURES FOR BRINGING CLAIMS UNDER THE VEOA

Applicants for appointment to a covered position and covered employees may contest adverse veterans' preference determinations, including any determination that a preference eligible is not a qualified applicant, pursuant to sections 401–416 of the CAA, 2 U.S.C. §§1401–1416, and provisions of law referred to therein; 206a(3) of the CAA, 2 U.S.C. §§1401, 1316a(3); and the Office's Procedural Rules.

SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

SEC. 1.107 VETERANS' PREFERENCE IN APPOINTMENTS TO RESTRICTED POSITIONS

In each appointment action for the positions of custodian, elevator operator, guard, and messenger (as defined below and collectively referred to in these regulations as restricted covered positions) employing offices shall restrict competition to preference eligibles as long as preference eligibles are available. The provisions of sections 1.109 and 1.110 below shall apply to the appointment of a preference eligible to a restricted covered position. The provisions of section 1.108 shall apply to the appointment of a preference eligible to a restricted covered position, in the event that there is more than one preference eligible applicant for the position.

Custodian—One whose primary duty is the performance of cleaning or other ordinary routine maintenance duties in or about a government building or a building under Federal control, park, monument, or other Federal reservation.

Elevator operator—One whose primary duty is the running of freight or passenger elevators. The work includes opening and closing elevator gates and doors, working elevator controls, loading and unloading the elevator, giving information and directions to passengers such as on the location of offices, and reporting problems in running the elevator.

Guard—One who is assigned to a station, beat, or patrol area in a Federal building or a building under Federal control to prevent illegal entry of persons or property; or required to stand watch at or to patrol a Federal reservation, industrial area, or other area designated by Federal authority, in order to protect life and property; make observations for detection of fire, trespass, unauthorized removal of public property or hazards to Federal personnel or property. The term guard does not include law enforcement officer positions of the U.S. Capitol Police Board.

Messenger—One whose primary duty is the supervision or performance of general messenger work (such as running errands, delivering messages, and answering call bells).

SEC. 1.108 VETERANS' PREFERENCE IN APPOINTMENTS TO NON-RESTRICTED COVERED POSITIONS

(a) Where employing offices opt to examine and rate applicants for covered positions on a numerical basis they shall add points to the earned ratings of those preference eligibles who receive passing scores in an entrance examination, in a manner that is proportionately comparable to the points prescribed in 5 U.S.C. §3309.

(b) In all other situations involving appointment to a covered position, employing offices shall consider veterans' preference eligibility as an affirmative factor that is given weight in a manner that is proportionately comparable to the points prescribed in 5 U.S.C. §3309 in the employing office's determination of who will be appointed from among qualified applicants.

SEC. 1.109 CREDITING EXPERIENCE IN APPOINTMENTS TO COVERED POSITIONS

When considering applicants for covered positions in which experience is an element of qualification, employing offices shall provide preference eligibles with credit:

(a) for time spent in the military service (1) as an extension of time spent in the position in which the applicant was employed immediately before his/her entrance into the military service, or (2) on the basis of actual duties performed in the military service, or (3) as a combination of both methods. Employing offices shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(b) for all experience material to the position for which the applicant is being considered, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he/she received pay therefor.

SEC. 1.110 WAIVER OF PHYSICAL REQUIREMENTS IN APPOINTMENTS TO COVERED POSITIONS

(a) Subject to (c) below, if an employing office determines, on the basis of evidence before it, that an applicant for a covered position is preference eligible, the employing office shall waive in determining whether the preference eligible applicant is qualified for appointment to the position:

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible, the preference eligible is physically able to perform efficiently the duties of the position;

(b) Subject to (c) below, if an employing office determines that, on the basis of evidence before it, an otherwise qualified applicant who is a preference eligible described in 5 U.S.C. §2108(3)(c) who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible of the reasons for the determination and of the right to respond and to submit additional information to the employing office, within 15 days of the date of the notification. Should the preference eligible make a timely response the employing office, at the highest level within the employing office, shall render a final determination of the physical ability of the preference eligible to perform the duties of the position, taking into account the response and any additional information provided by the preference eligible. When the employing office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the preference eligible.

(c) Nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

SUBPART D—VETERAN'S PREFERENCE IN REDUCTIONS IN FORCE

SEC. 1.111 DEFINITIONS APPLICABLE IN REDUCTIONS IN FORCE

(a) Competing covered employees are the covered employees within a particular position or job classification, at or within a particular competitive area, as those terms are defined below.

(b) Competitive area is that portion of the employing office's organizational structure, as determined by the employing office, in which covered employees compete for retention. A competitive area must be defined solely in terms of the employing office's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an employing office. The minimum competitive area is a department or subdivision of the employing office under separate administration within the local commuting area.

(c) Position classifications or job classifications are determined by the employing office, and shall refer to all covered positions within a competitive area that are in the same grade, occupational level or classification, and which are similar enough in duties, qualification requirements, pay schedules, tenure (type of appointment) and working conditions so that an employing office may reassign the incumbent of one position to any of the other positions in the position classification without undue interruption.

(d) Preference Eligibles. For the purpose of applying veterans' preference in reductions in force, except with respect to the application of section 1.114 of these regulations regarding the waiver of physical requirements, the following shall apply:

(1) ''active service'' has the meaning given it by section 101 of title 37;

(2) ''a retired member of a uniformed service'' means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his/her service as such a member; and

(3) a preference eligible covered employee who is a retired member of a uniformed service is considered a preference eligible only if—

(A) his/her retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) his/her service does not include twenty or more years of full-time active service, regardless of when performed but not including periods of active duty for training; or

(C) on November 30, 1964, he/she was employed in a position to which this subchapter applies and thereafter he/she continued to be so employed without a break in service of more than 30 days.

The definition of ''preference eligible'' as set forth in 5 U.S.C §2108 and section 1.102(o) of these regulations shall apply to waivers of physical requirements in determining an employee's qualifications for retention under section 1.114 of these regulations.

(e) Reduction in force is any termination of a covered employee's employment or the reduction in pay and/or position grade of a covered employee for more than 30 days and that may be required for budgetary or workload reasons, changes resulting from reorganization, or the need to make room for an employee with reemployment or restoration rights. This does not encompass terminations or other personnel actions predicated upon performance, conduct or other grounds attributable to an employee.

(f) Undue interruption is a degree of interruption that would prevent the completion of required work by a covered employee 90 days after the employee has been placed in a different position under this part. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if a covered employee needed more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a program accorded low priority by the employing office, or to a vacant position. An employing office has the burden of proving ''undue interruption'' by objectively quantifiable evidence.

SEC. 1.112 APPLICATION OF PREFERENCE IN REDUCTIONS IN FORCE

Prior to carrying out a reduction in force that will affect covered employees, employing offices shall determine which, if any, covered employees within a particular group of competing covered employees are entitled to veterans' preference eligibility status in accordance with these regulations. In determining which covered employees will be retained, employing offices will treat veterans' preference as the controlling factor in retention decisions among such competing covered employees, regardless of length of service or performance, provided that the preference eligible employee's performance has not been rated unacceptable. Provided, a preference eligible who is a ''disabled veteran'' under section 1.102(h) above who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable by an employing office is entitled to be retained in preference to other preference eligibles. Provided, this section does not relieve an employing office of any greater obligation it may be subject to pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. §2101 et seq.) as applied by section 102(a)(9) of the CAA, 2 U.S.C. § 1302(a)(9).

SEC. 1.113 CREDITING EXPERIENCE IN REDUCTIONS IN FORCE

In computing length of service in connection with a reduction in force, the employing office shall provide credit to preference eligible covered employees as follows:

(a) a preference eligible covered employee who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(b) a preference eligible covered employee who is a retired member of a uniformed service is entitled to credit for:

(1) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) the total length of time in active service in the armed forces if he is included under 5 U.S.C. §3501(a)(3)(A), (B), or (C); and

(c) a preference eligible covered employee is entitled to credit for:

(1) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(2) service rendered as an employee described in 5 U.S.C. §2105(c) if such employee moves or has moved, on or after January 1, 1966, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in 5 U.S.C. §2105(c).

SEC. 1.114 WAIVER OF PHYSICAL REQUIREMENTS IN REDUCTIONS IN FORCE

(a) If an employing office determines, on the basis of evidence before it, that a covered employee is preference eligible, the employing office shall waive:

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an employing office determines that, on the basis of evidence before it, a preference eligible described in 5 U.S.C. §2108(3)(c) who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible of the reasons for the determination and of the right to respond and to submit additional information to the employing office within 15 days of the date of the notification. Should the preference eligible make a timely response the employing office, at the highest level within the employing office, shall render a final determination of the physical ability of the preference eligible to perform the duties of the covered position, taking into account the evidence before it, including the response and any additional information provided by the preference eligible. When the employing office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the preference eligible.

(c) Nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

SEC. 1.115 TRANSFER OF FUNCTIONS

(a) When a function is transferred from one employing office to another employing office, each covered employee in the affected position classifications or job classifications in the function that is to be transferred shall be transferred to the receiving employing office for employment in a covered position for which he/she is qualified before the receiving employing office may make an appointment from another source to that position.

(b) When one employing office is replaced by another employing office, each covered employee in the affected position classifications or job classifications in the employing office to be replaced shall be transferred to the replacing employing office for employment in a covered position for which he/she is qualified before the replacing employing office may make an appointment from another source to that position.

SUBPART E—ADOPTION OF VETERANS' PREFERENCE POLICIES, RECORDKEEPING & INFORMATIONAL REQUIREMENTS

Sec.

SEC. 1.116 ADOPTION OF VETERANS' PREFERENCE POLICY

No later than 120 calendar days following Congressional approval of this regulation, each employing office that employs one or more covered employees or that seeks applicants for a covered position shall adopt its written policy specifying how it has integrated the veterans' preference requirements of the Veterans Employment Opportunities Act of 1998 and these regulations into its employment and retention processes. Upon timely request and the demonstration of good cause, the Executive Director, in his/her discretion, may grant such an employing office additional time for preparing its policy. Each such employing office will make its policies available to applicants for appointment to a covered position and to covered employees in accordance with these regulations and to the public upon request. The act of adopting a veterans' preference policy shall not relieve any employing office of any other responsibility or requirement of the Veterans Employment Opportunity Act of 1998 or these regulations. An employing office may amend or replace its veterans' preference policies as it deems necessary or appropriate, so long as the resulting policies are consistent with the VEOA and these regulations.

SEC. 1.117 PRESERVATION OF RECORDS MADE OR KEPT

An employing office that employs one or more covered employees or that seeks applicants for a covered position shall maintain any records relating to the application of its veterans' preference policy to applicants for covered positions and to workforce adjustment decisions affecting covered employees for a period of at least one year from the date of the making of the record or the date of the personnel action involved or, if later, one year from the date on which the applicant or covered employee is notified of the personnel action. Where a claim has been brought under section 401 of the CAA against an employing office under the VEOA, the respondent employing office shall preserve all personnel records relevant to the claim until final disposition of the claim. The term ''personnel records relevant to the claim,'' for example, would include records relating to the veterans' preference determination regarding the person bringing the claim and

records relating to any veterans' preference determinations regarding other applicants for the covered position the person sought, or records relating to the veterans' preference determinations regarding other covered employees in the person's position or job classification. The date of final disposition of the charge or the action means the latest of the date of expiration of the statutory period within which the aggrieved person may file a complaint with the Office or in a U.S. District Court or, where an action is brought against an employing office by the aggrieved person, the date on which such litigation is terminated.

1.118 DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO APPLICANTS FOR COVERED POSITIONS

(a) An employing office shall state in any announcements and advertisements it makes concerning vacancies in covered positions that the staffing action is governed by the VEOA.

(b) An employing office shall invite applicants for a covered position to identify themselves as veterans' preference eligibles, provided that in doing so:

(1) the employing office shall state clearly on any written application or questionnaire used for this purpose or make clear orally, if a written application or questionnaire is not used, that the requested information is intended for use solely in connection with the employing office's obligations and efforts to provide veterans' preference to preference eligibles in accordance with the VEOA; and

(2) the employing office shall state clearly that disabled veteran status is requested on a voluntary basis, that it will be kept confidential in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3), that refusal to provide it will not subject the individual to any adverse treatment except the possibility of an adverse determination regarding the individual's status as a preference eligible as a disabled veteran under the VEOA, and that any information obtained in accordance with this section concerning the medical condition or history of an individual will be collected, maintained and used only in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

(c) An employing office shall provide the following information in writing to all qualified applicants for a covered position:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition in a manner designed to be understood by applicants, along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to appointments to covered positions, including any procedures the employing office shall use to identify preference eligible employees;

(3) the employing office may provide other information to applicants, but is not required to do so by these regulations.

(d) Except as provided in this subparagraph, the written information required by paragraph (c) must be provided to all qualified applicants for a covered position so as to allow those applicants a reasonable time to respond regarding their veterans' preference status.

(e) Employing offices are also expected to answer applicant questions concerning the employing office's veterans' preference policies and practices.

SEC. 1.119 DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO COVERED EMPLOYEES

(a) If an employing office that employs one or more covered employees or that seeks applicants for a covered position provides any written guidance to such employees concerning employee rights generally or reductions in force more specifically, such as in a written employee policy, manual or handbook, such guidance must include information concerning veterans' preference entitlements under the VEOA and employee obligations under the employing office's veterans' preference policy, as set forth in subsection (b) of this regulation.

(b) Written guidances and notices to covered employees required by subsection (a) above shall include, at a minimum:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to workforce adjustments; and the procedures the employing office shall take to identify preference eligible employees.

(3) The employing office may include other information in the notice or in its guidances, but is not required to do so by these regulations.

(c) Employing offices are also expected to answer covered employee questions concerning the employing office's veterans' preference policies and practices.

1.120 WRITTEN NOTICE PRIOR TO A REDUCTION IN FORCE

(a) Except as provided under subsection (b), a covered employee may not be released, due to a reduction in force, unless the covered employee and the covered employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (b), at least 60 days before the covered employee is so released.

(b) Any notice under paragraph (a) shall include—

(1) the personnel action to be taken with respect to the covered employee involved;

(2) the effective date of the action;

(3) a description of the procedures applicable in identifying employees for release;

(4) the covered employee's competitive area;

(5) the covered employee's eligibility for veterans' preference in retention and how that preference eligibility was determined;

(6) the retention status and preference eligibility of the other employees in the affected position classifications or job classifications within the covered employee's competitive area;

(7) the place where the covered employee may inspect the regulations and records pertinent to him/her, as detailed in section 1.121(b) below; and

(8) a description of any appeal or other rights which may be available.

(c) (1) The director of the employing office may, in writing, shorten the period of advance notice required under subsection (a), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) No notice period may be shortened to less than 30 days under this subsection.

SEC. 1.121 INFORMATIONAL REQUIREMENTS REGARDING VETERANS' PREFERENCE DETERMINATIONS

(a) Upon written request by an applicant for a covered position, the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's appointment decision regarding that applicant. Such explanation shall state at a minimum:

(1) Whether the applicant is preference eligible and, if not, a brief statement of the reasons for the employing office's determination that the applicant is not preference eligible. If the applicant is not considered preference eligible, the explanation need not address the remaining matters described in subparagraphs (2) and (3).

(2) If the applicant is preference eligible, whether he/she is a qualified applicant and, if not, a brief statement of the reasons for the employing office's determination that the applicant is not a qualified applicant. If the applicant is not considered a qualified applicant, the explanation need not address the remaining matters described in subparagraph (3).

(3) If the applicant is preference eligible and a qualified applicant, the employing office's explanation shall advise whether the person appointed to the covered position for which the applicant was applying is preference eligible.

(b) Upon written request by a covered employee who has received a notice of reduction in force under section 1.120 above (or his/her representative), the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's retention decision regarding that covered employee. Such explanation shall state:

(1) Whether the covered employee is preference eligible and, if not, the reasons for the employing office's determination that the covered employee is not preference eligible.

(2) If the covered employee is preference eligible, the employing office's explanation shall include:

(A) a list of all covered employee(s) in the requesting employee's position classification or job classification and competitive area who were retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible,

(B) a list of all covered employee(s) in the requesting employee's position classification or job classification and competitive area who were not retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible, and

(C) a brief statement of the reason(s) for the employing office's decision not to retain the covered employee.

END OF PROPOSED REGULATIONS

HONORING OUR ARMED FORCES

LANCE CORPORAL RICHARD CHAD CLIFTON

Mr. CARPER. Mr. President, I set aside a few moments today to reflect on the life of Marine LCpl Richard Chad Clifton. Chad epitomized the best of our country' s brave men and women who fought to free Iraq and to secure a new democracy in the Middle East. He exhibited unwavering courage, dutiful service to his country, and above all else, honor. In the way he lived his life, and how we remember him, Chad reminds each of us how good we can be.

A resident of Milton, Chad's passing has deeply affected the community. A 2003 graduate of Cape Henlopen High School. Chad was the son of Richard C. and Terri Clifton. Friends, family, and school officials recalled Chad Clifton as smart, funny, laid back, and carefree; an all-around good person. He viewed the Marine Corps as an opportunity to gain life experience. An aspiring writer, Chad said being overseas was providing a reservoir of experiences to write about.

Chad always had a strong interest in the military. He spent more than 3 years as a member of the Cape Henlopen High School Junior ROTC program. His participation in that program enabled me to meet him last year and talk about his interest in serving the United States of America. His interest also came from his grandfather, a Korean War veteran, who earned the Purple Heart. That medal will be buried with Richard Chad Clifton.

After graduating from high school, Chad underwent basic training at Parris Island, SC before being stationed at Camp Pendleton, CA. Chad became a member of the 2nd Battalion, 5th Marine Regiment. He died in combat in the Al Anbar province in western Iraq.

Chad was a remarkable and well-respected young soldier. His friends and family remember him as an officer and gentleman with an acid wit and an appreciation for music and art. He enjoyed writing, listening to heavy metal, and watching television sitcom reruns. As his mother remembers, ''He was pure potential with a good heart.''

Today, commemorate Chad, celebrate his life, and offer his family our support and our deepest sympathy on their tragic loss.

KYOTO PROTOCOL AND CLIMATE CHANGE

Mr. JEFFORDS. Mr. President, I rise today to acknowledge that the international global warming pact known as the Kyoto Protocol has entered into force. This happens only 7 years after it was negotiated.

The Protocol imposes limits on emissions of greenhouse gases that scientists blame for increasing world temperatures. As my colleagues know, President Bush decided to abandon the Protocol and any serious international negotiations on the matter in March 2001. That unilateral abandonment leaves the world to wonder why the Nation that contributes the most greenhouse gas emissions to the world atmosphere refuses to accept responsibility for these emissions and refuses to cooperate with the international community to curb the global warming threat.

I assume it was no coincidence that the Committee on Environment and Public Works, on which I serve as ranking member, was supposed to consider legislation today called the Clear Skies Act. If passed, this legislation will create anything but clear skies.

The bill rolls back steady progress under the Clean Air Act and actually would increase this country's greenhouse gas emissions more than no legislation. The chairman of the committee has decided to take more time to craft this measure, due in no small part to the fact that the bill lacks the support in committee to be approved and reported to the Senate today. I commend the chairman for making that decision today—the same day the Kyoto Protocol has taken effect—to more carefully consider this important measure.

In the coming weeks as we discuss this legislation, I hope that we can reach agreement on a bill that truly does clear our skies. To me, that means a bill that not only improves upon the Clean Air Act, but that also addresses our Nation's greenhouse gas emissions.

Yesterday, on the eve of the Kyoto Protocol entering into force, a White House spokesman stated that the United States has made an unprecedented commitment to reduce the growth of greenhouse gas emissions in a way that continues to grow our economy. Mr. President, I have seen no evidence of this commitment.

For my part, I have already introduced the Clean Power Act of 2005. I also intend to introduce the Renewable Portfolio Standard Act of 2005 and the Electric Reliability Security Act of 2005, two bills designed to use our resources more efficiently.

If President Bush signed into law a measure that caps or truly required reductions in the emissions of greenhouse gases, evidence of a real commitment would be apparent, not just to me but to the entire world. I call upon my Senate and House colleagues to mark the occasion of the Kyoto Protocol's entering into force by embarking upon serious work to craft legislation that imposes credible deadlines to achieve caps and significant reductions to our Nation's sizeable and growing contribution of greenhouse gases to the atmosphere.

THE DOHA DECLARATION AND THE TRADE PROMOTION AUTHORITY ACT OF 2002

Mr. KENNEDY. Mr. President, the Trade Promotion Authority Act of 2002 gives the President and the U.S. Trade Representative the power to negotiate bilateral and multilateral trade agreements that must be given expedited consideration by Congress. The Doha Declaration was adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar, on November 14, 2001, and addresses the need for access to medicines for all and how to reconcile that need with intellectual property protections.

When the Trade Act came to the floor of the Senate, Senator FEINSTEIN and I offered an amendment to the section on the negotiating objectives of the United States in trade negotiations. Our amendment made it a principal objective of the United States to respect the Doha Declaration in all trade negotiations. Regrettably, in several trade agreements since then, administration has refused to fulfill this obligation.

The basic issue was the interpretation of the so-called TRIPS agreement on intellectual property protections such as patents and copyright. The Doha Declaration specifically states that the TRIPS agreement ''does not and should not prevent members from taking measures to protect public health.'' It recognized the need to interpret and implement TRIPS in a way that supports a nation's ''right to protect public health and, in particular, to promote access to medicines for all.''

The Doha Declaration went on to specify that ''[e]ach member country has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted.'' It stated that each member nation is ''free to establish its own regime'' on whether a sale of a patented product by the patent owner or licensee exhausts the patent, so that it cannot be asserted against subsequent purchasers or users of the product.

The Doha Declaration recognized a basic principle—poor people in the developing nations often cannot afford many patented drugs, even though the drugs are their only hope for surviving AIDS and other serious and life-threatening diseases.

The Doha Declaration is clearly intended to prevent patents from blocking access to life-saving drugs. Developing nations obviously do not have the capacity to manufacture drugs themselves, and they must be free to purchase these drugs from another country.

Our amendment to the Trade Promotion Authority Act reinforces the Doha Declaration. The Bush administration should be using it to negotiate trade agreements that allow urgently needed access to medicines. Instead, the administration has used trade agreements to promote the interests of the pharmaceutical industry at the expense of access to drugs in developing nations.

Again and again, the administration has defied the Doha Declaration and imposed unjustified restrictions on the availability of patented drugs. They've done it on trade agreements with Australia, with Jordan, with Morocco, with Singapore, and other nations. In these agreements, the Bush administration has undermined the very core of the Doha Declaration. They're trying to do it now in the Central American Free Trade Agreement.

They block the approval and use of generic version of drugs. They prevent new treatments for HIV/AIDS from getting to the people of the developing world.

It's an outrageous policy. The administration has made it U.S. policy to block affordable, life-saving drugs for AIDS for the people of Central America, because they feel it's more important to protect the profits of brand name drug companies..

The administration is defying the statutory requirement of the Doha Declaration, that our objective in these agreements must be to guarantee access to essential drugs for the sick and the poor in the developing nations of the world.

They use countless legal tactics to cause delays in the approval of generic drugs in developing countries, even

when patents are invalid or are not infringed at all by the generic drug. In essence, the administration has set up a bottleneck to prevent approval of generic drugs in many countries of the developing world. That's completely at odds with the Doha Declaration.

U.S. law allows a generic drug company to use a patented drug to develop a generic version of the drug before the patent has expired. It takes time to develop a drug, test it, and have it reviewed by the FDA.

The theory of the law is that a generic drug company should be able to complete this approval process before the patent expires, so that developing countries can get generic versions of drugs as quickly as possible.

That process is permitted by TRIPS, which means it is permitted by the trade agreements the administration has negotiated. It is not required by those agreements, however, and the administration has not tried to include it. In fact, they give brand name drug companies the opportunity to block that process in each of these developing countries. It's another example of the administration cynically protecting the interests of the brand name drug companies in violation of the law.

The administration claims that its tactics are consistent with another objective of the Trade Act, which is to seek standards for intellectual property protection and enforcement in other countries. That's true, but it's in the same provision in the act as the Doha Declaration.

The administration has a good track record in protecting the brand name drug industry, but it has never gotten even one provision that respects the Doha Declaration. Selectively interpreting laws to apply one provision and ignore another is unacceptable.

It's no secret that the brand name drug companies want better patents and longer exclusivities in the United States. But it's wrong for the administration to side with them in trade agreements that defy the Doha Declaration.

The administration has systematically blocked Congress from changing intellectual property protections except in ways that benefit brand name drug companies. It gets even worse. When brand name drug companies successfully lobby for protections under the laws of our trading partners that are greater than those under U.S. law, the industry then argues that the United States should ''harmonize'' its intellectual property protections with those of our trading partners. That's a slap in the face to Congress and the American people. They should not be forced by the Bush administration to endure even higher drug prices than they do today.

The question is: What should be done to put real teeth in Doha Declaration in trade negotiations?

First, the administration should follow U.S. law and respect the declaration in future negotiations, such as those about to begin with the nations of the Andes. It should immediately stop seeking intellectual property protections that prevent access to medicines for all and should start to seek those that promote greater access to medicines for all.

Second, the negotiators for countries of the developed and developing world should stop every time the U.S. Trade Representative asks for an intellectual property provision, especially one directed specifically at drug patents or drug data exclusivity, and ask how that provision affects access to needed drugs.

The U.S. Trade Representative should not be surprised if negotiators from developing nations refuse to accept restrictive provisions that violate the Doha Declaration. They should challenge our Trade Representative to obey the rule of law.

And here in Congress, we have to do a better job of insisting that our trade agreements comply with the letter and the spirit of the Doha Declaration. It's the law of the land, and it's a matter of life and death for hundreds of millions of people in other lands. The tactics we are so shamefully using against them can only breed greater resentment and greater hatred of the United States. And we can't afford to let that happen at this critical time in our role in the world.

I ask unanimous consent that a brief description of provisions in trade agreements that violate the Doha Declaration be printed in the RECORD as a technical appendix.

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

TECHNICAL APPENDIX TO STATEMENT OF SENATOR EDWARD M. KENNEDY ON THE DOHA DECLARATION AND THE TRADE PROMOTION AUTHORITY ACT OF 2002

COMPULSORY LICENSING AND PARALLEL TRADE

The Administration has successfully imposed restrictions on the right to compulsory license medicines in the trade agreements with Australia, Jordan, and Singapore. The Administration has obtained provisions that can block parallel imports in trade agreements with both developed and developing nations, such as Australia, Morocco, and Singapore. For the Doha Declaration to work, both developed and developing countries must be able to issue compulsory licenses and then engage in parallel importation of the drug from the developed country that can manufacture the drug to the developing country whose people need the drug, yet these agreements undermine both compulsory licensing and parallel importation.

DATA EXCLUSIVITIES

The Administration has also pursued data exclusivities to protect brand name drugs in trade agreements with Australia, Bahrain, Chile, Jordan, Morocco, and Singapore, and now seeks them in the Central American Free Trade Agreement. To receive authorization to market a drug, many countries, like the United States, require the drug manufacturer to present data to show that the drug is safe and effective for its intended use. The clinical trials to produce these data can be quite expensive, and protecting these data for a period of years—meaning that the data may not be used to approve another, similar product—can create an incentive for and protect the investment in producing them.

In the developing world, however, data exclusivities prohibit a country from approving even a compulsory licensed version of a patented drug. The trade agreements that require exclusivities provide no mechanism to allow for distribution of compulsory licensed products notwithstanding the exclusivities. The exclusivities therefore will block compulsory licensed versions of the new treatments for HIV/AIDS and other serious diseases from getting to the people of the developing world, at least until the data exclusivities have expired.

LINKAGE BETWEEN PATENTS AND DRUG APPROVAL

Most recently, the Administration has also negotiated for provisions in trade agreements with the countries of Central America that link approval of generic drug products to the status of patents on the pioneer drug product. In other words, approval of generic drugs is blocked if there are patents and the government approval agency has not ascertained whether the generic product infringes a brand name drug patent.

In the United States, approval of a generic drug is blocked because of a patent only if the brand name company sues to defend the patent. The obligation is not on the Food and Drug Administration, which has repeatedly stated that it has no capacity to assess or evaluate patents. The Administration's trade agreements place the responsibility to defend brand name drug patents on the FDA's of the developing nations, which we can only assume are more overburdened than our own FDA and similarly lack the expertise to assess and evaluate patents. The inevitable result will be delays in the approval of generic drugs in developing countries caused by patents that are invalid or that are not infringed by the generic drug.

THE BOLAR AMENDMENT

In the United States, the Bolar Amendment allows a generic drug company to use a patented invention to develop a generic version of a drug before the patent has expired because it takes time to develop and test a drug and have it reviewed by the FDA and a generic drug company should be able to complete this process before the patent has expired.

Without a Bolar provision, a drug patent is arbitrarily extended because of the time needed for drug formulation and approval. The Bolar Amendment in a developing country will improve timely access to medicines for the sick and poor. The Administration has not sought to mandate the Bolar provision in trade agreements, however.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Last summer, a gay man was attacked outside of a club in Seattle, WA. Micah Painter was leaving for the night when he was beaten and stabbed with a broken bottle. His attackers

shouted anti-gay slurs at him and demanded to know if he was gay. The incident is being investigated as a hate crime.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ANIMAL FIGHTING PROHIBITION ENFORCEMENT ACT

Mr. ENSIGN. Mr. President, I rise to reintroduce the Animal Fighting Prohibition Enforcement Act, legislation that garnered the support of 51 Senate cosponsors and 201 House cosponsors in the 108th Congress but didn't quite make it over the finish line. I thank my colleagues for their support in this endeavor to protect the welfare of animals and express my hope that we will get the job done early in this session. This legislation targets the troubling, widespread, and often underground activities of dogfighting and cockfighting where dogs and birds are bred and trained to fight to the death. This is done for the sheer enjoyment and illegal wagering of the animals' handlers and spectators.

These activities are reprehensible and despicable. Our States' laws reflect this sentiment. All 50 States have prohibited dogfighting. It is considered a felony in 48 States. Cockfighting is illegal in 48 States, and it is a felony in 31 States. In my home State of Nevada, both dogfighting and cockfighting are considered felonies. In fact, it is a felony to even attend a dogfighting or cockfighting match.

Unfortunately, in spite of public opposition to extreme animal suffering, these animal fighting industries thrive. There are 11 underground dogfighting publications and several above-ground cockfighting magazines. These national magazines advertise and sell animals and the materials associated with animal fighting. They also seek to legitimize this shocking practice.

During the consideration of the farm bill in 2001, a provision was included that closed loopholes in the Federal animal fighting law. Both the House and the Senate also increased the maximum jail time for individuals who violate this law from 1 year to 2 years, making any violation a Federal felony. However, during the conference, the jail time increase was removed.

Then in 2003, I offered an amendment to the Healthy Forests bill that would have had the same effect as the bill I am introducing today. The Senate agreed to this amendment by unanimous consent, but it was again taken out in conference.

Now, I am hoping the third time is the charm. In the form that is being introduced today, this legislation passed the House Judiciary Committee in September 2004. It is ripe for enactment early in the 109th Congress. This legislation has been endorsed by the USDA, the American Veterinary Medical Association, more than 150 State and local police and sheriffs departments across the country, and a host of others. The only groups opposing it are the cockfighters and the dogfighters.

The bill seeks to do two things. First, it increases the penalty to the felony level—up to 2 years jail time for offenders. I am informed by U.S. attorneys that they are hesitant to pursue animal fighting cases with merely a misdemeanor penalty. The USDA has received innumerable tips from informants and requests to assist with State and local prosecutions but has only been able to help in a handful of cases since Congress first passed the Federal animal fighting law in 1976. For example, in my own State last year, law enforcement authorities raided an ongoing cockfight involving about 200 people from Nevada and other States. The USDA wanted to pursue Federal charges, to complement the local effort, but the U.S. Attorney's Office declined to prosecute because the Federal crime was only a misdemeanor. Increased penalties will provide a greater incentive for Federal authorities to pursue animal fighting cases.

Second, the bill prohibits the interstate shipment of cockfighting implements, such as razor-sharp knives and gaffs. The specific knives are commonly known as ''slashers.'' The slashers and icepick-like gaffs are attached to the legs of birds to make the cockfights more violent and to induce bleeding of the animals. These weapons are used only in cockfights. Since Congress has restricted shipment of birds for fighting, it should also restrict implements designed specifically for fights.

This is commonsense, long-overdue legislation. It does not expand the Federal Government's reach into a new area but simply aims to make current law more effective. It is explicitly limited to interstate and foreign commerce, so it protects States rights in the two States, Louisiana and New Mexico, where cockfighting is still allowed. Further, it protects States rights in the other 48 States where weak Federal law is compromising their ability to keep animal fighting outside their borders.

Mr. President, this legislation is needed for humane reasons. But it is also urgently needed to protect poultry health and public health. In 2002 to 2003, we had an outbreak of exotic Newcastle disease among poultry in my home State of Nevada, as well as in California, Arizona, and Texas. According to the USDA, this deadly disease was spread in large part by illegal cockfighters. It cost taxpayers about $200 million to contain and cost the poultry industry many millions more in lost export markets. In Asia, at least four children died last year due to exposure to bird flu from cockfighting activity, according to news reports. One Malaysian news agency noted that surveys by the ''Veterinary Department show that irresponsible cockfighting enthusiasts are the main 'culprits' for bringing the avian influenza virus into the state.'' Fortunately, bird flu has not yet jumped the species barrier in this country, but we ought to do all we can to minimize the risk. One of the ways to ensure greater protection against the spread of these dangerous avian diseases is to enforce the ban on interstate and foreign shipment of birds for the purpose of fighting. Our bill ensures that penalties are in place to encourage meaningful enforcement of this ban.

I appreciate the strong support of Senators SPECTER, CANTWELL, FEINSTEIN, DEWINE, KENNEDY, KYL, KOHL, LUGAR, VITTER, LEAHY, and SANTORUM in this effort and look forward to the overwhelming support of my other colleagues in the Senate. I also wish to recognize Representative MARK GREEN for his leadership in reintroducing an identical bill in the House today. Surely, this is an issue that must be addressed as soon as possible. We cannot allow this barbaric practice to continue in our civilized society.

REDUCING CRIME AT AMERICA'S SEAPORTS ACT OF 2005

Mrs. FEINSTEIN. Mr. President, yesterday I introduced legislation to improve our Nation's ability to use the criminal law to guard against and respond to terrorist attacks at our seaports—the Reducing Crime at America's Seaports Act of 2005.

I am pleased to join my colleagues Senators BIDEN, SPECTER, KYL, and ALLEN, who have co-sponsored this bill, in moving forward with this initiative.

The Nation's seaports are a tremendous asset to our economy. They also represent a significant vulnerability to a possible terrorist attack.

Much of our national commerce travels through these ports. Ninety percent of all cargo tonnage moves through the 50 biggest ports. Just 25 of those ports account for 98 percent of the Nation's container traffic—two of the largest such ports, Oakland and Los Angeles/Long Beach, are in my home State of California.

A modern port, which handles huge ships laden with thousands of containers, and vast amounts of critical bulk cargo, is complex and sprawling. It is also extremely vulnerable to a terrorist attack.

The very complexity and size of our ports make them an obvious and attractive target for a terrorist. With hundreds of miles of wharves and piers, a vast volume of boat, truck and car traffic, lengthy perimeters, ports can be the perfect target.

Not only are they vulnerable to attack, the consequences of even a small attack could be overwhelming. Commerce would be devastated, not only at

and around the port, but all around the Nation, because the goods moving through ports are the lifeblood of industry and commerce throughout the Nation. The human cost would also be terrible, because ports not only employ thousands of workers; they are without exception located near large metropolitan population centers.

My concern is not just theoretical. The available intelligence analysis supports the conclusion that seaports are a critical vulnerability. Our terrorist enemies are well aware of the vulnerability of these ports, and are well equipped to do terrible damage.

This problem is heightened by two critical factors: the first is the growing importance of containers in maritime commerce. Since their introduction in the late 1960s, container traffic has grown. It now accounts for 66 percent of dollar value of all U.S. maritime traffic. In some ports, such as Los Angeles/Long Beach, it constitutes most of the trade. The problem with containers is that they are, by definition, a potential delivery device for a terrorist weapon. Whether conventional explosives, biological agents, or a nuclear device, such as a so-called ''dirty bomb,'' containers complicate the problem of securing our ports. The second factor is the increasing possibility that terrorists have, or will soon acquire, the ability to mount unconventional attacks, such as nuclear, radiological or biological attacks. In such a case our ports provide both a method for bringing such things into the country for an attack inland, and can be the target itself.

There is a lot to do to secure our ports. Some of it requires long term investment in capital improvements. But we can accomplish much simply by fine-tuning the tools we already have. Among those tools is the criminal law. These laws are vital to those on the front line—the Coast Guard, the FBI, Customs Agents, and the State, local and private authorities who protect our ports every day.

This bill will improve the criminal law applicable to ports in the following ways: it would clarify that the law prohibiting fraudulent access to transport facilities includes seaports and waterfronts within its scope, as well as increase the maximum term of imprisonment for a violation from 5 years to 10 years. According to the Report of the Interagency Commission on Crime and Security at U.S. Seaports: ''[c]ontrol of access to the seaport or sensitive areas within the seaports is often lacking.'' Such unauthorized access is especially problematic, since inappropriate controls may result in the theft of cargo and, more dangerously, undetected admission of terrorists.

It would amend the U.S. Code to make it a crime: One, for a vessel operator knowingly to fail to slow or stop a ship once ordered to do so by a Federal law enforcement officer, including the Coast Guard; two, for any person on board a vessel to impede boarding or other law enforcement action authorized by federal law; or three, for any person on board a vessel to provide false information to a federal law enforcement officer. Any violation of this section would be punishable by a fine and/or imprisonment for a maximum term of 5 years. A core function of the Coast Guard is law enforcement at sea, especially in the aftermath of the tragic events of September 11. While the Coast Guard has authority to use whatever force is reasonably necessary to force a vessel to stop or be boarded, ''refusal to stop,'' by itself, is not currently a crime.

It creates a new criminal provision to make it a crime to willfully use a dangerous weapon, including chemical, biological, radiological or nuclear materials, or explosive, with intent to cause death or serious bodily injury to any person on board a passenger vessel. Any violation of this section, including attempts and conspiracies, would be punishable by a fine and/or imprisonment for a maximum term of 20 years and, if death results, for a term of imprisonment up to life. This section would close a potential gap in existing law by making it clear that ''passenger vessels'' like cruise ships are included within the scope of transportation vehicles covered by the provision.

The bill would amend existing law which covers violence against maritime navigation to make it a crime to intentionally damage or tamper with any maritime navigational aid maintained by the Coast Guard or under its authority, if such act endangers the safe navigation of a ship. The Coast Guard maintains over 50,000 navigational aids on more than 25,000 miles of waterways. These aids, which are relied upon by all commercial, military and recreational mariners, are essential for safe navigation and are, therefore, inviting targets for terrorists.

The bill would make it a crime to: One, knowingly place in waters any device or substance which is likely to damage a vessel or its cargo, interfere with a vessel's safe navigation, or interfere with maritime commerce; or two, knowingly discharge a hazardous substance into U.S. waters, with the intent to endanger human life or welfare. Any violation of these provisions would be punishable by a fine and/or a term of imprisonment up to life; if death results, the offense could be punishable by a sentence of death. This addresses the vulnerability of our shorelines and ports to such a terrorist attack the results could be economically and environmentally devastating.

The law would make it a crime to knowingly and willfully transport aboard any vessel an explosive, biological agent, chemical weapon, or radiological or nuclear materials, knowing that the item is intended to be used to commit a terrorist act. Any violation of this provision would be punishable by a fine and/or a term of imprisonment up to life; if death results, the offense could be punished by a sentence of death. It would also make it a crime to knowingly and willfully transport aboard any vessel any person who intends to commit, or is avoiding apprehension after having committed, a terrorist act.

The law creates a set of crimes involving attacks on sea vessels. Modeled upon the existing criminal sanctions for destruction or interference with aircraft or aircraft facilities, updating them in the maritime area to harmonize them with coverage in the aviation context. Specifically, this section would make it a crime to: One, damage or destroy a vessel or its parts, a maritime facility, or any apparatus used to store, load or unload cargo and passengers; two, perform an act of violence against or incapacitate any individual on a vessel or at or near a facility; or three, knowingly communicate false information that endangers the safety of a vessel.

The law would also subject any individual who knowingly conveys false information about the offenses described above, or other named offenses, to a civil penalty up to $5,000. In addition, an individual who willfully and maliciously or recklessly conveys false information would be punishable by a fine and/or imprisonment for a maximum term of 5 years.

The law would amend the U.S. Code to prohibit the carrying of a dangerous weapon, including a firearm or explosive, at a seaport or on board a vessel. Any violation of this section, and conspiracies, would be punishable by a fine and/or imprisonment for a maximum term of 10 years; an individual who willfully or recklessly violates this section would be punishable by a fine and/or imprisonment for a maximum term of 15 years; if death results, the offense would be punishable by a term of imprisonment up to life. According to the Interagency Commission Report, ''[a]t many seaports, the carrying of firearms is not restricted, and thus internal conspirators and other criminals are allowed armed access to cargo vessels and cruise line terminals.''

The bill expands the scope of section 659 of title 18, theft of interstate or foreign shipments, to include theft of goods from additional transportation facilities or instruments, including trailers, cargo containers, and warehouses. In addition, it would increase the maximum term of imprisonment for low-level thefts from 1 year to 3 years and clarify that the determination of whether goods are ''moving as an interstate or foreign shipment'' is made by considering the entire cargo route, regardless of any temporary stop between the point of origin and final destination.

In addition to making changes to the criminal law, the bill creates mechanisms to permit the government to efficiently acquire data necessary to target scarce enforcement resources. Recognizing that cargo theft is not only a significant economic problem in its own right, but an indicator of porous

security, and thus of terrorist vulnerability, the law creates meaningful reporting requirements.

This bill would require the Attorney General to one, mandate the reporting of cargo theft offenses; and two, create a database containing the reported information, which would be appropriately integrated with other agencies' information-collection efforts and made available to governmental officials. Despite the fact that cargo theft is a well-known problem, there exists no national data collection and reporting systems that capture the magnitude of serious crime at seaports.

The bill increases the penalties for noncompliance with certain manifest reporting and record-keeping requirements, including information regarding the content of cargo containers and the country from which the shipments originated. The effectiveness of Federal, State and local efforts to secure ports is compromised by criminals' ability to evade detection by underreporting and misreporting the content of cargo—with little more than a slap on the wrist, if that. The existing statutes simply do not provide adequate sanctions to deter criminal or civil violations. As a consequence, vessel manifest information is often wrong or incomplete—and our ability to assess risks, make decisions about which containers to inspect more closely, or simply control the movement of cargo is made virtually impossible.

Our Nation's ports represent a critical vulnerability point in our Nation's defenses. It is critical that we take steps to reduce this vulnerability, develop defenses, and, unfortunately, plan for mitigation should there be an attack. There is much to do, including providing additional funding. This bill addresses one aspect of the problem by improving and adding to the criminal justice tools which can protect our ports. It is a relatively narrow bill, with a precise focus on the problem at hand.

I urge my colleagues to join in supporting this much-needed improvement to our law.

MILK INCOME LOSS CONTRACT EXTENSION BILL

Mr. COLEMAN. Mr. President, Senator TALENT asked me on the date of introduction, February 3, 2005, to be a cosponsor of S. 273. Unfortunately, by the time we got the message to the floor that day, the Senate had adjourned.

Senator TALENT is not only a great friend of mine, but a great friend of America's farmers and ranchers, including our dairy farm families. He is a valuable member of the Senate Agriculture, Nutrition, and Forestry Committee, a cochairman with me of the Senate Biofuels Caucus. We work very closely on issues of importance to our farm families.

I am pleased that Senator TALENT and I will be working together to extend MILC, legislation extremely important to Missouri and Minnesota dairy farmers and dairy farmers across our country.

TRIBUTE TO THE LATE FREDERICK DOUGLASS

Mr. INOUYE. Mr. President, on February, 14, 2005, one of our greatest Americans, Frederick Douglass, was honored at a celebration at the historic Ford's Theatre that was sponsored by the Caring Institute and the National Park Service. These two organizations play major roles in ensuring that the life and legacy of Mr. Douglass are not forgotten—the Institute through its establishment of The Frederick Douglass Museum and the Hall of Fame for Caring Americans on Capitol Hill, and the National Park Service through its management of the Frederick Douglass National Historic Site at Cedar Hill in Anacostia. As you know, Cedar Hill was his home in Washington, DC.

Frederick Douglass was one of the most important intellectual voices in American life in the 19th century. He was a forceful and persuasive writer and orator against slavery and for equal rights for African-Americans. His experiences as a slave were central to exposing the injustices of slavery. His first autobiographical work, Narrative of the Life of Frederick Douglass, was published in 1845 when he was a runaway slave. His second autobiography, My Bondage and My Freedom, was published in 1855, 9 years after friends and supporters in Great Britain bought his freedom. He frequently lectured about his experiences as a slave, and on what freedom meant to him.

During the Civil War, Douglass served as a recruiter of African-American soldiers for the North, and several times discussed with President Lincoln the problems of slavery. In the early 1870s, Douglass moved from Rochester, NY, where he had established the antislavery newspaper, the North Star, to Washington, DC, where he served as the District's Marshal, 1877–1881, and Recorder of Deeds, 1881–1886. Douglass later served our Nation as Minister to Haiti, 1889–1891.

Even when he was serving in governmental capacities, Douglass continued to deliver speeches on the meaning of abolition and emancipation. Just as he fought for the rights of African-Americans, he also worked to expand women's rights. On the day he died, February 20, 1895, he had attended a women's suffrage meeting.

Mr. President, I ask my colleagues to join me in paying tribute to one of our greatest Americans, Frederick Douglass. He would have celebrated his 187th birthday this month.

THE LIFE OF PATRICK OKURA

Mr. INOUYE. Mr. President, Patrick Okura was an extraordinary man who contributed much to our Nation, the Asian American community, and the fields of mental health and psychology. I was privileged to have him as a great friend and mentor. During my life in the Nation's Capital, Pat was always ready to help and advise me.

At Pat's memorial service on February 11, 2005, at Bradley Hills Presbyterian Church in Bethesda, MD, the Honorable Norman Y. Mineta, U.S. Secretary of Transportation, spoke of Pat and his remarkable life that had an enormous and positive impact on many.

I ask unanimous consent that Secretary Mineta's remarks be printed in the RECORD.

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

We are here today to celebrate the life of an extraordinary man one of the great leaders of our community, of our great nation, and a valued and trusted friend.

It is almost impossible to count the number of contributions that Kiyoshi Patrick Okura made to all of us.

His national presidency of the Japanese American Citizens League came during one of the most critical periods of the civil rights movement, and his active involvement in the JACL throughout its history helped win unprecedented victories for our community.

His advocacy on behalf of mental health was a passion that continued through his service as the staff psychologist for Father Flanagan's Boy's Town, his work at the National Institute of Mental Health, his founding of the National Asian Pacific American Families Against Substance Abuse, and the work that he and Lily have done together at the Okura Mental Health Foundation.

But most important of all, Pat had a passion to help others whether through his profession as a psychologist or through his endless personal drive to develop leaders for our community.

As a mentor, a friend, a guide and a counselor, he was second to none. I had the good fortune of knowing Pat for over 50 years and he was all of those things to me throughout my life and career.

There are so many of us here today who would not have achieved the successes we have without the foundation of opportunity that he laid for all of us, or without the support and the encouragement that he provided every day.

Lily, Deni's heart and my heart go out to you today. Pat's loss is a bitter blow to all of us.

But his life, and the things he achieved for all of us, will live forever as a testament to a life well-lived.''

IN RECOGNITION OF STU AND BETHEL DOPF

Mr. CRAIG. Mr. President, I speak about some people who, through the way they lived their lives, have been very important, not only to me, but to their entire community. I am talking about Stu and Bethel Dopf of Cambridge, ID.

Stu Dopf passed away in 2001, and just recently, on January 17, 2005, he was joined in Heaven by his wife of 63 years. When I read of Mrs. Dopf's passing, fond memories flooded my mind from my time growing up in Washington County, where Cambridge is located. I have only good things to remember about Mr. and Mrs. Dopf and

the family they raised from my very first experiences with them.

For more than 40 years, the Dopfs worked together to publish a small weekly newspaper known as the Upper Country News-Reporter. It was printed on newsprint, but I have no doubt in my mind that this paper represented and still does the very fabric of that community. The paper plays that role because the Dopfs wanted it that way, and made sure it happened.

I believe my first experience with Stu Dopf was almost 50 years ago at the Washington County Fair in Cambridge. I was in 4–H and had entered fat calves to be judged at the fair. Now, to some reporters or newspaper editors, livestock judging at a county fair may not seem like much of an assignment. But Stu understood the community in which he lived, and the farm and ranch families that made it a closely-knit community. People were interested in the activities and accomplishments of their neighbors, and no achievement was too small to report.

After that, any time I had some news or any stories about my 4–H or FFA activities, or public speaking contests, I knew I could stop by the News-Reporter office, where the Dopfs would be certain to listen. More often than not, those stories would show up somewhere on the pages of the next issue. Later, when I made my decision to run for office for the first time, for a seat in the Idaho State Senate, I went to the Dopfs to ask if they would print the pocket brochure for my campaign. Their sons, Alan and Don, had just started a printing business the year before, so it was an easy choice for me to go there.

Throughout my life, whether in the activities of my younger days, my endeavors in the legislature, or my time in the U.S. House and Senate, Stu Dopf always provided a fair, unbiased account in the News-Reporter. He always gave me a fair opportunity to make my point. Continuing Stu's example, the editors generously include each weekly column I write in the paper, and I am truly grateful.

Even after they retired, the influence of Mr. and Mrs. Dopf remained at the News-Reporter. Their children have carried on the same brand of community reporting, and this is why I continue to subscribe to the paper and read and enjoy it every week.

The Dopfs took pride in Cambridge and Washington County, and they loved it down to the smallest details. They took a special interest in the youth of the area, including articles and pictures of local high school sporting events, essay contest winners, invitations to baby showers, and as I mentioned, 4–H and FFA news.

They were great community people, and they were great people in their community. The Dopfs were a big reason I had such a positive experience growing up in rural Washington County. It is people like them who make Cambridge, Midvale, Weiser, and other small towns across Idaho great places to live. I'm sure they are resting peacefully in Heaven.

TRIBUTE TO WALLACE RUSTAD

Mr. CONRAD. Mr. President, I rise today to pay tribute to a member of my staff who will be retiring from his position in the U.S. Senate. Wally Rustad is a man who is recognized by his colleagues and myself as an extremely dedicated, hard-working, and joyful public servant.

Mr. Rustad has had a remarkable career in public service, spanning close to half a century. He joined the Army in 1955, where he served in Germany until 1958 and in the Reserves until 1961. Following that, he taught high school history and literature in Williston, ND. In 1965, he pursued his interest in politics with a move to Washington, D.C. to become a legislative assistant for the Honorable Rolland Redlin in the U.S. House of Representatives. After 2 years, he returned to North Dakota to work for Basin Electric Cooperative. But in 1970, he was drawn back to Washington, D.C. to work for Congressman Arthur Link in the U.S. House of Representatives as chief of staff and senior spokesperson.

With experience gained from his time on Capitol Hill, Mr. Rustad went on to a position with the National Rural Electric Cooperative Association, where he soon became the director of Government Relations. His work at the NRECA was recognized and praised by many. Under his direction, the NRECA saw the strength of its political influence grow substantially, prompting the Wall Street Journal to call the co-op lobby the second most powerful in Washington. He spent his years on the political front lines defending against attacks on the rural electric program. On February 17, 2004, Wally was presented with the prestigious Clyde T. Ellis Award, which honors an individual for contributions clearly above the routine call of duty in furthering the principles and progress of rural electrification and the development and utilization of national resources.

For the past 5½ years, I have been honored to have Wally serve on my staff. He brought with him his extensive experience in the energy industry and rural economic development and a tremendous dedication to our home State of North Dakota. During his tenure in my office, he has worked on economic development issues for North Dakota and in outreach to numerous individuals and groups throughout the State. As my State liaison, he has built strong rapport and stayed in close contact with constituents, responding to needs and monitoring priority issues to make sure that the views of North Dakotans are represented in Washington.

A native of Grenora, ND, population 261, Wally is a tremendous advocate for our home State. He and his family still own a farm near Grenora. Last summer, Wally and his wife, Marlys, organized a trip for a group of 38 of their friends to tour the State. They visited the Lewis & Clark Interpretive Center and trails along the Missouri River, toured the Theodore Roosevelt National Park, attended the musical and pitch fork fondue in Medora, and did a lot of golfing. His tour group was awed by the history and beauty of the State and, of course, its golf courses. As Wally put it, it was ''one small thing'' he could do to help promote economic development and tourism in North Dakota.

Wally and his wife of 43 years, Marlys Rustad nee Jacobson, live in Leesburg, VA. Their daughter Kimberly and her husband, Clark Kelly, and their children, Avery, Kate and William, live in Mobile, AL. Their daughter Jill and her husband Jonathan Adler, and their children, Julia, Jami and Jessica, live in Leesburg, VA. Jon, their son, lives in Los Angeles, CA.

Wally is a man with great dedication to public service. He arrives at work each day shortly after 6 a.m., after commuting for 2 hours, and brews the first pot of coffee. He greets his colleagues with a smile on his face and the news of the day as they arrive into work. As the late North Dakota Senator Quentin Burdick once said, ''Wally Rustad is a small-town North Dakotan who has made it big in Washington. He has a genuine commitment to serving the people of rural America.''

As Wally goes forward in his life, I hope that he proudly looks back from time to time and knows what a difference he has made in the lives of so many people. He is a good friend and a wonderful American whom I am honored to have had the pleasure to work with. I commend him for his accomplishments and outstanding service and wish him well.

ADDITIONAL STATEMENTS

TRIBUTE TO RUSS DONDERO

• Mr. SMITH. Mr. President, I rise today to pay tribute to Professor Russ Dondero of Pacific University in Forest Grove, OR. Professor Dondero is retiring from a full-time teaching load in the Department of Politics and Government at the end of this school year. He is being honored this week by his current and former students and friends during events leading up to the annual Pacific University Tom McCall Forum in Portland, OR on February 17.

The Tom McCall Forum may be Professor Dondero's most visible accomplishment. Now in its 23rd year, the forum has become the premier public affairs event in the Pacific Northwest, drawing national political figures each year for a spirited debate between a liberal and a conservative of national interest. The driving force throughout the Forum's history has been Professor Dondero. He has taken the event from the small confines of a basement room on campus to an event that attracts over 1,000 people and the cameras of C–SPAN.

While the forum gives a public face to Professor Dondero's work, his ties to and influence on our State of Oregon runs much deeper. A 1960 graduate of Roseburg High School, Professor Dondero left Oregon to pursue his academic calling at Whitman College, the University of Minnesota and Dickinson College. He returned home with his wife, Ann, to raise their sons, Tony and Jason.

During his 31 years of teaching at Pacific, Professor Dondero acted as teacher, mentor and friend to students past and present. Like a successful coach, Professor Dondero has always known which lever to pull to draw the best possible performance out of those with whom he worked. He has an instinct that can't be taught—how to inspire his students to succeed by deploying the appropriate tactic at the right moment.

Outside of the classroom, Professor Dondero has been relentless in seeking out opportunities for his students so they could apply in the field the lessons they learned. I have been proud to put some of his students to work in my office.

It is fitting that many of his former students and Pacific University have established the Russell A. Dondero Fellowship. In the future, fellowship recipients at Pacific will receive a small stipend to offset the cost of living while pursuing an internship as part of their academic program—which will certainly make it possible for more students to take advantage of this important experience.

His academic work is only part of Russ Dondero's story. It would be hard to locate a more passionate, talented and effective advocate for affordable housing in the State of Oregon. I am confident he will continue to use his talents and energies for this important cause, and that he and Ann will continue to shape the lives of his students and his community.

W. B. Yeats once wrote, ''Education is not the filling of a bucket, but the lighting of a fire.'' I am proud to join with the Pacific University community in thanking Russ Dondero for lighting fires that will continue to burn for many years to come.●

TRANSMITTING AS AMENDED, AND 12947 OF 01–23–95, AS AMENDED WITH A NEW EXECUTIVE ORDER CLARIFYING CERTAIN EXECUTIVE ORDERS BLOCKING PROPERTY AND PROHIBITING CERTAIN TRANSACTIONS—PM 5

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Pursuant to, inter alia, section 203(a) of the International Emergency Economic Powers Act, (50 U.S.C. 1702 (a)) (IEEPA) and section 201(a) of the National Emergencies Act (50 U.S.C. 1621 (a)) (NEA), I exercised my statutory authority to declare national emergencies in Executive Orders 13224 of September 23, 2001, as amended, and 12947 of January 23, 1995, as amended. I have issued a new Executive Order that clarifies certain measures taken to address those national emergencies. This new Executive Order relates to powers conferred to me by section 203(b)(2) of IEEPA and clarifies that the Executive Orders at issue prohibit a blocked United States person from making humanitarian donations.

The amendments made to those Executive Orders by the new Executive Order take effect as of the date of the new order, and specific licenses issued pursuant to the prior Executive Orders continue in effect, unless revoked or amended by the Secretary of the Treasury. General licenses, regulations, orders, and directives issued pursuant to the prior Executive Orders continue in effect, except to the extent inconsistent with this order or otherwise revoked or modified by the Secretary of the Treasury.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 16, 2005*.

MESSAGE FROM THE HOUSE

At 2:45 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 310. An act to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane material, and for other purposes.

H.R. 324. An act to designate the facility of the United States Postal Service located at 321 Montgomery Road in Altamonte Springs, Florida, as the ''Arthur Stacey Mastrapa Post Office Building''.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 25. A concurrent resolution recognizing the contributions of Jibreel Khazan (Ezell Blair, Jr.), David Richmond, Joseph McNeil, and Franklin McCain, the ''Greensboro Four'', to the civil rights movement.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 324. An act to designate the facility of the United States Postal Service located at 321 Montgomery Road in Altamonte Springs, Florida, as the ''Arthur Stacey Mastrapa Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 25. Concurrent resolution recognizing the contributions of Jibreel Khazan (Ezell Blair, Jr.), David Richmond, Joseph McNeil, and Franklin McCain, the ''Greensboro Four'', to the civil rights movement; to the Committee on the Judiciary.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 403. A bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

S. 397. A bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–763. A communication from The Acting Under Secretary of Defense, Department of Defense, transmitting, pursuant to law, the Defense Advanced Research Projects Agency's (DAR PA) biennial strategic plan, received February 8, 2005; to the Committee on Armed Services.

EC–764. A communication from the Under Secretary of Defense, transmitting, pursuant to law, a General Officer Frocking Request, received February 8, 2005; to the Committee on Armed Services.

EC–765. A communication from the Assistant Secretary of Defense, Health Affairs, Department of Defense, transmitting, pursuant to law, a report entitled ''DoD/VA Pilot Program-Separation Physicals'', received February 7, 2005; to the Committee on Armed Services.

EC–766. A communication from the Under Secretary of Defense, Department of Defense, transmitting, pursuant to law, a report on the mobilization of reserve component personnel, received on February 7, 2005; to the Committee on Armed Services.

EC–767. A communication from the Vice Admiral, Deputy Chief of Naval Operations, Department of the Navy, Department of Defense, providing notification of a decision to convert to performance by the private sector Public Works Center Environmental Services in San Diego, CA (initiative number NC20020796) received January 25, 2005; to the Committee on Armed Services.

EC–768. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Free Trade Agreements—Australia and Morocco'' (DFARS Case 2004–DO13) received on February 7, 2005; to the Committee on Armed Services.

EC–769. A communication from the Inspector General, Department of Defense, transmitting, pursuant to law, a report entitled ''DoD Workforce Employed to Conduct Public-Private Competitions Under the DoD Competitive Sourcing Program (D–2005–028)'', received February 8, 2005; to the Committee on Armed Services.

EC–770. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Weatherford, Blanchard, Elmore City, and Wynnewood, Oklahoma)'' (Doc. No. 03–181)

received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–771. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Corydon and Lanesville, Indiana)'' (Doc. No. 04–380) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–772. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Security and Genoa, Colorado)'' (Doc. No. 04–367) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–773. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations; Appleton, WI'' (Doc. No. 04–185) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–774. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations; Thief River Fallls, MN'' (Doc. No. 00–163) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–775. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations; Benton and Yazoo City, Mississippi'' (Doc. No. 04–249) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–776. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations; Grayville, Illinois and Alamogordo, New Mexico'' (Doc. No. 04–368 and 04–369) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–777. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations; El Dorado, AR'' (Doc. No. 04–282) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–778. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Center Hall, Mount Union, and Huntingdon, Pennsylvania)'' (Doc. No. 03–231) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–779. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotment, FM Broadcast Stations (Clayton and Raton, New Mexico)'' (Doc. No. 04–220) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–780. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Children's Television Obligations of Digital Television Broadcasters'' (Doc. No. 00–167) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–781. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations (Medical Lake, WA)'' (Doc. No. 04–250) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–782. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations (Great Falls, Montana)'' (Doc. No. 04–182) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–783. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Gainesville, Florida)'' (Doc. No. 04–31) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–784. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Crosbyton, Texas and Union Gap, Washington)'' (Doc. No. 04–340) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–785. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pittsfield and Easthampton, Massachusetts, and Malta, New York)'' (Doc. No. 04–67) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–786. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Nevada City, California)'' (Doc. No. 04–338) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–787. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747–200B, 200C, 200F, 300, 400, 400D, and 400F Series Airplanes and Model 747SP Series Airplanes'' ((RIN2120–AA64)(2005–0016)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–788. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira Aeronautica SA Model EMB 135 and EMB 145 Series Airplanes'' ((RIN2120–AA64)(2005–0017)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–789. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300B2, and B4 Series Airplanes, and Model A300 B4–600, 600R, and F4 600R Series Airplanes, and Model C4-605R Variant F Airplanes'' ((RIN2120–AA64)(2005–0018)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–790. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A310 Series Airplanes'' ((RIN2120–AA64)(2005–0019)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–791. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Operating Requirements: Domestic, Flag, and Supplemental Operations—Correction'' (RIN2120–ZZ62) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–792. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Pyrotechnic Signaling Device Requirements'' (RIN2120–AI42) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–793. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pratt and Whitney Canada PW206B, PW206C, PW206E, PW207D, and PW207E Turboshaft Engines'' ((RIN2120–AA64)(2005–0012)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–794. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: CFM International, SA CFM56–2–C, 3 Series, and 5 Series'' ((RIN2120–AA64)(2005–0013)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–795. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra Series Airplanes; and Model Gulfstream 100 Airplanes'' ((RIN2120–AA64)(2005–0014)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–796. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directive: Fokker Model F-28 Mark 0070 and 0100 Series Airplanes'' ((RIN2120–AA64)(2005–0015)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–797. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–200, 300 and 300F Series Airplanes'' ((RIN2120–AA64)(2005–0007)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–798. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing

Model 737–600, 700, 700C, 800, and 900 Series Airplanes'' ((RIN2120–AA64)(2005–0008)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–799. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A330, 340–200 and A340–300 Series Airplanes'' ((RIN2120–AA64)(2005–0009)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–800. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 707 and 720 Series Airplanes'' ((RIN2120–AA64)(2005–0010)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–801. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Glaslugel Ing. E. Hanle Model GLASFLUGEL Kestrel Sailplanes'' ((RIN2120–AA64)(2005–0011)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–802. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Lexington, OR'' ((RIN2120–AA66)(2005–0035)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–803. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification to Class E Airspace; Mean, AR'' ((RIN2120–AA66)(2005–0033)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–804. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A330, A340–200, and A340–300 Series Airplanes'' ((RIN2120–AA64)(2005–0551)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–805. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier, Inc. Model DHC3AM Luton Electrical Systems'' ((RIN2120–AA64)(2005–0002)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–806. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Great Lakes Aircraft Company, LLC Models 2T–1A–1 and 2T–1A–2 Airplanes'' ((RIN2120–AA64)(2005–0003)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–807. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter Deutschland GmbH Model EC135 P1, Pe, T1, and T2 Helicopters'' ((RIN2120–AA64)(2005–0004)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–808. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce plc RB211 Trent 700 Series Turbofan Engines'' ((RIN2120–AA64)(2005–0005)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–809. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Hamilton Sundstrand Power Systems T 62T Series Auxiliary Power Units'' ((RIN2120–AA64)(2005–0006)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–810. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Mount Vernon, TX'' ((RIN2120–AA66)(2005–0031) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–811. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Melbourne, AR'' ((RIN2120–AA66)(2005–0032)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–812. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Cozad, NE'' ((RIN2120–AA66)(2005–0037)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–813. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Restricted Areas 5103A, 5103B, and 5103C, and Revocation of Restricted Area 5103D; McGregor, NM'' ((RIN2120–AA66)(2005–0030)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–814. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Hastings, NE; Confirmation of Effective Date'' ((RIN2120–AA66)(2005–0025)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–815. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Harvard, NE'' ((RIN2120–AA66)(2005–0026)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–816. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Warrensburg, MO'' ((RIN2120–AA66)(2005–0027)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–817. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Imperial, NE'' ((RIN2120–AA66)(2005–0028)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–818. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Scribner, NE'' ((RIN2120–AA66)(2005–0029)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–819. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Sunriver, OR'' ((RIN2120–AA66)(2005–0020)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–820. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Restricted Areas 2932, 2933, 2934, 2935; Cape Canaveral, FL'' ((RIN2120–AA66)(2005–0021)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–821. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Dodge City, KS'' ((RIN2120–AA66)(2005–0022)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–822. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Hartington, NE'' ((RIN2120–AA66)(2005–0024)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–823. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; South Haven, MI; Correction'' ((RIN2120–AA66)(2005–0015)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–824. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class D Airspace and Modification of Class E Airspace; Joplin, MO'' ((RIN2120–AA66)(2005–0016)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–825. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Kennett, MO; Correction'' ((RIN2120–AA66)(2005–0017)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–826. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification on Class E Airspace; Harrisonville, MO'' ((RIN2120–AA66) (2005–0018)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–827. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class D Airspace; Provo, UT'' ((RIN2120–AA66) (2005–0019)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–828. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model CL 600 1A11, 2A12, 2B16, Series Airplanes'' ((RIN2120–AA64) (2005–0054)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–829. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Saab Model SAAB 200 Series Airplanes'' ((RIN2120–AA64) (2005–0055)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–830. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica SA Model EMB 135 and 145 Series Airplanes'' ((RIN2120–AA64) (2005–0056)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–831. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Sabb Model SAAB SF340A and SAAB 340B Series Airplanes'' ((RIN2120–AA64) (2005–0058)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–832. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Northwood, ND; Correction'' ((RIN2120–AA66) (2005–0013)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–833. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Company CF34–3A and CF34–3B Series Turbofan Engines'' ((RIN2120–AA66) (2005–0053)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–834. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747 Series Airplanes'' ((2120–AA64 (2005–0052)), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–835. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model DC9–81, –82, –83, and –87 and Model MD 88 Airplanes'' ((RIN2120–AA64) (2005–0047)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–836. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300B2, B4, B4–600, and B4–600R Series Airplanes; and Model A300–C4 605R Variant F and A300 F4 605R Airplanes'' ((RIN2120–AA64) (2005–0048)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–837. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce Deutschland Ltd and Co KG Models Spey 555–15, 555–15H, 555–15N, and 555–15P Turbojest Engines'' ((RIN2120–AA64) (2005–0049)) received on February 1, 2005 ; to the Committee on Commerce, Science, and Transportation.

EC–838. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Mooney Airplane Company, Inc. Model M20M Airplanes'' ((RIN2120–AA64) (2005–0050)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–839. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class D Airspace; Camp Douglas, WI; Correction'' ((RIN2120–AA66) (2005–0014)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–840. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce plc RB211 Series Turbofan Engines'' ((RIN2120–AA64) (2005–0051)) received on February 1, 2005 ; to the Committee on Commerce, Science, and Transportation.

EC–841. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A319, 320, 321 Series Airplanes'' ((RIN2120–AA64) (2005–0046)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–842. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileir de Aeronautica SA Model EB135 and 145 Series Airplanes'' ((RIN2120–AA64) (2005–0045)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–843. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Ostmecklnburgische Flugzeugbau GmbH Model OMF 100–160, Fuselage Tubing'' ((RIN2120–AA64) (2005–0044)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–844. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce Corp Models 250 C30R/1, C30R/3M, C47B and C47M Turboshaft Engines'' ((RIN2120–AA64) (2005–0043)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–845. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Models 737 600, 700, 700C, 800, and 900 Series Airplanes'' ((RIN2120–AA64) (2005–0042)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–846. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Short Brothers Model SD3–60, SD3SHERPA, and SD3–060SHERPA Series Airplanes'' ((RIN2120–AA64) (2005–0041)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–847. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Gulfstream Model GV and GV–SP Series Airplanes'' ((RIN2120–AA64) (2005–0040)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–848. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica SA Model ERJ 170 Series Airplanes'' ((RIN2120–AA64) (2005–0039)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–849. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model DC 9 14, DC 9 15, and DC 9 15F Airplanes; DC 9 20, DC 9 30, DC 9 40, DC 9 50 Series Airplanes; DC 9 81, DC 9 82, DC 9 87 Airplanes, and Model MD 88 Airplanes'' ((RIN2120–AA64) (2005–0038)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–850. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: LETECKE ZAVODY Model L 23 Super Blanik Sailplanes'' ((RIN2120–AA64) (2005–0037)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–851. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Kelly Aerospace Power Systems Part Number 14D11, A14D11, B14D11, C14D11, 23D04, A23D04, B23D04, 23D04, or P23D04 Fuel Regulator Shutoff Valves'' ((RIN2120–AA64) (2005–0036)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–852. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pratt and Whitney Canada PT6A–60A and PT6A–65B Turboprop Engines'' ((RIN2120–AA64) (2005–0035)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–853. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Cessna Aircraft Company 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 Series Airplanes; Correction'' ((RIN2120–AA64) (2005–0028)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–854. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Aircraft Company Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B)

Airplanes'' ((RIN2120–AA64) (2005–0033)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–855. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eagle Aircraft Sdn Bhd Model Eagle 150B Airplanes'' ((RIN2120–AA64) (2005–0032)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–856. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300 B2 and B4 Series Airplanes; Model A300 B4 600, A300 B4 600R, A300 F4 600R Series Airplanes and A300 C4 605R Variant F Airplanes and Model A310 Series Airplanes'' ((RIN2120–AA64) (2005–0031)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–857. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bell Helicotpers Textron Canada Model 206A, B, L, L1, L3, and L4 Helicopters'' ((RIN2120–AA64) (2005–0030)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–858. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce Corp. 250B and 250C Series Turboshaft and Turboprop Engines'' ((RIN2120–AA64) (2005–0029)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–859. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pilatus Aircraft Ltd Model PC 7 Airplanes; Correction'' ((RIN2120–AA64) (2005–0034)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–860. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model MD 11 and MD 11F Airplanes'' ((RIN2120–AA64) (2005–0021)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–861. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–200, 300, and 300F Series Airplanes'' ((RIN2120–AA64) (2005–0020)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–862. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Inc. Model DHC–3 Airplanes; Servo Tabs Viking Air'' ((RIN2120–AA64) (2005–0027)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–863. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300 Series Airplanes and Model A300 B4 600, A300 B4 600R, and A300 F4 600R'' ((RIN2120–AA64) (2005–0026)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–864. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767 200, 300, and 300F Series Airplanes'' ((RIN2120–AA64) (2005–0025)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–865. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Aircraft Company Model 390, MLG Wire Harness Assemblies'' ((RIN2120–AA64) (2005–0024)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–866. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model DC 9 14 and DC 9 15 Airplanes; and Model DC 9 20, DC 9 30, DC 9 40 and DC 9 50 Series Airplanes'' ((RIN2120–AA64) (2005–0023)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–867. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McCauley Propeller Systems Five-Blade Propeller Assemblies'' ((RIN2120–AA64) (2005–0022)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–868. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class C Airspace; Des Moines International Airport, Des Moines, IA'' ((RIN2120–AA66) (2005–0010)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–869. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Southeast, AK'' ((RIN2120–AA66) (2005–0011)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–870. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class D Airspace; Mount Clemens, MI; Correction'' ((RIN2120–AA64) (2005–0012)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–871. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''IFR Altitudes; Miscellaneous Amendments (6)'' ((RIN2120–AA63) (2005–0001)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–872. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures: Miscellaneous Amendments (53)'' ((RIN2120–AA65) (2005–0001)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–873. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (7)'' ((RIN2120–AA65) (2005–0002)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–874. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (34)'' ((RIN2120–AA65) (2005–0003)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–875. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Class D Airspace; Springfield/Chicopee, MA'' ((RIN2120–AA66) (2005–0001)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–876. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Hastings, NE'' ((RIN2120–AA66) (2005–0023)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–877. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Regulated Navigation Area: [CGD09–05–001], Chicago Sanitary and Ship Canal, Romeoville, IL'' (RIN1625–AA11), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–878. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Operation Regulations (including 6 regulations)'' (RIN1625–AA09), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–879. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Security Zone: [COTP San Francisco Bay 04–007], Suisun Bay, Concord California'' (RIN1625–AA87), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–880. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone (including 2 regulations)'' (RIN1625–AA00), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–881. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Security Zone Regulations (including 4 regulations)'' (RIN1625–AA87), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–882. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Regulated

Navigation Areas, Security Zones, and Temporary Anchorage Areas: [CGD07–04–090], St. Johns River, Jacksonville, FL'' (RIN1625–AA11), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–883. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; [CGD09–04–140], Captain of the Port Buffalo Zone'' (RIN1625–AA00), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–884. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Operation Regulations (including 2 regulations)'' (RIN1625–AA09), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–885. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Local Regulation: [CGD07–05–001] Annual Gasparilla Marine Parade, Hillsborough Bay, Tampa, FL'' (RIN1625–AA11), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–886. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands'' (IB Docket No. 02–10 , FCC 04–286) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–887. A communication from the Director, Bureau of Economic Analysis, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Direct Investment Surveys: BE–10, Benchmark Survey of U.S. Direct Investment Abroad—2004'' (RIN0691–AA52) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–888. A communication from the Chief, Policy and Rules Division, Office of Engineering and Technology, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Review of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems'' (ET Docket No. 98–153, FCC 04–285) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–889. A communication from the Legal Advisor, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02–55, Supplemental Order and Order on Reconsideration, FCC 04–294 (Dec. 22, 2004). This Order revises 47 C.F.R. Sections 90.175, 90.613, 90.614, 90.615, 90.617, 90.621, 90.676, 90.685 and 90.693 to implement the new 800 MHz band plan to resolve interference to public safety'' (FCC 04–294, WT 02–55, ET 00–258) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–890. A communication from the Assistant Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Rural Health Care Support Mechanism in WC Docket No . 02–60; FCC 04–289'' (FCC 04–289) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–891. A communication from the Secretary of Commerce, Department of Commerce, transmitting, pursuant to law, the Department's annual report on the Emergency Oil and Gas Guaranteed Loan Program, received February 11, 2005; to the Committee on Commerce, Science, and Transportation.

EC–892. A communication from the Secretary of Commerce, Department of Commerce, transmitting, pursuant to law, the Department's annual report on the Emergency Steel Loan Guarantee Program, received February 11, 2005; to the Committee on Commerce, Science, and Transportation.

EC–893. A communication from the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting pursuant to law, the report of a rule entitled ''Closure of Area 610 Pollock in the Gulf of Alaska'', received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–894. A communication from the Special Counsel, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers in WC Docket No. 04–313, CC Docket No. 01–338; FCC 04–290'' (FCC 04–290, WC 04–313, CC 01–338) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–895. A communication from the Attorney-Advisor, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''FMVSS No. 105—Rollbar'' (RIN2127–AI63) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–896. A communication from the Deputy Bureau Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991'' (FCC 04–204; CG 02–278) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–897. A communication from the Attorney Advisor, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Part 80 of the Commission's Rules Concerning Use of Frequency 156.575 MHz for Port Operations Communications in Puget Sound'' (DA No. 04–3408) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–898. A communication from the Deputy Chief Counsel for Regulations, Transportation Security Administration, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Maryland Three Airports: Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone'' (RIN1652–AA39) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–899. A communication from the Regulation Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled '' Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally–Assisted Programs'' (2125–AE97) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–900. A communication from an Attorney, Research and Special Programs Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Materials; Incorporation of Exemptions into Regulations'' (RIN2137–AD84 (Docket No. RSPA–03–16370)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–901. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–749, ''Department of Youth Rehabilitation Services Establishment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–902. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–750, ''Douglass Knoll, Golden Rule, 1728 W Street, and Wagner Gainesville Real Property Tax Exemption Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–903. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–753, ''National Park Trust Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–904. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–754, ''Appointment of the Chief Medical Examiner Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–905. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–572, ''Distracted Driving Safety Revised Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–906. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–571, ''Contract No. DCFJ–2004–B–0031 (Delivery of Electoral Power and Ancillary Services) Exemption Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–907. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–570, ''Low-Income Housing Tax Credit Fund Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–908. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-578, ''Property Management Reform Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–909. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-569, ''Public Assistance Confidentiality of Information Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–910. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-566, ''Prevention of Premature

Release of Mentally Incompetent Defendants Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–911. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-567, ''Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–912. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-568, ''Historic Preservation Process for Public Safety Facilities Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–913. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-565, ''District of Columbia Statehood Delegation Fund Commission Establishment and Tax Check-Off Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–914. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-564, ''Miscellaneous Vehicles Helmet Safety Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–915. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-563, ''Pedestrian Protection Right-of-Way at Crosswalks Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–916. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-532, ''Juvenile Justice Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–917. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-531, ''Unemployment Compensation Pension Offset Reduction Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–918. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-530, ''Gallery Place Project Graphics Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–919. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-529, ''Alcoholic Beverages Penalty Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–920. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-528, ''Fleeing Law Enforcement Prohibition Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–921. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-576, ''Housing and Community Development Reform Advisory Commission Extension Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–922. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-574, ''Fiscal Year 2004 Year-End State Aid Re-Allocation Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–923. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-573, ''Unclaimed Property Demutualization Proceeds Technical Correction Amendment Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–924. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-662, ''Arts, Cultural, and Educational Facilities Support Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–925. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-663, ''Equity in Real Property Tax Assessment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–926. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-664, ''Parking Meter Fee Moratorium Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–927. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-684, ''Non-Traditional Motor Vehicles Safety Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–928. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-682, ''District of Columbia Emancipation Day Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–929. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-717, ''Ballpark Omnibus Financing and Revenue Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–930. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-707, ''Dedication and Designation of Portions of New Jersey Avenue, S.E., 4th Street, S.E., and Tingey Street, S.E., S.O. 03-1420, Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–931. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-703, ''Closing of a Public Alley in Square 317, S.O. 04-7832, Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–932. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-715, ''School Safety and Security Contracting Procedures Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–933. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-701, ''Distracted Driving Safety Revised Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–934. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-699, ''Skyland Site Acquisition Support Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–935. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-700, ''Multiple Dwelling Residence Water Lead Level Test Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–936. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-680, ''Use of Fraudulent Temporary Identification Tags and Automobile Forfeiture Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–937. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-679, ''National Capital Revitalization Corporation Eminent Domain Clarification and Skyland Eminent Domain Approval Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–938. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-678, ''Disposal of District-owned Surplus Real Property in Ward 8 Amendment Act of 2004'' received on February 11 , 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–939. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-677, ''Capitol Hill Community Garden Land Trust Real Property Tax Exemption and Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–940. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-676, ''Bread for the City Community Garden Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–941. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-674, ''Unemployment Compensation Pension Offset Reduction Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–942. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-673, ''Energy Star Efficiency Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–943. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on

D.C. Act 15-671, ''Unemployment Compensation Funds Appropriation Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–944. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-670, ''Towing Regulations and Enforcement Authority Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–945. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-669, ''Gallery Place Project Graphics Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–946. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-648, ''Human Rights Genetic Information Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–947. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-649, ''Southeast Neighborhood House Real Property Tax Exemption and Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–948. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-650, ''Carefirst Economic Assistance Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–949. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-652, ''Kings Court Community Garden Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–950. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-633, ''Veterans of Foreign Wars Real Property Tax Exemption and Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–951. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-654, ''Lincoln Square Theater Sales and Use Tax Exemption Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–952. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-661, ''Continuing Care Retirement Communities Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–953. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-705, ''Restaurant Candles Permission Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–954. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-706, ''Domestic Partnership Protection Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–955. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-708, ''Studio Theatre, Inc. Economic Assistance Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–956. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–709, ''Certificate of Title Excise Tax Exemption Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–957. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–737, ''Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Second Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–958. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–736, ''Depreciation Allowance for Small Business De-Coupling from the Internal Revenue Code Second Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–959. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–735, ''Water Pollution Control Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–960. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–690, ''Jenkins Row Economic Development Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–961. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–691, ''Apprenticeship Requirements Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–962. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–692, ''Minimum Wage Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–963. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–693, ''Retail Service Station Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–964. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–694, ''Free Clinic Assistance Program Extension Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–965. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–696, ''Low-Income Housing Tax Credit Fund Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–966. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–697, ''Retirement Reform Act Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–967. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–698, ''Closing of a Portion of Public Alley in Square 5196, S.O. 02–2763, Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–968. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–702, ''Closing of a Portion of a Public Alley in Square 2032, S.O. 02–5133, Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–969. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–704, ''Department of Motor Vehicles Reform Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–970. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–710, ''Real Property Disposition Economic Analysis Second Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–971. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–711, ''Public Congestion and Venue Protection Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–972. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–712, ''Estate and Inheritance Tax Clarification Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–973. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–713, ''Bonus Depreciation De-Coupling Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–974. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–714, ''District Government Reemployed Annuitant Offset Alternative Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–975. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–716, ''Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–976. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on

D.C. Act 15–668, ''Charity Auction Sales Tax Exemption Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–977. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–667, ''National Guard Association of the United States Real Property Tax Exemption Reconfirmation and Modification Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–978. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–666, ''Public Charter School Real Property Tax Rebate Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–979. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–665, ''Director of the Office of Latino Affairs Salary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–980. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–651, ''Freedom Forum, Inc. Real Property Tax Exemption and Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–981. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–689, ''Payment In Lieu of Taxes Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–982. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–688, ''Fire and Casualty Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–983. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–686, ''Cancer Prevention Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–984. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–685, ''Disability Compensation Effective Administration Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–985. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–760, ''Omnibus Utility Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–986. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–763, ''Nonprofit Housing Organizations Tax Exemption Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–987. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–761, ''Anacostia Waterfront Corporation Board Expansion Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–988. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–762, ''Fiscal Year 2005 Southeast Veteran's Access Housing Inc., Budget Support Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–989. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–768, ''Carver 2000 Low-Income and Senior Housing Project Amendment Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–990. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–675, ''Unemployment Compensation Weekly Benefits Amount Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–991. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–681, ''District of Columbia Government Purchase Card Program Reporting Requirements Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–992. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–683, ''Debarment Procedures Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–993. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–687, ''Procedures for the Voluntary Withdrawal from the Market by Carriers Licensed in the District of Columbia to Sell Health Benefit Plans Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–994. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–769, ''Lead-Base Paint Abatement and Control Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–995. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–738, ''Tax Abatement Adjustment for Housing Priority Area Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–996. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–739, ''Long-Term Care Insurance Tax Deduction Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–997. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–741, ''Rehabilitation Services Program Establishment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–998. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–672, ''Heating Oil Clarification Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–999. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–755, ''Renewable Energy Portfolio Standard Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1000. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–752, ''District of Columbia Housing Authority Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1001. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–758, ''Child in Need of Protection Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1002. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–740, ''Health Care Ombudsman Program Establishment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1003. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–744, ''Omnibus Public Safety Ex-Offender Self-Sufficiency Reform Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1004. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–746, ''Lot 878 Square 456 Tax Exemption Clarification Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1005. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–747, ''Labor Relations and Collective Bargaining Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1006. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–748, ''Incompetent Defendants Criminal Committee Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1007. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law , the report of a rule entitled ''West Virginia Regulatory Program'' (WV–102–FOR) received on February 8, 2005; to the Committee on Energy and Natural Resources.

EC–1008. A communication from the Assistant General Counsel for Legislative and Regulatory Law, Office of Energy Efficiency and Renewable Energy, Department of Energy, transmitting, pursuant to law, the report of a rule entitled '' Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Packaged Boilers'' (RIN1904–AB02) received on February 11, 2005; to the Committee on Energy and Natural Resources.

EC–1009. A communication from the Assistant Secretary, Land and Minerals Management, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Oil and Gas and Sulphur Operations

in the Outer Continental Shelf (OCS)—Document Incorporated by Reference—American Petroleum Institute (API) 510'' (RIN 1010–AC95) received on February 8, 2005; to the Committee on Energy and Natural Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with amendments:

S. 63. A bill to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes (Rept. No. 109–1).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with amendments and an amendment to the title:

S. 163. A bill to establish the National Mormon Pioneer Heritage Area in the State of Utah, and for other purposes (Rept. No. 109–2).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment:

S. 200. A bill to establish the Arabia Mountain National Heritage Area in the State of Georgia, and for other purposes (Rept. No. 109–3).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 203. A bill to reduce temporarily the royalty required to be paid for sodium produced on Federal lands, and for other purposes (Rept. No. 109–4).

S. 204. A bill to establish the Atchafalaya National Heritage Area in the State of Louisiana (Rept. No. 109–5).

S. 249. A bill to establish the Great Basin National Heritage Route in the States of Nevada and Utah (Rept. No. 109–6).

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

S. 125. A bill to designate the United States courthouse located at 501 I Street in Sacramento, California, as the ''Robert T. Matsui United States Courthouse''.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. LUGAR for the Committee on Foreign relations.

*Robert B. Zoellick, of Virginia, to be Deputy Secretary of State.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. LAUTENBERG (for himself, Mr. KERRY, Mrs. BOXER, and Mrs. CLINTON):

S. 391. A bill to amend the Federal Election Campaign Act of 1971 to prohibit certain State election administration officials from actively participating in electoral campaigns; to the Committee on Rules and Administration.

By Mr. LEVIN (for himself, Mr. MCCAIN, Ms. STABENOW, Mrs. DOLE, Mr. OBAMA, Mr. GRAHAM, Mr. PRYOR, Mr. KENNEDY, Mr. ROCKEFELLER, Mr. NELSON of Florida, Ms. LANDRIEU, and Mr. KERRY):

S. 392. A bill to authorize the President to award a gold medal on behalf of Congress, collectively, to the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. AKAKA (for himself, Mr. DURBIN, Mr. LEAHY, Mr. SARBANES, and Mr. SCHUMER):

S. 393. A bill to require enhanced disclosure to consumers regarding the consequences of making only minimum required payments in the repayment of credit card debt, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CORNYN (for himself and Mr. LEAHY):

S. 394. A bill to promote accessibility, accountability, and openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 395. A bill to amend the Buy American Act to increase the requirement for American-made content, and to tighten the waiver provisions, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. ENSIGN:

S. 396. A bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; to the Committee on the Judiciary.

By Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. CHAMBLISS, Mr. COBURN, Ms. COLLINS, Mr. CORNYN, Mr. CRAPO, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON, Mr. KYL, Mrs. LINCOLN, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. SANTORUM, Mr. SESSIONS, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THUNE, and Mr. SUNUNU):

S. 397. A bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; read the first time.

By Mr. SANTORUM (for himself and Mr. BAYH):

S. 398. A bill to amend the Internal Revenue Code of 1986 to expand the expensing of environmental remediation costs; to the Committee on Finance.

By Mr. COLEMAN (for himself and Mrs. FEINSTEIN):

S. 399. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale of prescription drugs through the Internet, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN:

S. 400. A bill to prevent the illegal importation of controlled substances; to the Committee on the Judiciary.

By Mr. HARKIN (for himself, Mr. SPECTER, Mr. KENNEDY, Mr. KERRY, Mr. BIDEN, Mr. DAYTON, Ms. LANDRIEU, Mr. SCHUMER, Mr. CORZINE, Mr. LAUTENBERG, Mr. LIEBERMAN, and Mr. DODD):

S. 401. A bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes; to the Committee on Finance.

By Mr. NELSON of Florida (for himself and Mr. MARTINEZ):

S. 402. A bill to authorize ecosystem restoration projects for the Indian River Lagoon and the Picayune Strand, Collier County, in the State of Florida; to the Committee on Environment and Public Works.

By Mr. ENSIGN (for himself, Mr. HAGEL, Mr. BROWNBACK, Mr. SANTORUM, Mr. KYL, Mr. FRIST, Mrs. DOLE, Mr. SESSIONS, Mr. GRASSLEY, Mr. ALLEN, Mr. BUNNING, Mr. COBURN, Mr. DEMINT, and Mr. MCCONNELL):

S. 403. A bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; read the first time.

By Mr. REID:

S. 404. A bill to make a technical correction relating to the land conveyance authorized by Public Law 108-67; to the Committee on Energy and Natural Resources.

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

S. 405. A bill to provide for the conveyance of certain public land in Clark County, Nevada, for use as a heliport; to the Committee on Energy and Natural Resources.

By Ms. SNOWE (for herself, Mr. TALENT, Mr. BOND, Mr. BYRD, Mrs. DOLE, Mr. MCCAIN, Mrs. HUTCHISON, Mr. COLEMAN, Mr. VITTER, and Mr. MARTINEZ):

S. 406. A bill to amend title I of the Employee Retirement Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees; to the Committee on Health, Education, Labor, and Pensions.

By Mr. JOHNSON:

S. 407. A bill to restore health care coverage to retired members of the uniformed services, and for other purposes; to the Committee on Armed Services.

By Mr. DEWINE (for himself, Mr. DODD, Mr. HAGEL, Mr. WARNER, Mr. CORZINE, Mr. LIEBERMAN, Mr. LAUTENBERG, Ms. LANDRIEU, Mr. JEFFORDS, and Mr. SALAZAR):

S. 408. A bill to provide for programs and activities with respect to the prevention of underage drinking; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN (for himself, Mr. DEWINE, and Mr. ALEXANDER):

S. 409. A bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MCCAIN:

S. 410. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine; to the Committee on Finance.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. 411. A bill to amend title XVIII of the Social Security Act to improve the provisions of items and services provided to Medicare beneficiaries residing in States with more cost-effective health care delivery systems; to the Committee on Finance.

By Mr. DORGAN (for himself and Mr. INOUYE):

S. 412. A bill to reauthorize the Native American Programs Act of 1974; to the Committee on Indian Affairs.

By Mrs. FEINSTEIN (for herself, Ms. SNOWE, Mr. MCCAIN, Mr. CHAFEE, Mrs. MURRAY, Mr. JEFFORDS, Mr. DURBIN, Mr. LIEBERMAN, Mr. LEAHY, Mr. LAUTENBERG, Mrs. BOXER, Ms. CANTWELL, Mr. AKAKA, and Mr. REED):

S.J. Res. 5. A joint resolution expressing the sense of Congress that the United States should act to reduce greenhouse gas emissions; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. GRAHAM (for himself, Mr. LUGAR, Mr. BIDEN, Mr. BROWNBACK, and Mr. DORGAN):

S. Res. 55. A resolution recognizing the contributions of the late Zhao Ziyang to the people of China; to the Committee on Foreign Relations.

By Mr. SPECTER:

S. Res. 56. A resolution designating the month of March as Deep-Vein Thrombosis Awareness Month, in memory of journalist David Bloom; to the Committee on the Judiciary.

By Mr. GRAHAM (for himself, Mr. SPECTER, Mr. BROWNBACK, Mr. KOHL, Mr. HATCH, Mr. FEINGOLD, Ms. CANTWELL, Mr. CHAMBLISS, Mrs. MURRAY, Mrs. DOLE, Mr. SANTORUM, and Mr. JEFFORDS):

S. Res. 57. A resolution designating February 25, 2005, as ''National MPS Awareness Day''; considered and agreed to.

ADDITIONAL COSPONSORS

S. 17

At the request of Mr. DODD, the names of the Senator from Nevada (Mr. REID) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 17, a bill to amend the Help America Vote Act of 2002 to protect voting rights and to improve the administration of Federal elections, and for other purposes.

S. 37

At the request of Mrs. FEINSTEIN, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from Arizona (Mr. MCCAIN) were added as cosponsors of S. 37, a bill to extend the special postage stamp for breast cancer research for 2 years.

S. 147

At the request of Mr. AKAKA, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 147, a bill to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

S. 183

At the request of Mr. GRASSLEY, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 183, a bill to amend title XIX of the Social Security Act to provide families of disabled children with the opportunity to purchase coverage under the medicaid program for such children, and for other purposes.

S. 189

At the request of Mr. INHOFE, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 189, a bill to amend the Head Start Act to require parental consent for nonemergency intrusive physical examinations.

S. 236

At the request of Mr. NELSON of Nebraska, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 236, a bill to amend title XVIII of the Social Security Act to clarify the treatment of payment under the medicare program for clinical laboratory tests furnished by critical access hospitals.

S. 256

At the request of Mr. GRASSLEY, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

S. 262

At the request of Mrs. FEINSTEIN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 262, a bill to authorize appropriations to the Secretary of the Interior for the restoration of the Angel Island Immigration Station in the State of California.

S. 273

At the request of Mr. COLEMAN, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 273, a bill to amend the Farm Security and Rural Investment Act of 2002 to extend and improve national dairy market loss payments.

S. 277

At the request of Mr. JOHNSON, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 277, a bill to amend title XVIII of the Social Security Act to provide for direct access to audiologists for Medicare beneficiaries, and for other purposes.

S. 285

At the request of Mr. BOND, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 285, a bill to reauthorize the Children's Hospitals Graduate Medical Education Program.

S. 286

At the request of Mr. DODD, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 286, a bill to amend section 401(b)(2) of the Higher Education Act of 1965 regarding the Federal Pell Grant maximum amount.

S. 296

At the request of Mr. KOHL, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 296, a bill to authorize appropriations for the Hollings Manufacturing Extension Partnership Program, and for other purposes.

S. 306

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. 306, a bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

At the request of Ms. SNOWE, the names of the Senator from Delaware (Mr. BIDEN), the Senator from Minnesota (Mr. DAYTON), the Senator from New Jersey (Mr. CORZINE) and the Senator from Texas (Mr. CORNYN) were added as cosponsors of S. 306, supra.

S. 311

At the request of Mr. SMITH, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 311, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low-income individuals infected with HIV.

S. 330

At the request of Mr. ENSIGN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 330, a bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

S. 334

At the request of Mr. DORGAN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 334, a bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, and for other purposes.

S. 342

At the request of Mr. MCCAIN, the names of the Senator from Vermont (Mr. LEAHY) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 342, a bill to provide for a program of scientific research on abrupt climate change, to accelerate the reduction of greenhouse gas emissions in the United States by establishing a market-driven system of greenhouse gas tradeable allowances, to limit greenhouse gas emissions in the United States and reduce dependence upon foreign oil, and ensure benefits to consumers from the trading in such allowances.

S. 352

At the request of Ms. MIKULSKI, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 352, a bill to revise certain requirements for H–2B employers and require submission of information regarding H–2B non-immigrants, and for other purposes.

S. 360

At the request of Ms. SNOWE, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 360, a bill to amend the Coastal Zone Management Act.

S. 361

At the request of Ms. SNOWE, the name of the Senator from Mississippi

(Mr. LOTT) was added as a cosponsor of S. 361, a bill to develop and maintain an integrated system of ocean and coastal observations for the Nation's coasts, oceans and Great Lakes, improve warnings of tsunamis and other natural hazards, enhance homeland security, support maritime operations, and for other purposes.

S. 379

At the request of Ms. MIKULSKI, the names of the Senator from Hawaii (Mr. INOUYE) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 379, a bill to build capacity at community colleges in order to meet increased demand for community college education while maintaining the affordable tuition rates and the open-door policy that are the hallmarks of the community college system.

S. 380

At the request of Ms. COLLINS, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 380, a bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children.

S. 384

At the request of Mr. DEWINE, the names of the Senator from Minnesota (Mr. COLEMAN), the Senator from Maine (Ms. COLLINS), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Vermont (Mr. LEAHY), the Senator from South Carolina (Mr. GRAHAM), the Senator from Virginia (Mr. ALLEN) and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of S. 384, a bill to extend the existence of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group for 2 years.

S.J. RES. 1

At the request of Mr. ALLARD, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

S. RES. 20

At the request of Mr. KENNEDY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. Res. 20, a resolution designating January 2005 as ''National Mentoring Month''.

S. RES. 28

At the request of Mr. SARBANES, his name was added as a cosponsor of S. Res. 28, a resolution designating the year 2005 as the ''Year of Foreign Language Study''.

S. RES. 40

At the request of Ms. LANDRIEU, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. Res. 40, a resolution supporting the goals and ideas of National Time Out Day to promote the adoption of the Joint Commission on Accreditation of Healthcare Organizations' universal protocol for preventing errors in the operating room.

S. RES. 44

At the request of Mr. ALEXANDER, the names of the Senator from Nevada (Mr. REID), the Senator from Washington (Ms. CANTWELL), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Colorado (Mr. ALLARD) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. Res. 44, a resolution celebrating Black History Month.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG (for himself, Mr. KERRY, Mrs. BOXER, and Mrs. CLINTON):

S. 391. A bill to amend the Federal Election Campaign Act of 1971 to prohibit certain State election administration officials from actively participating in electoral campaigns; to the Committee on Rules and Administration.

Mr. LAUTENBERG. Mr. President, I rise to introduce the Federal Election Integrity Act on behalf of myself and Senators KERRY, BOXER and CLINTON. This bill creates a direct prohibition on chief State election officials from taking part in political campaigns by amending the Federal Campaign Act of 1971.

Legislation is very much needed to eliminate an inherent conflict of interest that exists when a State's chief election administration official—the Secretary of State, the State Attorney General, or the Lieutenant Governor—is responsible for monitoring, supervising and certifying the results of a Federal election, while actively involved in the campaign of one of the candidates in that election.

I know that this is a practice engaged in by both Democratic and Republican State officials on behalf of Federal candidates, but those officials in charge of certifying Federal elections must not allowed to serve two masters—the voters and the Federal candidate. It is not right and it undermines the faith and confidence that Americans in this Nation's election system, and impugns the integrity of the State election official and the Federal candidate. The will of voters must come before the personal partisan politics.

In 2000 and again in 2004, we have witnessed two Secretaries of State capturing national press attention because of their involvement in elections where, literally, every single vote mattered.

In the 2004 presidential election, Ohio Secretary of State Ken Blackwell was co-chairman of President Bush's re-election campaign in Ohio. On December 6th, 2004, Secretary of State Blackwell certified President Bush as the winner in Ohio with an 118,775–vote lead—closer than unofficial election night results, but not close enough to trigger a mandatory recount. Recount advocates have cited numerous Election Day problems in Ohio, including long lines, a shortage of voting machines in predominantly minority neighborhoods, and suspicious vote totals for candidates in scattered precincts.

In the 2000 election, Florida Secretary of State Katherine Harris served as co-chair of President Bush's Florida campaign. President Bush's narrow victory in Florida gave him the State's 25 electoral votes necessary to win the presidency. A recount of thousands of Florida ballots and resulting court battles held up a resolution to the election for five weeks. There were reports of improprieties by Secretary of State Harris, including ballot tampering and the tampering of office computer files with Bush talking points and other supportive material.

Just recently, California Secretary of State Kevin Shelley—a Democrat—resigned due to allegations that he improperly used Federal election funds for partisan activities.

In all these cases, I am sure that the Secretaries of State were honorable public servants who made some very unpopular, difficult decisions under intense public scrutiny. But as far as the voters are considered, the Secretaries engaged in partisan political activity that tainted the results of the elections. This legislation fixes that.

Secretaries of State and other State election officials with supervisory authority over the administration of Federal elections should not be actively involved in the political campaign or management of a candidate running for Federal office in their State. The Secretary of State is the primary election administration official in 39 States; despite that, history has shown numerous Secretaries of State chairing the political campaigns of Federal candidates in their State.

There is a direct conflict of interest when an election official charged with supervising the administration of Federal elections and ensuring the fairness and accuracy of the results of Federal elections has a direct role in a Federal candidate's campaign.

Again, this is not an issue of Democrats versus Republicans. Rather, this is an issue of preserving the American people's faith and confidence in the election process. Simply put, election officials responsible for ensuring fair and accurate Federal elections should not be actively cheering for and aiding a candidate in those elections.

I ask unanimous consent that the text of the ''Federal Election Integrity Act'' be printed in the RECORD.

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

S. 391

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 ''Federal Election Integrity Act of 2005''.

SEC. 2. FINDINGS.

Congress finds that—

(1) chief State election administration officials have served on political campaigns for Federal candidates whose elections those officials will supervise;

(2) such partisan activity by the chief State election administration official, an individual charged with certifying the validity of an election, represents a fundamental conflict of interest that may prevent the official from ensuring a fair and accurate election;

(3) this conflict impedes the legal duty of chief State election administration officials to supervise Federal elections, undermines the integrity of Federal elections, and diminishes the people's confidence in our electoral system by casting doubt on the results of Federal elections;

(4) the Supreme Court has long recognized that Congress's power to regulate Congressional elections under Article I, Section 4, Clause 1 of the Constitution is both plenary and powerful; and

(5) the Supreme Court and numerous appellate courts have recognized that the broad power given to Congress over Congressional elections extends to Presidential elections.

SEC. 3. PROHIBITION ON CAMPAIGN ACTIVITIES BY ELECTION ADMINISTRATION OFFICIALS.

(a) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by inserting after section 319 the following new section:

''CAMPAIGN ACTIVITIES BY ELECTION OFFICIALS

''SEC. 319A. (a) PROHIBITION.—It shall be unlawful for a chief State election administration official to take an active part in political management or in a political campaign with respect to any election for Federal office over which such official has supervisory authority.

''(b) CHIEF STATE ELECTION ADMINISTRATION OFFICIAL.—The term 'chief State election administration official' means the highest State official with responsibility for the administration of Federal elections under State law.

''(c) ACTIVE PART IN POLITICAL MANAGEMENT OR IN A POLITICAL CAMPAIGN.—The term 'active part in political management or in a political campaign' means—

''(1) serving as a member of an authorized committee of candidate for Federal office;

''(2) the use of official authority or influence for the purpose of interfering with or affecting the result of an election for Federal office;

''(3) the solicitation, acceptance, or receipt of political contributions from any person on behalf of a candidate for Federal office;

''(4) the solicitation or discouragement of the participation in any political activity of any person;

''(5) engaging in partisan political activity on behalf of a candidate for Federal office; and

''(6) any other act prohibited under section 7323(b)(4) of title 5, United States Code (other than any prohibition on running for public office).''.

(b) ENFORCEMENT.—Section 309 of the Federal Election Campaign Act of 1971 (42 U.S.C. 437g) is amended by adding at the end the following new subsection:

''(d)(1) Notwithstanding paragraphs (1) through (5) of subsection (a), any person who has knowledge of a violation of section 319A has occurred may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury subject to the provisions of section 1001 of title 18, United States Code. The Commission shall promptly notify any person alleged in the complaint and the candidate with respect to whom a violation is alleged, and shall give such person and such candidate an opportunity to respond. Not later than 14 days after the date on which such a complaint is filed, the Commission shall make a determination on such complaint.

''(2)(A) If the Commission determines by an affirmative vote of a majority of the members voting that a person has committed a violation of section 319A, the Commission shall require the person to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission.

''(B) If the Commission determines by an affirmative vote of a majority of the members voting that a person has committed a violation of section 319A under subparagraph (A) and that the candidate knew of the violation at the time such violation occurred, the Commission may require such candidate to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission.''.

By Mr. LEVIN (for himself Mr. MCCAIN, Ms. STABENOW, Mrs. DOLE, Mr. OBAMA, Mr. GRAHAM, Mr. PRYOR, Mr. KENNEDY, Mr. ROCKEFELLER, Mr. NELSON of Florida, Ms. LANDRIEU, and Mr. KERRY):

S. 392. A bill to authorize the President to award a gold medal on behalf of Congress, collectively, to the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces; to the Committee on Banking, Housing, and Urban Affairs.

Mr. LEVIN. Mr. President, during the last Session of the 108th Congress, I informed my colleagues of my intention to introduce bipartisan legislation in the 109th Congress, to authorize the awarding of the Congressional Gold Medal, collectively, to the ''Tuskegee Airmen.''

Congress has commissioned the gold medal as its highest expression of national appreciation for distinguished achievements and contributions. Today, I am pleased to be joined by Senators MCCAIN, STABENOW, DOLE, OBAMA, GRAHAM, ROCKEFELLER, PRYOR, BEN NELSON, LANDRIEU and KERRY in introducing legislation, S. 392, that would bestow this great honor on the Tuskegee Airmen, in recognition of their extraordinary courage and unwavering determination to become America's first black military airmen.

The Tuskegee Airmen were not only unique in their military record, but they inspired revolutionary reform in the armed forces, paving the way for integration of the Armed Services in the U.S. The largely college educated Tuskegee Airmen overcame the enormous challenges of prejudice and discrimination, succeeding, despite obstacles that threatened failure. What made these men exceptional was their willingness to leave their families and put their lives on the line to defend rights that were denied them here at home. Congresswoman Helen Gahagan Douglas of California, in remarks on the floor of the U.S. House of Representatives on February 1, 1946 summed it up this way:

> The Negro soldier made his contribution in World War II . . . he has met the test of patriotism and heroism. We should be especially mindful . . . remembering that he fought and shed his blood for a freedom which he has not as yet been permitted fully to share. I wish to pay him the respect and to express the gratitude of the American people for his contribution in the greatest battle of all time the battle which decided whether or not we were to remain a free people. The names of Negro heroes in this war are everlastingly recorded among the living and the dead . . . in every combat area, on land, on sea, in the air.

Former Senator Bill Cohen, in remarks on the floor of the Senate decades later, in July of 1995, said: ''. . . I listened to the stories of the Tuskegee airmen and . . . the turmoil they experienced fighting in World War II, feeling they had to fight two enemies: one called Hitler, the other called racism in this country.''

The superior record of the Tuskegee Airmen in World War II was accomplished by individuals who accepted the challenge and proudly displayed their skill and determination in the face of racism and bigotry at home, despite their distinguished war records. Prior to the 1940s, many in the military held the sadly, mistaken view that black servicemen were unfit for most leadership roles and mentally incapable of combat aviation. Between 1924 and 1939, the Army War College commissioned a number of studies aimed at increasing the military role of blacks. According to The Air Force Magazine , Journal of the Air Force Association, March 1996, ''. . . these studies asserted that blacks possessed brains significantly smaller than those of white troops and were predisposed to lack physical courage. The reports maintained that the Army should increase opportunities for blacks to help meet manpower requirements but claimed that they should always be commanded by whites and should always serve in segregated units.''

Overruling his top generals and to his credit, President Franklin Roosevelt in 1941 ordered the creation of an all black flight training program at Tuskegee Institute. He did so one day after Howard University student Yancy Williams filed suit in Federal Court to force the Department of Defense to accept black pilot trainees. Yancy Williams had a civilian pilot's license, and received an engineering degree. Years later, ''Major Yancy Williams,'' participated in an air surveillance project created by President Eisenhower.

''We proved that the antidote to racism is excellence in performance,'' said retired Lt. Col. Herbert Carter, who started his military career as a pilot and maintenance officer with the 99th Fighter Squadron. ''Can you imagine . . . with the war clouds as heavy as they were over Europe, a citizen of the

United States having to sue his government to be accepted to training so he could fly and fight and die for his country?'' The government expected the experiment to fail and end the issue, said Carter. The mistake they made was that they forgot to tell us . . .''

The first class of cadets began in July of 1941 with thirteen men, all of whom had college degrees, some with PhD's and all had pilot's licenses. Based on the aforementioned studies, the training of the Tuskegee Airmen was an experiment established to prove that ''coloreds'' were incapable of operating expensive and complex combat aircraft.

By 1943, the first of contingent of black airmen were sent to North Africa, Sicily and Europe. Their performance far exceeded anyone's expectation. They shot down six German aircraft on their first mission, and were also the first squad to sink a battleship with only machine guns. Overall, nearly 1000 black pilots graduated from Tuskegee, 450 of whom served in combat with the last class finishing in June of 1946,. Sixty-six of the aviators died in combat, while another 33 were shot down and captured as prisoners of war. The Tuskegee Airmen were credited with 261 aircraft destroyed, 148 aircraft damaged, 15,553 combat sorties and 1,578 missions over Italy and North Africa. They destroyed or damaged over 950 units of ground transportation and escorted more than 200 bombing missions. Clearly, the experiment, as it was called, was an unqualified success. Black men could not only fly, they excelled at it, and were equal partners in America's victory.

A number of Tuskegee Airmen have lived in Michigan, including Alexander Jefferson, Washington Ross, Wardell Polk, and Walter Downs, among others. Tuskegee Airmen also trained at Michigan's Selfridge and Oscoda air fields in the early 40's. In the early 1970's, the Airmen established their first chapter in Detroit. Today there are 42 chapters located in major cities of the U.S. The chapters support young people through scholarships, sponsorships to the military academies, and flight training programs. Detroit is also the location of The Tuskegee Airmen National Museum, which is on the grounds of historic Fort Wayne. The late Coleman Young, former Mayor of the City of Detroit was trained as a navigator bombardier for the 477th bombardment group of the Tuskegee Airmen. This group was still in training when WWII ended so they never saw combat. However, the important fact is that all of those receiving flight related training—nearly 1,000—were instrumental in breaking the segregation barrier. They all had a willingness to see combat, and committed themselves to the segregated training with a purpose to defend their country.

The Tuskegee Airmen were awarded three Presidential Unit Citations,150 Distinguished Flying Crosses and Legions of Merit, along with The Red Star of Yugoslavia, 9 Purple Hearts, 14 Bronze Stars and more than 700 Air medals and clusters. It goes without question that the Tuskegee Airmen are deserving of the Congressional Gold Medal. According to existing records, I am proud to say that 155 Tuskegee Airmen originated from my State of Michigan.

In closing, I urge my colleagues in the Senate to swiftly act on this legislation, a most deserving honor and tribute to the Tuskegee Airmen. I also ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 392

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

SECTION 1. FINDINGS.

Congress finds the following:

(1) In 1941, President Franklin D. Roosevelt overruled his top generals and ordered the creation of an all Black flight training program. President Roosevelt took this action one day after the NAACP filed suit on behalf of Howard University student Yancy Williams and others in Federal court to force the Department of War to accept Black pilot trainees. Yancy Williams had a civilian pilot's license and had earned an engineering degree. Years later, Major Yancy Williams participated in an air surveillance project created by President Dwight D. Eisenhower.

(2) Due to the rigid system of racial segregation that prevailed in the United States during World War II, Black military pilots were trained at a separate airfield built near Tuskegee, Alabama. They became known as the ''Tuskegee Airmen''.

(3) The Tuskegee Airmen inspired revolutionary reform in the Armed Forces, paving the way for full racial integration in the Armed Forces. They overcame the enormous challenges of prejudice and discrimination, succeeding, despite obstacles that threatened failure.

(4) From all accounts, the training of the Tuskegee Airmen was an experiment established to prove that so-called ''coloreds'' were incapable of operating expensive and complex combat aircraft. Studies commissioned by the Army War College between 1924 and 1939 concluded that Blacks were unfit for leadership roles and incapable of aviation. Instead, the Tuskegee Airmen excelled.

(5) Overall, some 992 Black pilots graduated from the pilot training program of the Tuskegee Army Air Field, with the last class finishing in June 1946, 450 of whom served in combat. The first class of cadets began in July 1941 with 13 airmen, all of whom had college degrees, some with Ph.D.'s, and all of whom had pilot's licenses. One of the graduates was Captain Benjamin O. Davis Jr., a United States Military Academy graduate. Four aviation cadets were commissioned as second lieutenants, and 5 received Army Air Corps silver pilot wings.

(6) That the experiment achieved success rather than the expected failure is further evidenced by the eventual promotion of 3 of these pioneers through the commissioned officer ranks to flag rank, including the late General Benjamin O. Davis, Jr., United States Air Force, the late General Daniel ''Chappie'' James, United States Air Force, our Nation's first Black 4-star general, and Major General Lucius Theus, United States Air Force (retired).

(7) Four hundred fifty Black fighter pilots under the command of then Colonel Benjamin O. Davis, Jr., fought in World War II aerial battles over North Africa, Sicily, and Europe, flying, in succession, P-40, P-39, P-47, and P-51 aircraft. These gallant men flew 15,553 sorties and 1,578 missions with the 12th Tactical Air Force and the 15th Strategic Air Force.

(8) Colonel Davis later became the first Black flag officer of the United States Air Force, retired as a 3-star general, and was honored with a 4th star in retirement by President William J. Clinton.

(9) German pilots, who both feared and respected the Tuskegee Airmen, called them the ''Schwartze Vogelmenshen'' (or ''Black Birdmen''). White American bomber crews reverently referred to them as the ''Black Redtail Angels'', because of the bright red painted on the tail assemblies of their fighter aircraft and because of their reputation for not losing bombers to enemy fighters as they provided close escort for bombing missions over strategic targets in Europe.

(10) The 99th Fighter Squadron, after having distinguished itself over North Africa, Sicily, and Italy, joined 3 other Black squadrons, the 100th, the 301st, and the 302nd, designated as the 332nd Fighter Group. They then comprised the largest fighter unit in the 15th Air Force. From Italian bases, they destroyed many enemy targets on the ground and at sea, including a German destroyer in strafing attacks, and they destroyed numerous enemy aircraft in the air and on the ground.

(11) Sixty-six of these pilots were killed in combat, while another 32 were either forced down or shot down and captured to become prisoners of war. These Black airmen came home with 150 Distinguished Flying Crosses, Bronze Stars, Silver Stars, and Legions of Merit, one Presidential Unit Citation, and the Red Star of Yugoslavia.

(12) Other Black pilots, navigators, bombardiers and crewman who were trained for medium bombardment duty as the 477th Bomber Group (Medium) were joined by veterans of the 332nd Fighter Group to form the 477th Composite Group, flying the B-25 and P-47 aircraft. The demands of the members of the 477th Composite Group for parity in treatment and for recognition as competent military professionals, combined with the magnificent wartime records of the 99th Fighter Squadron and the 332nd Fighter Group, led to a review of the racial policies of the Department of War.

(13) In September 1947, the United States Air Force, as a separate service, reactivated the 332d Fighter Group under the Tactical Air command. Members of the 332d Fighter Group were ''Top Guns'' in the 1st annual Air Force Gunnery Meet in 1949.

(14) For every Black pilot there were 12 other civilian or military Black men and women performing ground support duties. Many of these men and women remained in the military service during the post-World War II era and spearheaded the integration of the Armed Forces of the United States.

(15) Major achievements are attributed to many of those who returned to civilian life and earned leadership positions and respect as businessmen, corporate executives, religious leaders, lawyers, doctors, educators, bankers, and political leaders.

(16) A period of nearly 30 years of anonymity for the Tuskegee Airmen was ended in 1972 with the founding of Tuskegee Airmen, Inc., in Detroit, Michigan. Organized as a non-military and nonprofit entity, Tuskegee Airmen, Inc., exists primarily to motivate and inspire young Americans to become participants in our Nation's society and its democratic process, and to preserve the history of their legacy.

(17) The Tuskegee Airmen have several memorials in place to perpetuate the memory of who they were and what they accomplished, including—

(A) the Tuskegee Airmen, Inc., National Scholarship Fund for high school seniors who excel in mathematics, but need financial assistance to begin a college program;

(B) a museum in historic Fort Wayne in Detroit, Michigan;

(C) Memorial Park at the Air Force Museum at Wright-Patterson Air Force Base in Dayton, Ohio;

(D) a statue of a Tuskegee Airman in the Honor Park at the United States Air Force Academy in Colorado Springs, Colorado; and

(E) at National Historic Site at Moton Field, where primary flight training was performed under contract with the Tuskegee Institute.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The President is authorized to award to the Tuskegee Airmen, on behalf of Congress, a gold medal of appropriate design honoring the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces.

(b) DESIGN AND STRIKING.—For the purposes of the award referred to in subsection (a), the Secretary of the Treasury (hereafter in this Act referred to as the ''Secretary'') shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 3. DUPLICATE MEDALS.

Under such regulations as the Secretary may prescribe, the Secretary may strike and sell duplicates in bronze of the gold medal struck under section 2, at a price sufficient to cover the costs of the medals, including labor, materials, dies, use of machinery, and overhead expenses.

SEC. 4. NATIONAL MEDALS.

Medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS; PROCEEDS OF SALE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be charged against the United States Mint Public Enterprise Fund, an amount not to exceed $30,000 to pay for the cost of the medals authorized under section 2.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 3 shall be deposited in the United States Mint Public Enterprise Fund.

By Mr. AKAKA (for himself, Mr. DURBIN, Mr. LEAHY, Mr. SARBANES, and Mr. SCHUMER):

S. 393. A bill to require enhanced disclosure to consumers regarding the consequences of making only minimum required payments in the repayment of credit card debt, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. AKAKA. Mr. President, I rise to introduce the Credit Card Minimum Payment Warning Act. I thank Senators DURBIN, LEAHY, SARBANES, and SCHUMER for working with me on this legislation and for cosponsoring this bill.

I am deeply concerned about the enormous debt burdens that Americans are currently carrying. I share the concern on debts we expect from the Social Security program. Revolving Debt, mostly comprised of credit card debt, has increased from $54 billion in January 1980 to more than $780 billion in November 2004. A U.S. Public Interest Research Group and Consumer Federation of America analysis of Federal Reserve data indicates that the average household with debt carries approximately $10,000 to $12,000 in total revolving debt and has nine credit cards.

During all of 1980, only 287,570 consumers filed for bankruptcy. As consumer debt burdens have ballooned, the number of bankruptcies have increased significantly. From January through September of 2004, approximately 1.2 million consumers filed for bankruptcy, keeping pace with last year's record level.

It is imperative that we make consumers more aware of the long-term effects of their financial decisions, particularly in managing their credit card debt, so that they can avoid financial pitfalls that may lead to bankruptcy.

While it is relatively easy to obtain credit, not enough is done to ensure that credit is properly managed. Currently, credit card statements fail to include all of the information necessary to allow individuals to make fully informed financial decisions. Additional disclosure is needed to ensure that individuals completely understand the implications of their credit card use and costs of only making the minimum payments required by credit card companies.

Our legislation will provide a wake up call for consumers. It will make it very clear what costs consumers will incur if they make only the minimum payments on their credit cards. The personalized information they will receive for each of their accounts will help them to make informed choices about the payments that they choose to make towards reducing their balance.

This bill requires a minimum payment warning notification on monthly statements stating that making the minimum payment will increase the amount of interest that will be paid and extend the amount of time it will take to repay the outstanding balance. The bill also requires informing consumers of how many years and months it will take to repay their entire balance if they make only the minimum payments. In addition, the total cost in interest and principal, if the consumer pays only the minimum payment, would have to be disclosed. These provisions will make individuals much more aware of the true costs of their credit card debts. The bill also requires that credit card companies provide useful information so that people can develop strategies to free themselves of credit card debt. Consumers would have to be provided with the amount they need to pay to eliminate their outstanding balance within 36 months.

Finally, the legislation would require that creditors establish a toll-free number so that consumers can access trustworthy credit counselors. In order to ensure that consumers are referred from the toll-free number to only trustworthy organizations, the agencies for referral would have to be approved by the Federal Trade Commission and the Federal Reserve Board as having met comprehensive quality standards. These standards are necessary because certain credit counseling agencies have abused their nonprofit, tax-exempt status and have taken advantage of people seeking assistance in managing their debts. Many people believe, sometimes mistakenly, that they can place blind trust in nonprofit organizations and that their fees will be lower than those of other credit counseling organizations. Too many individuals may not realize that the credit counseling industry does not deserve the trust that consumers often place in it.

The Credit Card Minimum Payment Warning Act has been endorsed by the Consumer Federation of America, Consumers Union, U.S. Public Interest Research Group, and Consumer Action.

I urge my colleagues to support this legislation that will empower consumers by providing them with detailed personalized information to assist them in making informed choices about their credit card use and repayment. This bill makes clear the adverse consequences of uninformed choices such as making only minimum payments and provides opportunities to locate assistance to eliminate credit card debts.

I ask unanimous consent that a letter of support and fact sheet from organizations in support of the legislation be printed in the RECORD.

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

JANUARY 28, 2005.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.
Hon. PAUL S. SARBANES,
U.S. Senate,
Washington, DC.
Hon. RICHARD J. DURBIN
U.S. Senate,
Washington, DC.

DEAR SENATORS AKAKA, DURBIN AND SARBANES: The undersigned national consumer organizations write to strongly support the Credit Card Minimum Payment Warning Act. The Act would require credit card issuers to disclose more information to consumers about the costs associated with paying their bills at ever-declining minimum payment rates. The Act provides a personalized ''price tag'' so consumers can understand what are the real costs of credit card debt and avoid financial problems in the future.

Undisputed evidence links the rise in bankruptcy in recent years to the increase in consumer credit outstanding. These numbers have moved in lockstep for more than 20 years. Revolving credit, for example (most of which is credit card debt) ballooned from $214 billion in January 1990 to over $780 billion currently. As family debt increases, debt service payments on items such as interest and late fees take an ever-increasing piece of their budget. For some families, this contributes to the collapse of their budget. Bankruptcy becomes the only way out. (See the attached fact sheet for more information about the scope and impact of credit card debt.)

Credit card issuers have exacerbated the financial problems that many families have faced by lowering minimum payment amounts, from around 4 percent of the balance owed, to about 2 percent currently. This decline in the typical minimum payment is a significant reason for the rise in consumer bankruptcies in recent years. A low minimum payment often barely covers interest obligations. It convinces many borrowers that they are financially sound as long as they can meet all of their minimum payment obligations. However, those that cannot afford to make these payments often carry so much debt that bankruptcy is usually the only viable option.

This bill will provide consumers several crucial pieces of information on their monthly credit card statement:

A ''minimum payment warning'' that paying at the minimum rate will increase the amount of interest that is owed and the time it will take to repay the balance.

The number of years and months that it will take the consumer to payoff the balance at the minimum rate.

The total costs in interest and principal if the consumer pays at the minimum rate.

The monthly payment that would be required to pay the balance off in three years.

The bill also requires that credit card companies provide a toll-free number that consumers can call to receive information about credit counseling and debt management assistance. In order to assure that consumers are referred to honest, legitimate non-profit credit counselors, the bill requires the Federal Reserve to screen these agencies to ensure that they meet rigorous quality standards.

Our groups commend you for offering this very important and long-overdue piece of legislation. It provides the kind of personalized, timely disclosure information that will help debt-choked families make informed decisions and start to work their way back to financial health.

Sincerely,

TRAVIS B. PLUNKETT,
Legislative Director, Consumer Federation of America.
SUSANNA MONTEZEMOLO,
Policy Analyst, Consumers Union.
EDMUND MIERZWINSKI,
Consumer Programs Director, U.S. Public Interest Research Group.
LINDA SHERRY,
Editorial Director, Consumer Action.

FACTS ABOUT CREDIT CARD DEBT

Revolving debt (most of which is credit card debt) has ballooned from $54 billion in January 1980 to over $780 billion currently.

	Billion
January 1980	$54
January 1984	79
January 1990	214
January 1994	313
November 2004	780.1

Source: http://www.federalreserve.gov/Releases/G19/hist/cc hist sa.html.

About one-twelfth of this debt is paid off before it incurs interest, so Americans pay interest on an annual load of about $690 billion in revolving debt.

According to the Federal Reserve, the most recent average credit card interest rate is 12.4% APR. At simple interest, with no compounding, then, consumers pay at least $85 billion annually in interest on credit card and other revolving debt.

Just about 55 percent of consumers carry debt. The rest are convenience users.

From PIRG/CFA analysis of Federal Reserve data, the average household with debt carries approximately $10,000–12,000 in total revolving debt and has approximately nine cards.

FACTS ABOUT THE EFFECT OF MINIMUM MONTHLY PAYMENTS

A household making the monthly minimum required payments on this debt (usually the greater of 2 percent of the unpaid balance or $20) at the very low average 12.4% APR (many consumers pay much higher penalty rates than this FRB-reported average) would pay $1,175 in interest just in the first year, even if these cards are cut up and not used again.

This household would pay a total of over $9,800 in interest over a period of 25 years and three months. That fact is not disclosed.

A household or consumer who merely doubled their minimum payment and paid 4% of the amount due would fare better. A household or consumer that paid 10% of the balance each month would fare much better. Here is a comparison.

Minimum payment warnings would encourage larger payments and save consumers thousands of dollars in high-priced credit card debt.

Credit card debt of $10,000 at Modest 12.4% APR	Monthly Payment (% of unpaid balance)		
	2%	4%	10%
First Year Interest =	$1,175	$1,054	$775
Total Interest Owed =	$9,834	$3,345	$1,129
Months To Pay	303	127	52
Years To Pay	25.3	10.6	4.3

Calculations by U.S. PIRG. Also see http://www.truthaboutcredit.org/lowerapr.htm for additional comparisons and amortization tables.

Giving consumers a minimum payment warning on their credit card statements is the most powerful action Congress could take to increase consumer understanding of the cost of credit card debt.

FACTS ABOUT WHO OWES CREDIT CARD DEBT

Credit card debt has risen fastest among lower-income Americans. These families saw the largest increase—a 184 percent rise in their debt—but even very high-income families had 28 percent more credit card debt in 2001 than they did in 1989. Source: Demos.

Thirty-nine percent of student loan borrowers now graduate with unmanageable levels of debt, meaning that their monthly payments are more than 8% of their monthly incomes. According to PIRG analysis of the 1999–2000 NPSAS data, in 2001, 41% of the graduating seniors carried a credit card balance, with an average balance of $3,071. Student loan borrowers were even more likely to carry credit card debt, with 48% of borrowers carrying an average credit card balance of $3,176. See ''The Burden of Borrowing,'' 2002, Tracey King, the State PIRGs, http://www.pirg.org/highered/BurdenofBorrowing.pdf.

While less likely to have credit cards than white families, data show that African-American and Hispanic families are more likely to carry debt.

	% with credit cards 2001	Cardholding % with debt 2001	Average credit card debt 2001
All families	76	55	$4,126
White families	82	51	4,381
Black families	59	84	2,950
Hispanic families	53	75	3,691

Demos calculations using 2001 Survey of Consumer Finances. See Borrowing To Make Ends Meet. Demos, http://www.demosusa.org/pubs/borrowing_tomake_ends_meet.pdf.

SENIORS (OVER AGE 65)

Credit card debt among older Americans increased by 89 percent from 1992 to 2001. Average balances among indebted adults over 65 increased by 89 percent, to $4,041.

Seniors between 65 and 69 years old, presumably the newly-retired, saw the most staggering rise in credit card debt—217 percent—to an average of $5,844.

Female-headed senior households experienced a 48 percent increase between 1992 and 2001, to an average of $2,319.

Among seniors with incomes under $50,000 (70 percent of seniors), about one in five families with credit card debt is in debt hardhip—spending over 40 percent of their income on debt payments, including mortgage debt.

TRANSITIONERS (AGES 55–64)

Transitioners experienced a 47 percent increase in credit card debt between 1992 and 2001, to an average of $4,088.

The average credit card-indebted family in this age group now spends 31 percent of their income on debt payments, a 10 percent increase over the decade.

Mr. AKAKA. I also ask unanimous consent that the text of the Credit Card Minimum Payment Warning Act be printed in the RECORD.

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

S. 393

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 ''Credit Card Minimum Payment Warning Act of 2005''.

SEC. 2. ENHANCED CONSUMER DISCLOSURES REGARDING MINIMUM PAYMENTS.

Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11)(A) Information regarding repayment of the outstanding balance of the consumer under the account, appearing in conspicuous type on the front of the first page of each such billing statement, and accompanied by an appropriate explanation, containing—

''(i) the words 'Minimum Payment Warning: Making only the minimum payment will increase the amount of interest that you pay and the time it will take to repay your outstanding balance.';

''(ii) the number of years and months (rounded to the nearest month) that it would take for the consumer to pay the entire amount of that balance, if the consumer pays only the required minimum monthly payments;

''(iii) the total cost to the consumer, shown as the sum of all principal and interest payments, and a breakdown of the total costs in interest and principal, of paying that balance in full if the consumer pays only the required minimum monthly payments, and if no further advances are made;

''(iv) the monthly payment amount that would be required for the consumer to eliminate the outstanding balance in 36 months if no further advances are made; and

''(v) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.

''(B)(i) Subject to clause (ii), in making the disclosures under subparagraph (A) the creditor shall apply the interest rate in effect on the date on which the disclosure is made.

''(ii) If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision specifying a subsequent interest rate or applying an index or formula for subsequent interest rate adjustment, the creditor shall apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will

apply under that contractual provision, and then shall apply the adjusted interest rate, as specified in the contract. If the contract applies a formula that uses an index that varies over time, the value of such index on the date on which the disclosure is made shall be used in the application of the formula.''.

SEC. 3. ACCESS TO CREDIT COUNSELING AND DEBT MANAGEMENT INFORMATION.

(a) GUIDELINES REQUIRED.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Board of Governors of the Federal Reserve System and the Federal Trade Commission (in this section referred to as the ''Board'' and the ''Commission'', respectively) shall jointly, by rule, regulation, or order, issue guidelines for the establishment and maintenance by creditors of a toll-free telephone number for purposes of the disclosures required under section 127(b)(11) of the Truth in Lending Act, as added by this Act.

(2) APPROVED AGENCIES.—Guidelines issued under this subsection shall ensure that referrals provided by the toll-free number include only those agencies approved by the Board and the Commission as meeting the criteria under this section.

(b) CRITERIA.—The Board and the Commission shall only approve a nonprofit budget and credit counseling agency for purposes of this section that—

(1) demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides;

(2) at a minimum—

(A) is registered as a nonprofit entity under section 501(c) of the Internal Revenue Code of 1986;

(B) has a board of directors, the majority of the members of which—

(i) are not employed by such agency; and

(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

(C) if a fee is charged for counseling services, charges a reasonable and fair fee, and provides services without regard to ability to pay the fee;

(D) provides for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

(E) provides full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, any costs of such program that will be paid by the client, and how such costs will be paid;

(F) provides adequate counseling with respect to the credit problems of the client, including an analysis of the current financial condition of the client, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

(G) provides trained counselors who—

(i) receive no commissions or bonuses based on the outcome of the counseling services provided;

(ii) have adequate experience; and

(iii) have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (F);

(H) demonstrates adequate experience and background in providing credit counseling;

(I) has adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan; and

(J) is accredited by an independent, nationally recognized accrediting organization.

By Mr. CORNYN (for himself and Mr. LEAHY):

S. 394. A bill to promote accessibility, accountability, and openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes; to the Committee on the Judiciary.

(See exhibit 1.)

Mr. CORNYN. Mr. President, I rise today to introduce a bill, along with the Senator from Vermont who we will hear from shortly, that will help enhance the openness of the Federal Government. This bill is called the Open Government Act of 2005. It is a bipartisan effort to improve and update our public information laws—particularly the Freedom of Information Act.

The purpose of the bill is to arm the American people with the information they need to make certain that ours remains a government whose legitimacy is derived from the consent of the governed. This legislation will significantly expand the accessibility, accountability, and openness of the Federal Government.

Open government, of course, is one of the most basic requirements of a healthy democracy. It allows taxpayers to see where their money is going. It permits the honest exchange of information that ensures government accountability, and it upholds the ideal that government never rules without the consent of the governed. As is so often the case, Abraham Lincoln said it best:

> No man is good enough to govern another without that person's consent.

But achieving the true consent of the governed requires something more than just holding elections every couple of years. What we need is informed consent. Informed consent is impossible without open and accessible government.

It has been nearly a decade since Congress has approved major reforms to the Freedom of Information Act. The Senate Judiciary Committee has not convened an oversight hearing to examine the Freedom of Information Act compliance issue since 1992. And at that time, I believe it is clear that the growth of technology and the Internet has created a real desire among the American people to achieve direct, efficient, and open access to government information.

I thank my colleague from Vermont, the ranking member of the Judiciary Committee, who has long been a champion of these issues, for his hard work on this bill. Together our offices have spent a good deal of time meeting with open government advocates. I am proud to say this bill is supported by a broad coalition across the ideological spectrum, because I believe this legislation should not be a partisan or special interest bill. Indeed, it is not.

I ask unanimous consent that these endorsement letters from dozens of watchdog groups across the political spectrum be printed in the RECORD at the close of my remarks.

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

(See exhibit 2.)

Mr. CORNYN. Mr. President, as the Senator from Vermont said at a recent Judiciary Committee hearing:

> I have always found that every administration, Republican or Democrat, would love to keep a whole lot of things from the public. They do something they are proud of, they will send out a hundred press releases. Otherwise, they will hold it back. We have the Freedom of Information Act, which is a very good thing. It keeps both Democratic and Republican administrations in line.

I agree with that. Essentially, we are talking about human nature. It is only natural that elected officials and Government leaders want recognition for their successes but not their failures. But we, as a healthy democracy, need to know the good, the bad, and the ugly.

The news media, of course, is the main way people get information about the Government. The media pushes Government entities and elected officials, bureaucrats, and agencies to release information that the people have the right to know, occasionally exposing waste, fraud, and abuse—and hopefully more often than that letting the American people know what a good job their public officials are doing.

But we have also seen in recent years an expansion of other outlets for sharing information outside of the mainstream media to online communities, discussion groups, and blogs. I believe all these outlets can and do contribute to the health of our political democracy.

Let me make this clear. This is not just a bill for the media, lest anybody be confused. This is a bill that will benefit every man, woman, and child in the United States of America who cares about the Federal Government, cares about how the Federal Government operates, and ultimately cares about the success of this great democracy.

By reforming our information policies in order to guarantee true access by all citizens to Government records, we will revitalize the informed consent that keeps America free. The Open Government Act contains over a dozen substantive provisions, designed to achieve the following four objectives:

First, it will strengthen the Freedom of Information Act and close loopholes.

Secondly, it will help Freedom of Information Act requesters obtain timely responses to their requests.

Third, it will ensure that agencies have strong incentives to comply with the law in a timely fashion.

Fourth, it will provide Freedom of Information Act officials; that is, people within Government agencies, with all the tools, including the education, they need in order to ensure that our Government remains open and accessible.

This legislation is not just pro-openness, pro-accountability and pro-accessibility; it is also pro-Internet. It contains important congressional findings to reiterate the presumption of openness. It includes a provision for a hotline that enables citizens to track the requests and even allows tracking of those requests via the Internet. As a whole, the Open Government Act reiterates the principle that our Government is based not on the need to know but rather on the right to know.

We all recognize that America's security should never take a back seat. But nor should the claim, without justification, of national security be used as a barrier against allowing taxpayers to know how their money is being spent.

There is a broad consensus across the aisle, the political spectrum, that we currently overclassify Government documents, and that many documents and much information is placed beyond the public view without any real justification. I believe we need a system of classification that strikes the right balance between the need to classify documents in the interest of our national security and our national values of open government.

Our default position of the U.S. Government must be one of openness. If records can be open, they should be open. If there is a good reason to keep something closed, it is the Government that should bear the burden, not the other way around.

Open government is fundamentally an American issue. It is literally necessary to preserve our way of life as a self-governing people. Ensuring the accessibility, accountability, and openness of the Federal Government is a cause worthy of preservation, and I call on my colleagues to join the Senator from Vermont and I today in taking a meaningful step toward that goal.

Finally, before I yield the floor to the Senator from Vermont, let me again express my appreciation to him and his staff. They have worked very closely with my staff. This is one of those good Government initiatives that knows no party affiliation, no ideological affiliation, but is really one that is essential to the preservation of our way of life as a self-governing democracy.

EXHIBIT 1

OPENNESS PROMOTES EFFECTIVENESS IN OUR NATIONAL GOVERNMENT ACT OF 2005

Led by U.S. Senators John Cornyn and Patrick Leahy, the OPEN Government Act of 2005 is a bipartisan effort to achieve meaningful reforms to federal government information laws—including most notably the Freedom of Information Act of 1966 (''FOIA''). If enacted, the legislation would substantially enhance and expand the accessibility, accountability, and openness of the federal government. It has been nearly a decade since Congress has approved major reforms to FOIA. Moreover, the Senate Judiciary Committee has not convened an oversight hearing to examine FOIA compliance issues since April 30, 1992. (The Senate Homeland Security and Governmental Affairs Committee, which shares jurisdiction over federal government information laws with the Judiciary Committee, has not held a FOIA oversight hearing since 1980.)

This legislation is the culmination of months of extensive discussions between the offices of Senators Cornyn and Leahy and various members of the requestor community. The bill is supported by Texas Attorney General Greg Abbott and a broad coalition of organizations across the ideological spectrum, including:

American Association of Law Libraries
American Civil Liberties Union
American Library Association
American Society of Newspaper Editors
Associated Press Managing Editors
Association of Health Care Journalists
Center for Democracy & Technology
Coalition of Journalists for Open Government
Committee of Concerned Journalists
Education Writers Association
Electronic Privacy Information Center
Federation of American Scientists/Project on Government Secrecy
Free Congress Foundation/Center for Privacy & Technology Policy
Freedom of Information Center, University of Missouri
The Freedom of Information Foundation of Texas
The Heritage Foundation/Center for Media and Public Policy
Information Trust
National Conference of Editorial Writers
National Freedom of Information Coalition
National Newspaper Association
National Security Archive/George Washington University
Newspaper Association of America
People for the American Way
Project on Government Oversight
Radio-Television News Directors Association
The Reporters Committee for Freedom of the Press
Society of Environmental Journalists

The Act contains important Congressional findings to reiterate and reinforce the view that the Freedom of Information Act establishes a presumption of openness, and that our government is based not on the need to know, but upon the fundamental right to know. The Act also contains over a dozen substantive provisions, designed to achieve the following four objectives:

(1) Strengthen FOIA and close loopholes
(2) Help FOIA requestors obtain timely responses to their requests
(3) Ensure that agencies-have strong incentives to act on FOIA requests in a timely fashion
(4) Provide FOIA officials with all of the tools they need to ensure that our government remains open and accessible

STRENGTHEN FOIA AND CLOSE LOOPHOLES

Ensure that FOIA applies when agency recordkeeping functions are outsourced

Establish a new open government impact statement, by requiring that any future Congressional attempt to create a new FOIA exemption be expressly stated within the text of the legislation

Impose annual reporting requirement on usage of the DHS disclosure exemption for critical infrastructure information

Protect access to FOIA fee waivers for legitimate journalists, regardless of institutional association—including bloggers and other Internet-based journalists

Provide reliable reporting of FOIA performance, by requiring agencies to distinguish between first person requests for personal information and other kinds of requests

HELP FOIA REQUESTORS OBTAIN TIMELY RESPONSES

Establish FOIA hotline services, either by telephone or on the Internet, to enable requestors to track the status of their requests

Create a new FOIA ombudsman, located at the Administrative Conference of the United States, to review agency FOIA compliance and provide alternatives to litigation

Authorize reasonable recovery of attorney fees when litigation is inevitable

ENSURE THAT AGENCIES HAVE STRONG INCENTIVES TO ACT ON FOIA REQUESTS IN TIMELY FASHION

Restore meaningful deadlines for agency action by ensuring that the 20-day statutory clock runs immediately upon the receipt of the request

Impose real consequences on federal agencies for missing statutory deadlines

Enhance authority of the Office of Special Counsel to take disciplinary action against government officials who arbitrarily and capriciously deny disclosure

Strengthen reporting requirements on FOIA compliance to identify agencies plagued by excessive delay, and to identify excessive delays in fee status determinations

PROVIDE FOIA OFFICIALS WITH THE TOOLS THEY NEED TO ENSURE THAT OUR GOVERNMENT REMAINS OPEN AND ACCESSIBLE

Improve personnel policies for FOIA officials to enhance agency FOIA performance

Examine the need for FOIA awareness training for federal employees

Determine appropriate funding levels needed to ensure agency FOIA compliance

OPENNESS PROMOTES EFFECTIVENESS IN OUR NATIONAL GOVERNMENT ACT OF 2005

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. The Open Government Act of 2005.

Sec. 2. Findings. The findings reiterate the intent of Congress upon enacting the Freedom of Information Act (FOIA), 5 D.S.C. 552 as amended, and restate FOIA's presumption in favor of disclosure.

Sec. 3. Protection of Fee Status for News Media. This section amends 5 U.S.C. 552(a)(4)(A)(ii) to make clear that independent journalists are not barred from obtaining fee waivers solely because they lack an institutional affiliation with a recognized news media entity. In determining whether to grant a fee waiver, an agency shall consider the prior publication history of the requestor. If the requestor has no prior publication history and no current affiliation with a news organization, the agency shall review the requestor's plans for disseminating the requested material and whether those plans include distributing the material to a reasonably broad audience.

Sec. 4. Recovery of Attorney Fees and Litigation Costs. This section, the so-called Buckhannon fix, amends 5 U.S.C. 552(a)(4)(E) to clarify that a complainant has substantially prevailed in a FOIA lawsuit, and is eligible to recover attorney fees, if the complainant has obtained a substantial part of his requested relief through a judicial or administrative order or if the pursuit of a claim was the catalyst for the voluntary or unilateral change in position by the opposing party. The section responds to the Supreme Court's ruling in Buckhannon Board and Care Home, Inc. v. West Virginia Dep't of Health and Human Resources, 532 U.S. 598 (2001), which eliminated the ''catalyst theory'' of attorney fee recovery under certain Federal civil rights laws. FOIA requestors have raised concerns that the holding in Buckhannon could be extended to FOIA cases. This section preserves the ''catalyst theory'' in FOIA litigation.

Sec. 5. Disciplinary Actions for Arbitrary and Capricious Rejections of Requests. FOIA currently requires that when a court finds that agency personnel have acted arbitrarily or capriciously with respect to withholding documents, the Office of Special Counsel

shall determine whether disciplinary action against the involved personnel is warranted. See 5 U.S.C. 552(a)(4)(F). This section of the bill amends FOIA to require the Attorney General to notify the Office of Special Counsel of any such court finding and to report the same to Congress. It further requires the Office of Special Counsel to report annually to Congress on any actions taken by the Special Counsel to investigate cases of this type.

Sec. 6. Time Limits for Agencies to Act on Requests. The section clarifies that the 20-day time limit on responding to a FOIA request commences on the date on which the request is first received by the agency. Further, the section states that if the agency fails to respond within the 20-day limit, the agency may not then assert any FOIA exemption under 5 U.S.C. 552(b), except under limited circumstances such as endangerment to national security or disclosure of personal private information protected by the Privacy Act of 1974, unless the agency can demonstrate, by clear and convincing evidence, good cause for failure to comply with the time limits.

Sec. 7. Individualized Tracking Numbers for Requests and Status Information. Requires agencies to establish tracking systems by assigning a tracking number to each FOIA request: notifying a requestor of the tracking number within ten days of receiving a request; and establishing a telephone or Internet tracking system to allow requestors to easily obtain information on the status of their individual requests, including an estimated date on which the agency will complete action on the request.

Sec. 8. Specific Citations in Exemptions. 5 U.S.C. 552(b)(3) states that records specifically exempted from disclosure by statute are exempt from FOIA. This section of the bill provides that Congress may not create new statutory exemptions under this provision of FOIA unless it does so explicitly. Accordingly, for any new statutory exemption to have effect, the statute must cite directly to 5 U.S.C. 552(b)(3), thereby conveying congressional intent to create a new (b)(3) exemption.

Sec. 9. Reporting Requirements. This section adds to current reporting requirements by mandating disclosure of data on the 10 oldest active requests pending at each agency, including the amount of time elapsed since each request was originally filed. This section further requires agencies to calculate and report on the average response times and range of response times of FOIA requests. (Current requirements mandate reporting on the median response time.) Finally, this section requires reports on the number of fee status requests that are granted and denied and the average number of days for adjudicating fee status determinations by individual agencies.

Sec. 10. Openness of Agency Records Maintained by a Private Entity. This section clarifies that agency records kept by private contractors licensed by the government to undertake recordkeeping functions remain subject to FOIA just as if those records were maintained by the relevant government agency.

Sec. 11. Office of Government Services. This section establishes an Office of Government Information Services within the Administrative Conference of the U.S. Within that office will be appointed a FOIA ombudsman to review agency policies and procedures, audit agency performance, recommend policy changes, and mediate disputes between FOIA requestors and agencies. The establishment of an ombudsman will not impact the ability of requestors to litigate FOIA claims, but rather will serve to alleviate the need for litigation whenever possible.

Sec. 12. Accessibility of Critical Infrastructure Information. This section requires reports on the implementation of the Critical Infrastructure Information Act of 2002, 6 U.S.C. 133. Reports shall be issued from the Comptroller General to the Congress on the number of private sector, state, and local agency submissions of CII data to the Department of Homeland Security and the number of requests for access to records. The Comptroller General will also be required to report on whether the nondisclosure of CII material has led to increased protection of critical infrastructure.

Sec. 13. Report on Personnel Policies Related to FOIA. This section requires the Office of Personnel Management to examine how FOIA can be better implemented at the agency level, including an assessment of whether FOIA performance should be considered as a factor in personnel performance reviews, whether a job classification series specific to FOIA and the Privacy Act should be considered, and whether FOIA awareness training should be provided to federal employees.

EXHIBIT 2

FEBRUARY 15, 2005.

Hon. JOHN CORNYN,
Chairman, U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights & Property Rights, Washington DC.

DEAR SENATOR CORNYN: I strongly endorse the proposed OPEN Government Act or 2005, which will strengthen the federal Freedom of Information Act (FOIA) and advance government openness.

James Madison once observed that ''[k]nowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.'' The Father of the Constitution recognized that our constitutional democracy, which is rooted in self-government, requires the informed consent of the people. I share Madison's belief, and yours, that a government of the people, by the people, and for the people must operate in full view of the people. Openness and accountability—not secrecy and concealment—are what keep democracies strong and enduring.

A commitment to open government underpins both FOIA and the Texas Public Information Act, which you interpreted and forcefully defended as the 49th Attorney General of Texas. As your successor I am proud that Texas leads the nation in promoting open government and privileged to build upon your efforts to make sure the public's business is conducted in full sunshine. As you know, the Texas Public Information Act declares that ''government is the servant and not the master of the people,'' and ''[t]he people do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.''

The OPEN Government Act of 2005 will bring similar benefits to all Americans and ensure that FOIA finally lives up to its noble ideals. By closing loopholes and enabling government to be more responsive to requests for information, the OPEN Govermnent Act of 2005 will modernize FOIA's nearly 40-year-old commitment to open and accessible government.

Our system of self-government does not rest on the public's need to know, but on its fundamental right to know. Your proposed legislation will codify this venerable standard in federal law and reinforce one of our nation's first principles: open government leads inexorably to good government.

I cannot overstate my support for these important reforms and commend you for your exceptional leadership on this issue.

Sincerely,

GREG ABBOTT,
Attorney General of Texas.

AMERICAN ASSOCIATION OF LAW LIBRARIES,
WASHINGTON AFFAIRS OFFICE,
Washington, DC, February 14, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: On behalf of the American Association of Law Libraries, I commend you for your leadership in promoting access to government information by introducing the Openness Promotes Effectiveness in our National (OPEN) Government Act of 2005. We share your belief that accessible government information is both an essential principle of a democratic society and a valuable public good.

The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5000 members nationwide who respond to the legal information needs of legislators, judges, and other public officials at all levels of government, corporations and small businesses, law professors and students, attorneys, and members of the general public. Our mission is to promote and enhance the value of law libraries, to foster law librarianship and to provide leadership and advocacy in the field of legal information and information policy.

AALL believes that public inspection of government records, including electronic records, under the Freedom of Information Act (FOIA) is the foundation for citizen access to government information. The OPEN Government Act of 2005 provides important and timely amendments to FOIA. AALL supports this important legislation and we look forward to working with you to ensure its prompt enactment.

Sincerely,

MARY ALICE BAISH,
Associate Washington Affairs Representative.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, February 14, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATORS CORNYN AND LEAHY: On behalf of the American Civil Liberties Union and its more than 400,000 members, we are pleased to endorse the Openness Promotes Effectiveness in our National Government Act of 2005, the ''OPEN Government Act of 2005.''

As the Supreme Court has made clear, ''disclosure, not secrecy, is the dominant objective of the Act,'' Department of the Air Force v. Rose, 425 U.S. 352 (1976). Nevertheless, secrecy, not openness, all too often seems to be the dominant trend of agencies in recent times.

The OPEN Government Act includes a series of much-needed corrections to policies that have eroded the promise of the Freedom of Information Act (FOIA). These include ensuring requesters will have timely information on the status of their requests, enforceable time limits for agencies to respond to requests, news media status rules that recognize the reality of freelance journalists and the Internet, and strong incentives—including both carrots and sticks—for agency employees to improve FOIA compliance. The OPEN Government Act also includes a much needed review of the new exemption in the Homeland Security Act for critical infrastructure information.

James Madison warned against ''a popular Government without popular information,'' saying that ''a people who mean to be their own Governors, must arm themselves with the power knowledge gives.'' We strongly urge passage of the OPEN Government Act

of 2005 to help restore to the people some of that power.

Sincerely,

LAURA W. MURPHY,
Director, Washington Legislative Office.
TIMOTHY H. EDGAR,
Legislative Counsel.

AMERICAN SOCIETY OF NEWSPAPER EDITORS,
Reston, VA, February 9, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: On behalf of the American Society of Newspaper Editors (ASNE), I am writing to congratulate you on the Introduction of the ''Open Government Act.'' Since the organization was founded in 1922, ASNE's membership of directing editors of dally newspapers throughout the United States has worked to assist journalists and provide an unfettered and effective press in the service of the American people.

ASNE is proud to endorse the Open Government Act as legislation that can help us achieve these ideals. As you wrote in your recent article in the LBJ Journal of Public Affairs, ''Our national commitment to democracy and freedom is not merely some abstract notion. It is a very real and continuing effort, and an essential element of that effort is an open and accessible government'' The Open Government Act is a ringing reminder that the Freedom of Information Act (FOIA) is the cornerstone of this principle. Your bill comes at a time when many executive agencies are able to shortcut FOIA's guarantees of access to government documents while avoiding any repercussion for their actions.

We appreciate your desire to provide a meaningful enforcement mechanism for those who see that FOIA is not achieving its promise of open and accessible records for all. The bill's pragmatic focus on procedural, rather than substantive, change is noteworthy; instead of rewriting the law in a way that would promote or disfavor certain special interests, you wisely seek to bring government and citizenry together to make FOIA more efficient and effective.

ASNE applauds your efforts and joins you in urging passage of this bill in the 109th Congress.

Sincerely,

KARLA GARRETT HARSHAW,
President.

FEDERATION OF AMERICAN SCIENTISTS,
Washington, DC, February 4, 2005.

Senator JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: I am writing to express the support of the Federation of American Scientists for your continuing efforts to promote openness in government, and specifically for your proposed legislation to strengthen the Freedom of Information Act (FOIA).

It is our belief that openness generally, and the FOIA in particular, have an importance that transcends the usual political divides. By making information available to our citizens, we advance the ideals of democratic self-governance that we all share.

Your proposed legislation would strengthen the FOIA in several important ways: It would reverse recent trends to use fee recovery as an impediment to FOIA processing; it would strengthen the position of requesters who are forced to pursue litigation to gain the records they seek; it would enhance and clarify the administration of the FOIA; and it would create an important new mechanism to audit agency compliance with the FOIA, among other important provisions.

Perhaps most fundamentally, your legislation marks a hopeful new resurgence of congressional attention to these fundamental issues.

Thank you for your leadership.

Sincerely,

STEVEN AFTERGOOD,
Project Director,
FAS Project on Government Secrecy.

FREE CONGRESS FOUNDATION,
Washington, DC, February 11, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: We would like to commend your introduction of the OPEN Government Act of 2005.

Conservatives believe checks and balances are essential to our system of government. One important check is to ensure that citizens and the news media have access to what the Federal Government's departments and agencies are doing. Unfortunately, as noted by Austin American Statesman reporter Chuck Lindell, too often the Federal Government's bureaucracy demonstrates no interest in replying to such requests in a timely and efficient manner. It prefers to operate in darkness, not having their actions exposed to the sunlight of public scrutiny.

Citizens have a right to know what the Federal Government is doing with their tax dollars. The fact that the Department of Agriculture and the Environmental Protection Agency can take years to answer requests for information should be disturbing to conservatives who bemoan the arrogance and unresponsiveness of Big Government. Every citizen and every news reporter is entitled to a prompt answer to their request for information.

''The buck stops here'' is a snappy soundbite, and may have once represented a workable philosophy of governing in simpler times. The reality is that in today's Washington it's hard to tell where the buck is because it is simply obscured by an unresponsive bureaucracy. Ironically, technology and increasing expectations of transparency in government render the mindset practiced by a recalcitrant bureaucracy obsolete. A measure such as the OPEN Government Act of 2005 can help level the playing field in favor of the citizenry.

Sincerely,

STEVE LILIENTHAL,
Director,
Center for Privacy & Technology Policy.

THE FREEDOM OF INFORMATION FOUNDATION OF TEXAS,
Dallas, TX, February 8, 2005.

Ms. KATHERINE GARNER,
Executive Director.

DEAR BOARD MEMBERS: United States Senator John Cornyn will introduce legislation to strengthen the Freedom of Information Act next week. Among other things, the Open Government Act of 2005 would provide meaningful deadlines for federal agencies to act on Freedom of Information requests and impose consequences on federal agencies for missing statutory deadlines. In light of the fact that some federal agencies have had requests for information pending for as long as seventeen years, the Foundation believes Senator Cornyn's proposals are much needed and overdue. The proposed legislation would also make it easier for successful litigants to recover their attorney's fees when litigation becomes necessary, strengthen reporting requirements on government agencies' FOIA compliance, establish an ombudsman to resolve FOIA complaints without the need to resort to litigation and enhance the authority of the Office of Special Counsel to take disciplinary action against government officials who arbitrarily and capriciously deny disclosure.

The Foundation therefore enthusiastically endorses Senator Cornyn's proposed legislation and encourages each of your organizations to do the same.

Sincerely,

JOEL R. WHITE.

THE HERITAGE FOUNDATION,
CENTER FOR MEDIA AND PUBLIC POLICY,
Washington, DC, February 11, 2005.

Sen. JOHN CORNYN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CORNYN: Insuring the continuance of our Republican liberty depends upon maintaining the right of the people to know as much as possible about what their government is doing in order to hold the public officials and employees accountable.

Protecting this accountability tool grows ever more important as the power of the federal government continues its historic growth, with its attendant tendency continually to become more and more resistant to genuine transparency. That is why a healthy Freedom of Information Act is so vital.

But while the federal government has grown exponentially since passage of the FOIA in 1966, the law's effectiveness has steadily declined as politicians and career bureaucrats with a shared interest in avoiding accountability have become increasingly skilled at exploiting loopholes, creatively interpreting administrative provisions and relying upon the paucity of legal resources available to many requestors to avoid satisfying either the letter or spirit of the statute.

Indeed, the National Security Archive's 2003 survey that found an FOIA system ''in extreme disarray.'' The Archive found that ''agency contact information on the web was often inaccurate; response times largely failed to meet the statutory standard; only a few agencies performed thorough searches, including e-mail and meeting notes; and the lack of central accountability at the agencies resulted in lost requests and inability to track progress.''

I believe the comprehensive package of reforms contained in ''The Open Government Act of 2005'' would go far in restoring the effectiveness of the FOIA as an accountability tool for the people in dealing with their government.

We must remember that transparency and accountability are the strongest antidotes to the inevitable abuses of Big Government and are thus essential guarantors of every individual's liberty and prerequisites for the maintenance of our common security.

Sincerely,

MARK TAPSCOTT,
Director.

NATIONAL NEWSPAPER ASSOCIATION,
WASHINGTON PROGRAMS,
Arlington, VA, February 9, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington DC.

DEAR SENATOR CORNYN: The National Newspaper Association, an organization representing over 2,500 community newspapers nationwide, supports your efforts to strengthen the Freedom of Information Act. The OPEN Government Act of 2005 is a sound step toward a better FOIA.

Openness and transparency in government is vital to the proper functioning of a democratic government. Ensuring unhindered access to government information by the public is the utmost responsibility of our elected leaders, for without this access, it would be impossible for the consent of the governed to be truly informed.

The Freedom of Information Act is an important tool in achieving this lofty goal, and

it has proven to be useful to community newspapers around the country. The Act requires continual oversight from Congress to ensure the spirit of the law remains intact. Congress has neglected this duty in recent years, and we are pleased that you have undertaken efforts to rectify this neglect.

We want to emphasize that FOIA serves a function beyond providing records to requesters filing written requests. It also serves as a talisman for openness in similar state laws. It provides a framework for releasing information that is informally requested by journalists and others—a function of particular importance to community newspapers.

We will look forward to working with you as the bill is considered by the Judiciary Committee.

Sincerely,

MATTHEW PAXTON,
Chairman,
Government Relations Committee.

NEWSPAPER ASSOCIATION OF AMERICA,
Vienna, VA, February 10, 2005.

Hon. JOHN CORNYN,
Chairman, Senate Judiciary Subcommittee on the Constitution, Civil Rights, & Property Rights, Washington, DC.

DEAR SENATOR CORNYN: On behalf of the Newspaper Association of America (NAA), a non-profit organization representing more than 2,000 newspapers in the United States and Canada, I want to thank you for introducing the Open Government Act of 2005.

The Freedom of Information Act is premised on the belief that an informed citizenry is essential to democracy. The Open Government Act will strengthen the Freedom of Information Act and send a clear message that the openness and accessibility of the federal government is a vital part of our democratic process.

We commend you for your outstanding leadership, especially with regard to the inclusion of the provisions that would close current FOIA loopholes, prevent new ones, and restore meaningful deadlines for agency action on FOIA requests. Additionally, the legislation will make it easier for the public to access information about their government through the creation of a FOIA ombudsmen, agency FOIA hotlines, and tracking systems for FOIA requests.

Thank you again for your leadership on this important issue. We look forward to working with you and your staff in the coming months to ensure passage of the Open Government Act of 2005 in the 109th Congress.

Thanks for reading,

JOHN F. STURM,
President and CEO.

PEOPLE FOR THE AMERICAN WAY,
Washington, DC, February 9, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATORS CORNYN AND LEAHY: On behalf of People For the American Way (PFAW) and its more than 675,000 members and supporters, I write in support of your efforts to strengthen the Freedom of Information Act (FOIA) and promote greater public access to government records through the proposed Open Government Act of 2005 (OGA).

Open government is a vital component of this country's democratic framework, allowing citizens to learn about the activities of their government and helping ensure government accountability. FOIA, which permits public access to federal records, has helped establish the public's right to obtain government information and created a strong presumption in favor of disclosure. Serious problems have arisen with full and timely agency compliance with FOIA and its goals, however, necessitating the types of important FOIA reforms contemplated in the OGA.

In particular, PFAW is supportive of the Act's use of penalties to enforce compliance with FOIA deadlines, particularly the provision imposing a presumptive waiver of FOIA exemptions when an agency fails to meet the 20-day production deadline, and the requirement that Congress be explicit when it considers creating additional exemptions under 5 U.S.C. 552(b)(3).

We also support the provision in the bill that would permit an award of attorney fees when a nonfrivolous lawsuit has served as the catalyst for voluntary disclosure of a substantial part of a FOIA request. It is imperative that a requester—who must incur litigation costs to enforce agency compliance with the law—be able to recover attorneys' fees and litigation costs in such cases, particularly in order to discourage arbitrary and unlawful agency rejections of legitimate FOIA requests.

Finally, we believe that the various record-keeping and monitoring provisions of the Open Government Act—including monitoring of the Department of Homeland Security's use of its ''critical infrastructure information'' exemption and mandatory agency disclosure of the 10 oldest active requests—are useful and necessary to ensure the integrity of the open government process and to gather the information needed to modify and adjust our open government laws going forward.

We applaud your efforts to reaffirm the vital importance of open government in this country and believe that the Open Government Act is an encouraging first step toward that goal.

Sincerely,

RALPH G. NEAS,
President.

Mr. CORNYN. Mr. President, 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. 394

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 ''Openness Promotes Effectiveness in our National Government Act of 2005'' or the ''OPEN Government Act of 2005''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Freedom of Information Act was signed into law on July 4, 1966, because the American people believe that—

(A) our constitutional democracy, our system of self-government, and our commitment to popular sovereignty depends upon the consent of the governed;

(B) such consent is not meaningful unless it is informed consent; and

(C) as Justice Black noted in his concurring opinion in Barr v. Matteo (360 U.S. 564 (1959)), ''The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality of government service rendered by all elective or appointed public officials or employees.'';

(2) the American people firmly believe that our system of government must itself be governed by a presumption of openness;

(3) the Freedom of Information Act establishes a ''strong presumption in favor of disclosure'' as noted by the United States Supreme Court in United States Department of State v. Ray (502 U.S. 164 (1991)), a presumption that applies to all agencies governed by that Act;

(4) ''disclosure, not secrecy, is the dominant objective of the Act,'' as noted by the United States Supreme Court in Department of Air Force v. Rose (425 U.S. 352 (1976));

(5) in practice, the Freedom of Information Act has not always lived up to the ideals of that Act; and

(6) Congress should regularly review section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), in order to determine whether further changes and improvements are necessary to ensure that the Government remains open and accessible to the American people and is always based not upon the ''need to know'' but upon the fundamental ''right to know''.

SEC. 3. PROTECTION OF FEE STATUS FOR NEWS MEDIA.

Section 552(a)(4)(A)(ii) of title 5, United States Code, is amended by adding at the end the following:

''In making a determination of a representative of the news media under subclause (II), an agency may not deny that status solely on the basis of the absence of institutional associations of the requester, but shall consider the prior publication history of the requester. Prior publication history shall include books, magazine and newspaper articles, newsletters, television and radio broadcasts, and Internet publications. If the requestor has no prior publication history or current affiliation, the agency shall consider the requestor's stated intent at the time the request is made to distribute information to a reasonably broad audience.''.

SEC. 4. RECOVERY OF ATTORNEY FEES AND LITIGATION COSTS.

Section 552(a)(4)(E) of title 5, United States Code, is amended by adding at the end the following: ''For purposes of this section, a complainant has 'substantially prevailed' if the complainant has obtained a substantial part of its requested relief through a judicial or administrative order or an enforceable written agreement, or if the complainant's pursuit of a nonfrivolous claim or defense has been a catalyst for a voluntary or unilateral change in position by the opposing party that provides a substantial part of the requested relief.''.

SEC. 5. DISCIPLINARY ACTIONS FOR ARBITRARY AND CAPRICIOUS REJECTIONS OF REQUESTS.

Section 552(a)(4)(F) of title 5, United States Code, is amended—

(1) by inserting ''(i)'' after ''(F)''; and

(2) by adding at the end the following:

''(ii) The Attorney General shall—

''(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

''(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

''(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).''.

SEC. 6. TIME LIMITS FOR AGENCIES TO ACT ON REQUESTS.

(a) TIME LIMITS.—

(1) IN GENERAL.—Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by inserting '', and the 20-day period shall commence on the date on which the request is first received by the agency, and shall not be tolled without the consent of the party filing the request'' after ''adverse determination''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act.

(b) AVAILABILITY OF AGENCY EXEMPTIONS.—

(1) IN GENERAL.—Section 552(a)(6) of title 5, United States Code, is amended by adding at the end the following:

''(G)(i) If an agency fails to comply with the applicable time limit provisions of this paragraph with respect to a request, the agency may not assert any exemption under subsection (b) to that request, unless disclosure—

''(I) would endanger the national security of the United States;

''(II) would disclose personal private information protected by section 552a or proprietary information; or

''(III) is otherwise prohibited by law.

''(ii) A court may waive the application of clause (i) if the agency demonstrates by clear and convincing evidence that there was good cause for the failure to comply with the applicable time limit provisions.''.

(2) EFFECTIVE DATE AND APPLICATION.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.

SEC. 7. INDIVIDUALIZED TRACKING NUMBERS FOR REQUESTS AND STATUS INFORMATION.

(a) IN GENERAL.—Section 552(a) of title 5, United States Code, is amended by adding at the end the following:

''(7) Each agency shall—

''(A) establish a system to assign an individualized tracking number for each request for information under this section;

''(B) not later than 10 days after receiving a request, provide each person making a request with the tracking number assigned to the request; and

''(C) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

''(i) the date on which the agency originally received the request; and

''(ii) an estimated date on which the agency will complete action on the request.''.

(b) EFFECTIVE DATE AND APPLICATION.—The amendment made by this section shall take effect 1 year after the date of enactment of this Act and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.

SEC. 8. SPECIFIC CITATIONS IN EXEMPTIONS.

Section 552(b) of title 5, United States Code, is amended by striking paragraph (3) and inserting the following:

''(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute—

''(A) if enacted after the date of enactment of the Openness Promotes Effectiveness in our National Government Act of 2005, specifically cites to this section; and

''(B)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

''(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;''.

SEC. 9. REPORTING REQUIREMENTS.

Section 552(e)(1) of title 5, United States Code, is amended—

(1) in subparagraph (F), by striking ''and'' after the semicolon;

(2) in subparagraph (G), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(H) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally filed;

''(I) the average number of days for the agency to respond to a request beginning the date on which the request was originally filed, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests; and

''(J) the number of fee status requests that are granted and denied, and the average number of days for adjudicating fee status determinations.

When reporting the total number of requests filed, agencies shall distinguish between first person requests for personal records and other kinds of requests, and shall provide a total number for each category of requests.''.

SEC. 10. OPENNESS OF AGENCY RECORDS MAINTAINED BY A PRIVATE ENTITY.

Section 552(f) of title 5, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) 'record' and any other term used in this section in reference to information includes—

''(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

''(B) any information described under subparagraph (A) that is maintained for an agency by an entity under a contract between the agency and the entity.''.

SEC. 11. OFFICE OF GOVERNMENT INFORMATION SERVICES.

(a) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended—

(1) by redesignating section 596 as section 597; and

(2) by inserting after section 595 the following:

''§ 596. Office of Government Information Services

''(a) There is established the Office of Government Information Services within the Administrative Conference of the United States.

''(b) The Office of Government Information Services shall—

''(1) review policies and procedures of administrative agencies under section 552 and compliance with that section by administrative agencies;

''(2) conduct audits of administrative agencies on such policies and compliance and issue reports detailing the results of such audits;

''(3) recommend policy changes to Congress and the President to improve the administration of section 552, including whether agencies are receiving and expending adequate funds to ensure compliance with that section; and

''(4) offer mediation services between persons making requests under section 552 and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, issue advisory opinions if mediation has not resolved the dispute.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by striking the item relating to section 596 and inserting the following:

''596. Office of Government Information Services.

''597. Authorization of appropriations.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of enactment of this Act.

SEC. 12. ACCESSIBILITY OF CRITICAL INFRASTRUCTURE INFORMATION.

(a) IN GENERAL.—Not later than January 1 of each of the 3 years following the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the implementation and use of section 214 of the Homeland Security Act of 2002 (6 U.S.C. 133), including—

(1) the number of persons in the private sector, and the number of State and local agencies, that voluntarily furnished records to the Department under this section;

(2) the number of requests for access to records granted or denied under this section;

(3) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats; and

(4) an examination of whether the nondisclosure of such information has led to the increased protection of critical infrastructure.

(b) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 13. REPORT ON PERSONNEL POLICIES RELATED TO FOIA.

Not later than 1 year after the date of enactment of this Act, the Office of Personnel Management shall submit to Congress a report that examines—

(1) whether changes to executive branch personnel policies could be made that would—

(A) provide greater encouragement to all Federal employees to fulfill their duties under section 552 of title 5, United States Code; and

(B) enhance the stature of officials administering that section within the executive branch;

(2) whether performance of compliance with section 552 of title 5, United States Code, should be included as a factor in personnel performance evaluations for any or all categories of Federal employees and officers;

(3) whether an employment classification series specific to compliance with sections 552 and 552a of title 5, United States Code, should be established;

(4) whether the highest level officials in particular agencies administering such sections should be paid at a rate of pay equal to or greater than a particular minimum rate ; and

(5) whether other changes to personnel policies can be made to ensure that there is a clear career advancement track for individuals interested in devoting themselves to a career in compliance with such sections; and

(6) whether the executive branch should require any or all categories of Federal employees to undertake awareness training of such sections.

Mr. LEAHY. Mr. President, I am pleased to join as a partner with the Senator from Texas in introducing the OPEN Government Act of 2005. I have devoted a considerable portion of my work in the Senate to improving Government oversight, Government openness and citizen ''right-to-know'' laws to make Government work better for the American people, and at times it has been a lonely battle. Finding dedicated allies on the other side of the aisle has proven difficult. That is why I am delighted to have a partner in JOHN CORNYN. Senator CORNYN has a distinguished record of supporting open government dating back to his days as Attorney General of Texas. In fact,

some of the provisions in the bill we introduce today are modeled after sections of the Texas Public Information Act.

I believe that we both see this effort as the first of many bipartisan steps we can take together in the new Congress. Senator CORNYN and I began to forge a partnership on improving public access to Government information well over a year ago when, during the 108th Congress, we worked with several other Senators and with the Library of Congress to improve the publicly accessible congressional information website, THOMAS. He and I also cooperated last fall in a successful effort to ensure that ''government information,'' including the application of the Freedom of Information Act, FOIA, be subject to the jurisdiction of both the Judiciary Committee and the newly constituted Homeland Security and Governmental Affairs Committee.

The bill we introduce today is a collection of commonsense modifications designed to update FOIA and improve the timely processing of FOIA requests by Federal agencies. It was drafted after a long and thoughtful process of consultation with individuals and organizations that rely on FOIA to obtain information and share it with the public, including the news media, librarians, and public interest organizations representing all facets of the political spectrum.

The OPEN Government Act reaffirms the fundamental premise of FOIA: Government information belongs to all Americans and should be subject to a presumption in favor of disclosure. James Madison said that ''a popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or tragedy or perhaps both.'' His caution rings just as true today. The public's right to know what its government is doing promotes accountability, imbues trust and contributes to our system of checks and balances.

First enacted in 1966, FOIA represents the foundation of our modern open Government laws. In 1996, I was the principal author of the Electronic Freedom of Information Act Amendments, which updated FOIA for the internet age. The bill we introduce today is the next step: a practical set of important modifications that respond to common complaints and limitations in the current system that we have heard, whether from frequent FOIA requestors, such as representatives of the press, or individual citizens who may only occasionally rely on FOIA, but who nonetheless deserve timely and comprehensive responses to their requests.

Chief among the problems with FOIA implementation is agency delay. Following the successful model of the Texas Public Information Act, this legislation imposes penalties on agencies that miss statutory deadlines to release documents and strengthens reporting requirements on FOIA compliance.

The OPEN Government Act responds to some confusion over the applicability of FOIA to agency records that are held by outside private contractors. It does this by clarifying that such records are subject to FOIA wherever they are located.

Our legislation establishes an ombudsman to mediate FOIA disputes between agencies and requestors, a step that many FOIA requestors believe will help to ameliorate the need for FOIA litigation in the Federal courts. We hope that this mechanism will work to the benefit of all parties. However, where mediation fails to resolve disputes, our bill preserves the rights of requestors to litigate under FOIA.

Our bill responds to recent Federal jurisprudence by explicitly providing for recovery of attorneys' fees under the so-called ''catalyst theory.'' That is, where a FOIA lawsuit was the catalyst for an agency determination to release documents prior to a court's entry of judgment, the plaintiff may recover attorneys' fees.

Finally, the bill requires reports on a controversial law, the Critical Infrastructure Information Act, enacted as part of the Homeland Security Act of 2002, and it protects fee-waiver status for journalists under FOIA.

Letters of support for the OPEN Government Act have been submitted by the American Association of Law Libraries, American Civil Liberties Union, American Library Association, American Society of Newspaper Editors, Associated Press Managing Editors, Association of Health Care Journalists, Center for Democracy & Technology, Coalition of Journalists for Open Government, Committee of Concerned Journalists, Education Writers Association, Electronic Privacy Information Center, Federation of American Scientists/Project on Government Secrecy, Free Congress Foundation/Center for Privacy & Technology Policy, Freedom of Information Center/University of Missouri, The Freedom of Information Foundation of Texas, The Heritage Foundation/Center for Media and Public Policy, Information Trust, National Conference of Editorial Writers, National Freedom of Information Coalition, National Newspaper Association, National Security Archive/George Washington University, Newspaper Association of America, People for the American Way, Project on Government Oversight, Radio-Television News Directors Association, The Reporters Committee for Freedom of the Press, and the Society of Environmental Journalists.

The Freedom of Information Act is an invigorating mechanism that helps keep our government more open and effective and closer to the American people. FOIA has had serious setbacks in recent years that endanger its effectiveness. This legislation is a rare chance to advance the public's right to know.

I thank my colleague, the Senator from Texas, for the time and effort he has devoted to protecting the public's right to know, and I urge all members of the Senate to join us in supporting this important legislation.

By Mr. FEINGOLD:

S. 395. A bill to amend the Buy American Act to increase the requirement for American-made content, and to tighten the waiver provisions, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. FEINGOLD. Mr. President, today I am introducing the second in a series of bills intended to support American companies and American workers. Yesterday, I submitted S. Con. Res. 12, which would set some minimum standards for future trade agreements into which our country enters.

The bill that I am introducing today, the Buy American Improvement Act, focuses on the Federal Government's responsibility to support domestic manufacturers and workers and on the role of Federal procurement policy in achieving this goal. The reintroduction of this bill, which I first introduced in 2003, is part of my ongoing effort to find ways to stem the flow of manufacturing jobs abroad.

The Buy American Act of 1933 is the primary statute that governs Federal procurement. The name of this law accurately and succinctly describes its purpose: to ensure that the Federal Government supports domestic companies and domestic workers by buying American-made goods. This is an important law but, regrettably, it contains a number of loopholes that make it too easy for government agencies to buy foreign-made goods.

My bill, the Buy American Improvement Act, would strengthen the existing act by tightening its waiver provisions. Currently, the heads of Federal departments and agencies are given broad discretion to waive the Act and buy foreign goods. We should ensure that the Federal Government makes every effort to give Federal contracts to companies that will perform the work domestically. We should also ensure that certain types of industries do not leave the United States completely, thus making the Federal Government dependent on foreign sources for goods, such as plane or ship parts, that our military may need to acquire on short notice.

I have often heard my colleagues say on this floor that American-made goods are the best in the world. I could not agree more. Regrettably, nearly 80,000 good-paying manufacturing jobs have left my state since 2000. And the country has lost more than two-and-one-half million manufacturing jobs since January 2001, including more than 25,000 jobs last month alone. This hemorrhaging of jobs shows no signs of stopping. Congress should do more to support domestic manufacturers and their employees. One way to do this is to ensure that the Federal Government makes every effort to buy American-made goods.

There are five primary waivers to the Buy American Act, and my bill addresses four of them The first of these waivers allows an agency head to buy foreign goods if complying with the Act would be ''inconsistent with the public interest.'' I am concerned that this waiver, which includes no definition for what is ''inconsistent with the public interest,'' is actually a gaping loophole that gives too much discretion to department secretaries and agency heads. My bill would modify this waiver provision to prohibit it from being invoked by an agency or department head after a request for proposals, or RFP, has been published in the Federal Register. Once the bidding process has begun, the Federal Government should not be able to pull an RFP by saying that it is in the ''public interest'' to do so. This determination, sometimes referred to as the Buy American Act's national security waiver, should be made well in advance of placing a procurement up for bid. To do otherwise pulls the rug out from under companies that are spending valuable time and resources to prepare a bid for a Federal contract.

The Buy American Act may also be waived if the head of the agency determines that the cost of the lowest-priced domestic product is ''unreasonable,'' and a system of price differentials is used to assist in making this determination. My bill would modify this waiver to require that preference be given to the American company if that company's bid is substantially similar to the lowest foreign bid or if the American company is the only domestic source for the item to be procured.

I have a long record of supporting efforts to help taxpayers get the most bang for their buck and of opposing wasteful Federal spending. I don't think anyone can argue that supporting American jobs is ''wasteful.'' We owe it to American manufacturers and their employees to make sure they get a fair shake. I would not support awarding a contract to an American company that is price gouging, but we should make every effort to ensure that domestic sources for goods needed by the Federal Government do not dry up because American companies have been slightly underbid by foreign competitors.

The Buy American Act also includes a waiver for goods bought by the Federal Government that will be used outside of the United States. There is no question that there are occasions when the Federal Government needs to procure items quickly for use outside the United States, such as in a time of war. However, there may be items that are bought on a regular basis and used at foreign military bases or United States embassies, for example, that could reasonably be procured from domestic sources and shipped to the location where they will be used. My bill would require Federal agencies to compare the difference in cost for obtaining articles that are used on regular basis outside the U.S., or that are not needed immediately, between an overseas versus a domestic source—including the cost of shipping—before awarding the contract to the company that will do the work overseas.

The Buy American Act's domestic source requirements may also be waived if the articles to be procured are not available from domestic sources ''in sufficient and reasonably available commercial quantities and of a satisfactory quality.'' My bill would require that an agency or department head, prior to issuing such a waiver, determine whether domestic production can be initiated to meet the procurement needs and whether a comparable article, material, or supply is available domestically.

My bill would also strengthen the Buy American Act in four other ways. It would, for the first time, make the Buy American requirement applicable to the United States Congress. The current definition of a Federal agency in the Act specifically exempts the Senate, the House, and Architect of the Capitol, and activities under the direction of the Architect. I believe that Congress should lead by example and comply with the Buy American Act—a requirement that we have imposed on executive agencies.

Secondly, my bill would increase the minimum American content standard qualification under the Act from the current 50 percent to 75 percent. The definition of what qualifies as an American-made product has been a source of much debate. To me, it seems clear that American-made means manufactured in this country. This classification is a source of pride for manufacturing workers around our country. The current 50 percent standard should be raised to a minimum of 75 percent.

In addition, my bill would make permanent the expanded reporting requirement that I authored which was first enacted as part of the fiscal year 2004 omnibus spending bill and was extended as part of the fiscal year 2005 omnibus spending bill. Prior to the enactment of these provisions, only the Department of Defense was required to report to Congress on its use of Buy American waivers and purchases of foreign goods. It is virtually impossible to get hard numbers on the Federal Government's purchases of foreign- and domestic-made goods and to ensure that there is disclosure and accountability in the waiver process.

The annual report to be submitted by agency heads will be required to include the following information: the dollar value of any items purchased that were manufactured outside of the United States; an itemized list of all applicable waivers granted with respect to such items under the Buy American Act; and a summary of the total procurement funds spent by the Federal agency on goods manufactured in the United States versus on goods manufactured overseas. In addition, my bill also requires that the heads of all Federal agencies make these annual reports publicly available on the Internet.

My bill also seeks to prevent dual-use technologies from falling into the hands of terrorists or countries of concern by prohibiting the awarding of overseas contracts or sub-contracts that would require the transfer of information relating to any item that is classified as a dual-use item on the Commerce Control List unless approval for such a contract has been obtained through the Export Administration Act process. It only makes sense that we would not award contracts that require the transfer of sensitive technology without following our own export licensing process. It is possible that this technology could later be used by some countries to make their own products to sell to countries that cannot obtain such goods from the United States. This loophole in our export control laws should be closed.

Finally, my bill would require the Government Accountability Office to report to Congress with recommendations for defining the terms ''inconsistent with the public interest'' and ''unreasonable cost'' for purposes of invoking the corresponding waivers in the Act. I am concerned that both of these terms lack definitions, and that they can be very broadly interpreted by agency or department heads. GAO would require to make recommendations for statutory definitions of both of these terms, as well as for establishing a consistent waiver process that can be used by all federal agencies.

I am pleased that my legislation is supported by a broad array of business and labor groups. The groups are committed to ensuring that we have a strong domestic manufacturing base that provides good-paying, stable jobs for American workers, and they include Save American Manufacturing, the national and Wisconsin AFL–CIO, the U.S. Business and Industry Council, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Boilermakers, and the United Auto Workers.

In addition to strengthening the Buy American Act, Congress should support trade agreements that do not undermine it. As I have repeatedly stated on this floor, Congress and Administrations of both parties have a dismal record of promoting trade agreements that send American jobs overseas. And many of those same flawed trade agreements have repeatedly weakened the Buy American Act and other domestic preference laws.

Last year, the Ranking Member of the Homeland Security and Governmental Affairs Committee, Mr. LIEBERMAN, and I asked the GAO to study the effect of trade agreements on domestic source requirements such as those contained in the Buy American Act. That study found that the United States government is required to give

favorable treatment to certain goods from a total of 45 countries as a result of trade agreements and reciprocal defense procurement agreements. The report notes that the United States is a party to seven trade agreements, including the North American Free Trade Agreement (NAFTA) and the World Trade Organization's Government Procurement Agreement, that prevents the U.S. from applying domestic preference laws fully. The report also identifies 21 Department of Defense (DoD) Memoranda of Understanding that allow DoD to procure goods and services from foreign countries.

The gaping loopholes in the Buy American Act and the trade agreements and defense procurement agreements that contain additional waivers of domestic source restrictions have combined to weaken our domestic manufacturing base by allowing—and sometimes actually encouraging—the Federal Government to buy foreign-made goods. Congress can and should do more to support American companies and American workers. We must strengthen the Buy American Act and we must stop entering into bad trade agreements that send our jobs overseas and undermine our own domestic preference laws.

By strengthening Federal procurement policy, we can help to bolster our domestic manufacturers during these difficult times. As I have repeatedly noted, Congress cannot simply stand on the sidelines while tens of thousands of American manufacturing jobs have been and continue to be shipped overseas. While there may be no single solution to this problem, I believe that one way in which Congress should act is by strengthening the Buy American Act.

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

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

S. 395

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 ''Buy American Improvement Act of 2005''.

SEC. 2. REQUIREMENTS FOR WAIVERS.

(a) IN GENERAL.—Section 2 of the Buy American Act (41 U.S.C. 10a) is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) IN GENERAL.—Notwithstanding''; and

(2) by adding at the end the following:

''(b) SPECIAL RULES.—The following rules shall apply in carrying out the provisions of subsection (a):

''(1) PUBLIC INTEREST WAIVER.—A determination that it is not in the public interest to enter into a contract in accordance with this Act may not be made after a notice of solicitation of offers for the contract is published in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

''(2) DOMESTIC BIDDER.—A Federal agency entering into a contract shall give preference to a company submitting an offer on the contract that manufactures in the United States the article, material, or supply for which the offer is solicited, if—

''(A) that company's offer is substantially the same as an offer made by a company that does not manufacture the article, material, or supply in the United States; or

''(B) that company is the only company that manufactures in the United States the article, material, or supply for which the offer is solicited.

''(3) USE OUTSIDE THE UNITED STATES.—

''(A) IN GENERAL.—Subsection (a) shall apply without regard to whether the articles, materials, or supplies to be acquired are for use outside the United States if the articles, materials, or supplies are not needed on an urgent basis or if they are acquired on a regular basis.

''(B) COST ANALYSIS.—In any case where the articles, materials, or supplies are to be acquired for use outside the United States and are not needed on an urgent basis, before entering into a contract an analysis shall be made of the difference in the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies in the United States (including the cost of shipping) and the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies outside the United States (including the cost of shipping).

''(4) DOMESTIC AVAILABILITY.—The head of a Federal agency may not make a determination under subsection (a) that an article, material, or supply is not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality, unless the head of the agency has conducted a study and, on the basis of such study, determined that—

''(A) domestic production cannot be initiated to meet the procurement needs; and

''(B) a comparable article, material, or supply is not available from a company in the United States.

''(c) REPORTS.—

''(1) IN GENERAL.—Not later than 180 days after the end of each fiscal year, the head of each Federal agency shall submit to Congress a report on the acquisitions that were made of articles, materials, or supplies by the agency in that fiscal year from entities that manufacture the articles, materials, or supplies outside the United States.

''(2) CONTENT OF REPORT.—The report for a fiscal year under paragraph (1) shall separately indicate the following information:

''(A) The dollar value of any articles, materials, or supplies that were manufactured outside the United States.

''(B) An itemized list of all waivers granted with respect to such articles, materials, or supplies under this Act.

''(C) A summary of—

''(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

''(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

''(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available by posting on an Internet website.''.

(b) DEFINITIONS.—Section 1 of the Buy American Act (41 U.S.C. 10c) is amended—

(1) by striking subsection (c) and inserting the following:

''(c) FEDERAL AGENCY.—The term 'Federal agency' means any executive agency (as defined in section 4(1) of the Federal Procurement Policy Act (41 U.S.C. 403(1))) or any establishment in the legislative or judicial branch of the Government.''; and

(2) by adding at the end the following:

''(d) SUBSTANTIALLY ALL.—Articles, materials, or supplies shall be treated as made substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, if the cost of the domestic components of such articles, materials, or supplies exceeds 75 percent.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 2 of the Buy American Act (41 U.S.C. 10a) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

(2) Section 3 of such Act (41 U.S.C. 10b) is amended—

(A) by striking ''department or independent establishment'' in subsection (a), and inserting ''Federal agency''; and

(B) by striking ''department, bureau, agency, or independent establishment'' in subsection (b) and inserting ''Federal agency''.

(3) Section 633 of the National Military Establishment Appropriations Act, 1950 (41 U.S.C. 10d) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

SEC. 3. GAO REPORT AND RECOMMENDATIONS.

(a) SCOPE OF WAIVERS.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall report to Congress recommendations for determining, for purposes of applying the waiver provision of section 2(a) of the Buy American Act—

(1) unreasonable cost; and

(2) inconsistent with the public interest.

The report shall include recommendations for a statutory definition of unreasonable cost and standards for determining inconsistency with the public interest.

(b) WAIVER PROCEDURES.—The report described in subsection (a) shall also include recommendations for establishing procedures for applying the waiver provisions of the Buy American Act that can be consistently applied.

SEC. 4. DUAL-USE TECHNOLOGIES.

The head of a Federal agency (as defined in section 1(c) of the Buy American Act (as amended by section 2) may not enter into a contract, nor permit a subcontract under a contract of the Federal agency, with a foreign entity that involves giving the foreign entity plans, manuals, or other information pertaining to a dual-use item on the Commerce Control List or that would facilitate the manufacture of a dual-use item on the Commerce Control List unless approval for providing such plans, manuals, or information has been obtained in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and the Export Administration Regulations (15 C.F.R. part 730 et seq.).

By Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. CHAMBLISS, Mr. COBURN, Ms. COLLINS, Mr. CORNYN, Mr. CRAPO, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON, Mr. KYL, Mrs. LINCOLN, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. SANTORUM, Mr. SESSIONS, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THUNE, and Mr. SUNUNU):

S. 397. A bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; read the first time.

Mr. CRAIG. Mr. President, I am pleased to join with Senator BAUCUS in introducing the Protection of Lawful Commerce in Arms Act.

This bill addresses the abuse of our Nation's courts through predatory lawsuits against the U.S. firearms industry—suits attempting to force law-abiding businesses to pay far criminal acts by individuals beyond their control.

It's important for our colleagues to understand that the lawsuits we're talking about are not brought by victims seeing relief for same wrongs done to them by the firearms industry. Instead, they are part of a politically inspired initiative trying to force social goals through an end-run around the Congress and State legislatures.

These lawsuits are based an the notion that even though a business complies with all laws and sells a legitimate product, it should be held responsible for the misuse or illegal use of the firearm by a criminal. This isn't a legal theory—it's just the latest twist in the gun controllers' notion that it's the gun, and not the criminal, that causes crime.

The truth is that there are millions of firearms in this country today, only a tiny fraction of which have ever been used in the commission of a crime. The truth is that again and again, law-abiding firearm owners are using their guns, often without even firing a shot, to defend life and property. The truth is that the intent of the user, not the gun, determines whether that gun will be used in a crime. The trend of predatory litigation targeting the firearms industry not only defies common sense and concepts of fundamental fairness, but it would do nothing to curb criminal gun violence. The cost of these lawsuits threatens to drive a critical industry out of business, losing thousands of good-paying jobs in the process and jeopardizing Americans' constitutionally protected access to firearms for self defense and other lawful uses.

The Protection of Lawful Commerce in Arms Act would stop these abusive lawsuits. However, it would not insulate the firearms industry from all lawsuits or deprive legitimate victims of their day in court. Indeed, it specifically provides that actions based on the wrongful conduct of those involved in the business of manufacturing and selling firearms would not be affected by this legislation. The bill is solely directed to stopping abusive, politically driven litigation against law-abiding individuals for the misbehavior of criminals over whom they had no control.

This bill is virtually identical to legislation introduced and debated to length in the Senate during the last Congress. As my colleagues will recall, the addition of two unrelated poison pill amendments doomed final passage of that bill; however, it is worth noting that all amendments to the actual substance of that measure were defeated.

The need for this legislation is every bit as serious today as it was in the last Congress. I am proud that a number of our colleagues on both sides of the aisle asked to sponsor this bill before it was even introduced: Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. CHAMBLISS, Mr. COBURN, Ms. COLLINS, Mr. CORNYN, Mr. CRAPO, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON, Mr. KYL, Mrs. LINCOLN, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. SANTORUM, Mr. SESSIONS, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, and Mr. THUNE. I thank these original cosponsors for their support.

The courts of our Nation are supposed to be forums for resolving controversies between citizens and providing relief where warranted, not a mechanism for achieving political ends that are rejected by the people's representatives in Congress and the State legislatures. I hope all our colleagues will join us in taking a measured, principled stand against this abusive litigation by supporting the Protection of Lawful Commerce in Arms Act.

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. 397

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 ''Protection of Lawful Commerce in Arms Act''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

(2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

(7) To exercise congressional power under art. IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.

(a) IN GENERAL.—A qualified civil liability action may not be brought in any Federal or State court.

(b) DISMISSAL OF PENDING ACTIONS.—A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.

SEC. 4. DEFINITIONS.

In this Act:

(1) ENGAGED IN THE BUSINESS.—The term ''engaged in the business'' has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes, time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) MANUFACTURER.—The term ''manufacturer'' means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

(3) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) QUALIFIED PRODUCT.—The term ''qualified product'' means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) QUALIFIED CIVIL LIABILITY ACTION.—

(A) IN GENERAL.—The term ''qualified civil liability action'' means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief'' resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

(iv) an action for breach of contract or warranty in connection with the purchase of the product; or

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term 'negligent entrustment' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

(6) SELLER.—The term ''seller'' means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) STATE.—The term ''State'' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION.—The term ''trade association'' means—

(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) UNLAWFUL MISUSE.—The term ''unlawful misuse'' means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

By Mr. SANTORUM (for himself and Mr. BAYH):

S. 398. A bill to amend the Internal Revenue Code of 1986 to expand the expensing of environmental remediation costs; to the Committee on Finance.

Mr. SANTORUM. Mr. President, I am pleased to introduce with my colleague from Indiana, Senator BAYH, important legislation to encourage the cleanup of contaminated sites commonly known as ''brownfields.'' I urge all my colleagues to join Senator BAYH and me as supporters of this legislation and ask that they actively work with us towards its enactment.

The United States Environmental Protection Agency, EPA, defines brownfields as ''abandoned, idled, or under used industrial commercial sites where expansion or redevelopment is complicated by real or perceived environmental contamination that can add cost, time, or uncertainness to redevelopment projects.''

Brownfields are not unique to my State of Pennsylvania, nor are they to Senator BAYH's State of Indiana. In every State in the Nation, there are areas blighted by run down, abandoned properties and unsightly vacant lots. They are the shut down manufacturing facilities, deserted warehouses and gas stations that are all too familiar to us. On these properties once stood vibrant and productive enterprises, but changing times and events have drained their vitality and they are now in desperate need of revitalization and redevelopment. Compounding the problem is that over the years, the activities on these sites have left the soil and water tables contaminated with environmental pollutants.

The negative social and economic effects that these sites cause on their surrounding communities are significant. There are serious financial impacts not only to the market values of the brownfield properties themselves, but also to property values in the surrounding neighborhoods. As middle class citizens are working to gain assets and potentially be able to borrow against, or even sell their homes in the future, property values become a very serious issue. A reduction of property values in brownfield neighborhoods hits hardest the families who can least afford it.

Brownfields have other serious repercussions, extending far beyond the pocketbook. The unsightliness of brownfields can lead to the characterization of entire neighborhoods as run-down and undesirable. The once vibrant spirit of these centrally located and thriving urban areas can be dampened as these eyesores drag down residents' morale and sense of connection with their community.

The U.S. Conference of Mayors and the Government Accountability Office estimate that there are over 400,000 brownfield sites across the country. According to a recent U.S. Conference of Mayors survey of 187 cities throughout the nation, redevelopment of their existing brownfields would bring additional tax revenues of up to $2 billion annually and could create hundreds of thousands of jobs.

Many brownfields are located in prime business locations near critical infrastructure, including transportation, and close to an already productive workforce. Putting these sites back into use will generate good paying jobs and affordable housing in areas where they are most needed. Rehabilitating and reusing these sites also serves to help prevent urban sprawl. We should encourage the cleanup and use of these brownfield sites rather than abandon them and instead always look to develop at new locations. A powerful example from my State of a successful brownfield revitalization effort and how it can have substantial and positive effects on a community is the city of Chester.

In the midst of a major revitalization, Chester is redeveloping its blighted and vacant waterfront district, including the former PECO power station. The city is striving to turn a former industrial site into a business center. Chester will be able to create new office space, and by working with a private developer Chester has received an initial commitment to move 2,000 jobs into the area. This initiative will help bring more business and infrastructure back to the community, adding to the area's prosperity and making Chester an even safer and more pleasant place to live.

Unfortunately, a big reason that so many brownfield properties are languishing in a state of decay and disrepair is the substantial clean up costs associated with them and the unfavorable tax treatment of those costs.

As part of the Community Renewal and Revitalization Act of 2000, Congress enacted section 198 of the Internal Revenue Code, which allowed cleanup costs to be expensed in the year they were incurred. Prior to that, these costs had to be capitalized to the land, postponing any recovery of these costs for tax purposes until the property was sold.

This expedited writeoff of clean up expenses helps a redeveloper manage the cost of rehabilitating existing properties which typically is much more expensive than developing new sites. Brownfield cleanup costs can be an imposing obstacle to redevelopment. While the price tag varies with each site, it is not unreasonable for the cleanup of a major site to cost between $500,000 and $1 million.

We in the Senate, and our colleagues in the House, were wise to enact section 198 and renew it for 2 years through the Working Families Tax Relief Act of 2004. That was a start, but more needs to be done in this area.

The bill my colleague and I are introducing today has three provisions. First, it makes section 198 a permanent provision in the Tax Code. Second, it broadens the definition of ''hazardous substances'' in section 198 to include petroleum. Finally, it repeals the provision in the law requiring the recapture of the section 198 deduction when the property is sold.

The tax policy of allowing the expensing of clean up costs should be a permanent fixture in the Tax Code. Brownfields are a long-term problem and this solution will allow us to complete this important task.

Furthermore, a shortcoming of the law passed in 2000 was the absence of petroleum as a contaminant that allowed a site to qualify as a brownfield under section 198. A large percentage of brownfields across the country are contaminated with petroleum. Extending the law to cover petroleum contamination makes much more sense and the law much more effective.

Finally, the provision in section 198 that requires a taxpayer who uses the clean up deduction to pay income tax on that amount when he or she sells the property is illogical. This sends a message to developers, that if they undertake the worthy endeavor of remediation of brownfield sites they will be subjected to substantial tax penalties for doing so. This policy is counterproductive to the efforts we are trying to encourage and it should be repealed.

The benefits of brownfields cleanup are obvious. Remediation of these sites revitalizes our neighborhoods and communities, and I urge my colleagues to support this legislation.

By Mr. COLEMAN (for himself and Mrs. FEINSTEIN):

S. 399. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale of prescription drugs through the Internet, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN:

S. 400. A bill to prevent the illegal importation of controlled substances; to the Committee on the Judiciary.

Mr. COLEMAN. Mr. President, I rise to introduce two bills that expand Federal authority to prevent controlled substances from flooding into the U.S., authorizing States to shut down illegitimate virtual pharmacies, and bar Internet drug stores from dispensing drugs to customers referred to on-line doctors for a prescription.

Americans are increasingly turning to the Internet for access to affordable drugs. In 2003, consumer spending on drugs procured over the Internet exceeded $3.2 billion. Unfortunately, rogue Internet sites have proliferated and rake in millions of dollars by selling unproven, counterfeit, defective or otherwise inappropriate medications to unsuspecting consumers. Even more dangerously, these sites are profiting by selling addictive and potentially deadly controlled substances to consumers without a prescription or any physician oversight. This must stop before more individuals die or become addicted to easily obtainable narcotic drugs.

The first bill I am introducing was developed in close consultation with Senator FEINSTEIN, who is an original cosponsor. In appreciation for her role in helping write this legislation it is named after a young man from her state who died from an overdose of drugs purchased over the Internet. I am also pleased to announce that Congressmen TOM DAVIS and HENRY WAXMAN are introducing this exact measure in the House today. The issue of rogue Internet sites and the availability of controlled substances on-line is indeed a bi-partisan and bi-cameral issue.

17-year-old Ryan Haight of La Mesa, CA was an honor roll student, and avid baseball card collector about to enter college. As his mom says, ''he was a good kid.'' But in May of 2000 Ryan started hanging out with a different crowd of friends. He joined an online chat forum, which advocates the safe use of drugs, and he began buying prescription drugs from the Internet.

He used the family computer late at night and a debit card his parents gave him to buy baseball cards on Ebay. You might wonder how did a healthy 17-year-old obtain prescriptions for painkillers without a medical exam. He got them from Dr. Robert Ogle an ''online'' physician based out of Texas. With the prescriptions from Dr. Ogle, Ryan was able to order hydrocodone, morphine, Valium and Oxazepam and have them shipped via US mail right to his front door.

In February 2001, Ryan overdosed on a combination of these prescription drugs. His mother found him dead on his bedroom floor.

The Ryan Haight Internet Pharmacy Consumer Protection Act counters the growing sale of prescription drugs over the Internet without a valid prescription by one, providing new disclosure standards for Internet pharmacies; two, barring Internet sites from selling or dispensing prescription drugs to consumers who are provided a prescription solely on the basis of an online questionnaire; and three, allowing State Attorneys General to go to Federal court to shut down rogue sites.

The bill is geared to counter domestic Internet pharmacies that sell drugs without a valid prescription, not international pharmacies that sell drugs at a low cost to individuals who have a valid prescription from their U.S. doctors.

Under current law, purchasing drugs online without a valid prescription can be simple: a consumer just types the name of the drug into a search engine, quickly identifies a site selling the medication, fills in a brief questionnaire, and then clicks to purchase. The risks of self-medicating, however, can include potential adverse reactions from inappropriately prescribed medications, dangerous drug interactions, use of counterfeit or tainted products, and addiction to habit-forming substances. Several of these illegitimate sites fail to provide information about contraindications, potential adverse effects, and efficacy.

Regulating these Internet pharmacies is difficult for Federal and

State authorities. State medical and pharmacy boards have expressed the concern that they do not have adequate enforcement tools to regulate practice over the Internet. It can be virtually impossible for states to identify, investigate, and prosecute these illegal pharmacies because the consumer, prescriber, and seller of a drug may be located in different States.

The Internet Pharmacy Consumer Protection Act amends the Federal Food, Drug, and Cosmetic Act to address this problem in three steps. First, it requires Internet pharmacy web sites to display information identifying the business, pharmacist, and physician associated with the website.

Second, the bill bars the selling or dispensing of a prescription drug via the Internet when the website has referred the customer to a doctor who then writes a prescription without ever seeing the patient.

Third, the bill provides States with new enforcement authority modeled on the Federal Telemarketing Sales Act that will allow a State attorney general to shut down a rogue site across the country, rather than only bar sales to consumers of his or her State.

I am proud to say that the Ryan Haight Internet Pharmacy Consumer Protection Act is supported by the Federation of State Medical Boards, the National Community Pharmacists Association, and the American Pharmacists Association.

The second bill I am introducing enables Customs and Border Protection to immediately seize and destroy any package containing a controlled substance that is illegally imported into the U.S. without having to fill out duplicative forms and other unnecessary administrative paperwork. The Act will allow Customs to focus on interdicting and destroying potentially addictive and deadly controlled substances. The Act is dedicated to Todd Rode, a young man who died after overdosing on imported drugs.

Todd Rode had the heart and soul of a musician. He graduated from college magna cum laude with a major in psychology and a minor in music. The faculty named him the outstanding senior in the Psychology Department. He worked in this field for a number of years, but he constantly fought bouts of depression and anxiety.

Unfortunately Todd ordered controlled drugs from a pharmacy and doctor in another country. These drugs included Venlafaxine, Propoxyphene, and Codeine. All were controlled substances and all were obtained from overseas pharmacies without any safeguards. To obtain these controlled substances all Todd had to do was to fill out an online questionnaire and with the click of a mouse they were shipped directly to his front door.

In October of 1999, Todd's family found him dead in his apartment.

A six-month investigation by the Permanent Subcommittee on Investigations has revealed that tens of thousands of dangerous and addictive controlled substances are streaming into the U.S. on a daily basis from overseas Internet pharmacies. For example, on March 15 and 17, 2004, at JFK airport, home to the largest International Mail Branch in the U.S., at least 3000 boxes from a single vendor in the Netherlands containing hydrocodone and Diazepam (Valium) were seized by Customs and Border Protection (Customs).

In fact, senior Customs inspectors at JFK estimate that 40,000 parcels containing drugs are imported on a daily basis. During last summer's FDN Customs blitz, 28 percent of the drugs tested were controlled substances. Extrapolating these figures, 11,200 drug parcels containing controlled substances are imported through JFK daily, 78,400 weekly, 313,600 monthly and 3,763,200 annually. Top countries of origin include Brazil, India, Pakistan, Netherlands, Spain, Portugal, Canada, Mexico, and Romania.

Likewise, as of March 2003, senior Customs officials at the Miami International Airport indicated that as much as 30,000 packages containing drugs were being imported on a daily basis. A large percentage of these are controlled substances as well. Customs is simply overwhelmed. At Mail facilities across the U.S., Customs regularly seizes shipments of oxycodone, hydroquinone, tranquilizers, steroids, codeine laced product, GHB, date rape drug, and morphine.

In order to comply with paperwork requirements, Customs is forced to devote investigators solely to opening, counting, and analyzing drug packages, filling out duplicative forms, and logging into a computer all of the seized controlled substances. It takes Customs at least one hour to process a single shipment of a controlled substance. This minimizes the availability of inspectors to screen incoming drug packages. In fact, last year at JFK, there were as many as 20,000 packages of seized controlled substances waiting processing. Customs acknowledges that, because of the sheer volume of product, bureaucratic regulations, and lack of manpower, the vast majority of controlled substances that are illegally imported are simply missed and allowed into the U.S. stream of commerce.

The Act to Prevent the Illegal Importation of Controlled Substances is a simple bill to address this burgeoning and potentially lethal problem.

I am confident that, if enacted as stand-alone measures, each of these bills will make on-line drug purchasing safer. However, I have worked with Senator GREGG to ensure these safety features are included in his comprehensive reimportation bill and urge my colleagues to help make sure that this important piece of legislation becomes law this year.

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

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

S. 399

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 ''Internet Pharmacy Consumer Protection Act'' or the ''Ryan Haight Act''.

SEC. 2. INTERNET SALES OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter 5 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 503A the following section:

''SEC. 503B. INTERNET SALES OF PRESCRIPTION DRUGS.

''(a) REQUIREMENTS REGARDING INFORMATION ON INTERNET SITE.—

''(1) IN GENERAL.—A person may not dispense a prescription drug pursuant to a sale of the drug by such person if—

''(A) the purchaser of the drug submitted the purchase order for the drug, or conducted any other part of the sales transaction for the drug, through an Internet site;

''(B) the person dispenses the drug to the purchaser by mailing or shipping the drug to the purchaser; and

''(C) such site, or any other Internet site used by such person for purposes of sales of a prescription drug, fails to meet each of the requirements specified in paragraph (2), other than a site or pages on a site that—

''(i) are not intended to be accessed by purchasers or prospective purchasers; or

''(ii) provide an Internet information location tool within the meaning of section 231(e)(5) of the Communications Act of 1934 (47 U.S.C. 231(e)(5)).

''(2) REQUIREMENTS.—With respect to an Internet site, the requirements referred to in subparagraph (C) of paragraph (1) for a person to whom such paragraph applies are as follows:

''(A) Each page of the site shall include either the following information or a link to a page that provides the following information:

''(i) The name of such person.

''(ii) Each State in which the person is authorized by law to dispense prescription drugs.

''(iii) The address and telephone number of each place of business of the person with respect to sales of prescription drugs through the Internet, other than a place of business that does not mail or ship prescription drugs to purchasers.

''(iv) The name of each individual who serves as a pharmacist for prescription drugs that are mailed or shipped pursuant to the site, and each State in which the individual is authorized by law to dispense prescription drugs.

''(v) If the person provides for medical consultations through the site for purposes of providing prescriptions, the name of each individual who provides such consultations; each State in which the individual is licensed or otherwise authorized by law to provide such consultations or practice medicine; and the type or types of health professions for which the individual holds such licenses or other authorizations.

''(B) A link to which paragraph (1) applies shall be displayed in a clear and prominent place and manner, and shall include in the caption for the link the words 'licensing and contact information'.

''(b) INTERNET SALES WITHOUT APPROPRIATE MEDICAL RELATIONSHIPS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a person may not dispense a prescription drug, or sell such a drug, if—

''(A) for purposes of such dispensing or sale, the purchaser communicated with the person through the Internet;

''(B) the patient for whom the drug was dispensed or purchased did not, when such communications began, have a prescription for the drug that is valid in the United States;

''(C) pursuant to such communications, the person provided for the involvement of a practitioner, or an individual represented by the person as a practitioner, and the practitioner or such individual issued a prescription for the drug that was purchased;

''(D) the person knew, or had reason to know, that the practitioner or the individual referred to in subparagraph (C) did not, when issuing the prescription, have a qualifying medical relationship with the patient; and

''(E) the person received payment for the dispensing or sale of the drug.

For purposes of subparagraph (E), payment is received if money or other valuable consideration is received.

''(2) EXCEPTIONS.—Paragraph (1) does not apply to—

''(A) the dispensing or selling of a prescription drug pursuant to telemedicine practices sponsored by—

''(i) a hospital that has in effect a provider agreement under title XVIII of the Social Security Act (relating to the Medicare program); or

''(ii) a group practice that has not fewer than 100 physicians who have in effect provider agreements under such title; or

''(B) the dispensing or selling of a prescription drug pursuant to practices that promote the public health, as determined by the Secretary by regulation.

''(3) QUALIFYING MEDICAL RELATIONSHIP.—

''(A) IN GENERAL.—With respect to issuing a prescription for a drug for a patient, a practitioner has a qualifying medical relationship with the patient for purposes of this section if—

''(i) at least one in-person medical evaluation of the patient has been conducted by the practitioner; or

''(ii) the practitioner conducts a medical evaluation of the patient as a covering practitioner.

''(B) IN-PERSON MEDICAL EVALUATION.—A medical evaluation by a practitioner is an in-person medical evaluation for purposes of this section if the practitioner is in the physical presence of the patient as part of conducting the evaluation, without regard to whether portions of the evaluation are conducted by other health professionals.

''(C) COVERING PRACTITIONER.—With respect to a patient, a practitioner is a covering practitioner for purposes of this section if the practitioner conducts a medical evaluation of the patient at the request of a practitioner who has conducted at least one in-person medical evaluation of the patient and is temporarily unavailable to conduct the evaluation of the patient. A practitioner is a covering practitioner without regard to whether the practitioner has conducted any in-person medical evaluation of the patient involved.

''(4) RULES OF CONSTRUCTION.—

''(A) INDIVIDUALS REPRESENTED AS PRACTITIONERS.—A person who is not a practitioner (as defined in subsection (d)(1)) lacks legal capacity under this section to have a qualifying medical relationship with any patient.

''(B) STANDARD PRACTICE OF PHARMACY.—Paragraph (1) may not be construed as prohibiting any conduct that is a standard practice in the practice of pharmacy.

''(C) APPLICABILITY OF REQUIREMENTS.—Paragraph (3) may not be construed as having any applicability beyond this section, and does not affect any State law, or interpretation of State law, concerning the practice of medicine.

''(c) ACTIONS BY STATES.—

''(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice that violates section 301(l), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such practice, to enforce compliance with such section (including a nationwide injunction), to obtain damages, restitution, or other compensation on behalf of residents of such State, to obtain reasonable attorneys fees and costs if the State prevails in the civil action, or to obtain such further and other relief as the court may deem appropriate.

''(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) or (5)(B) upon the Secretary and provide the Secretary with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Secretary shall have the right—

''(A) to intervene in such action;

''(B) upon so intervening, to be heard on all matters arising therein; and

''(C) to file petitions for appeal.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

''(5) ACTIONS BY OTHER STATE OFFICIALS.—

''(A) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

''(B) In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

''(d) GENERAL DEFINITIONS.—For purposes of this section:

''(1) The term 'practitioner' means a practitioner referred to in section 503(b)(1) with respect to issuing a written or oral prescription.

''(2) The term 'prescription drug' means a drug that is subject to section 503(b)(1).

''(3) The term 'qualifying medical relationship', with respect to a practitioner and a patient, has the meaning indicated for such term in subsection (b).

''(e) INTERNET-RELATED DEFINITIONS.—

''(1) IN GENERAL.—For purposes of this section:

''(A) The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

''(B) The term 'link', with respect to the Internet, means one or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command—

''(i) to move from viewing one portion of a page on such site to another portion of the page;

''(ii) to move from viewing one page on such site to another page on such site; or

''(iii) to move from viewing a page on one Internet site to a page on another Internet site.

''(C) The term 'page', with respect to the Internet, means a document or other file accessed at an Internet site.

''(D)(i) The terms 'site' and 'address', with respect to the Internet, mean a specific location on the Internet that is determined by Internet Protocol numbers. Such term includes the domain name, if any.

''(ii) The term 'domain name' means a method of representing an Internet address without direct reference to the Internet Protocol numbers for the address, including methods that use designations such as '.com', '.edu', '.gov', '.net', or '.org'.

''(iii) The term 'Internet Protocol numbers' includes any successor protocol for determining a specific location on the Internet.

''(2) AUTHORITY OF SECRETARY.—The Secretary may by regulation modify any definition under paragraph (1) to take into account changes in technology.

''(f) INTERACTIVE COMPUTER SERVICE; ADVERTISING.—No provider of an interactive computer service, as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), or of advertising services shall be liable under this section for dispensing or selling prescription drugs in violation of this section on account of another person's selling or dispensing such drugs, provided that the provider of the interactive computer service or of advertising services does not own or exercise corporate control over such person.''.

(b) INCLUSION AS PROHIBITED ACT.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after paragraph (k) the following:

''(l) The dispensing or selling of a prescription drug in violation of section 503B.''.

(c) INTERNET SALES OF PRESCRIPTION DRUGS; CONSIDERATION BY SECRETARY OF PRACTICES AND PROCEDURES FOR CERTIFICATION OF LEGITIMATE BUSINESSES.—In carrying out section 503B of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section), the Secretary of Health and Human Services shall take into consideration the practices and procedures of public or private entities that certify that businesses selling prescription drugs through Internet sites are legitimate businesses, including practices and procedures regarding disclosure formats and verification programs.

(d) REPORTS REGARDING INTERNET-RELATED VIOLATIONS OF STATE AND FEDERAL LAWS ON DISPENSING OF DRUGS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall, pursuant to the submission of an application meeting the criteria of the Secretary, make an award of a grant or contract to the National Clearinghouse on Internet Prescribing (operated by the Federation of State Medical Boards) for the purpose of—

(A) identifying Internet sites that appear to be in violation of State or Federal laws concerning the dispensing of drugs;

(B) reporting such sites to State medical licensing boards and State pharmacy licensing boards, and to the Attorney General and the Secretary, for further investigation; and

(C) submitting, for each fiscal year for which the award under this subsection is made, a report to the Secretary describing investigations undertaken with respect to violations described in subparagraph (A).

(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there is authorized to be appropriated $100,000 for each of the fiscal years 2005 through 2007.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect upon the expiration of the 60-day period beginning on the date of the enactment of this Act, without regard to whether a final rule to implement such amendments has been promulgated by the Secretary of Health and Human Services under section 701(a) of the Federal Food, Drug, and Cosmetic Act. The preceding sentence may not be construed as affecting the authority of such Secretary to promulgate such a final rule.

S. 400

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 ''Prevention of Illegally Imported Controlled Substances Act of 2005'' or ''Todd Rode Act''.

SEC. 2. DESTRUCTION OF CERTAIN IMPORTED SHIPMENTS.

Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end the following:

''DESTRUCTION OF CERTAIN IMPORTED SHIPMENTS

''SEC. 424. (a) IN GENERAL.—A shipment of controlled substances that is imported or offered for import into the United States in violation of section 401 and whose value is less than $10,000 shall be seized and summarily forfeited to the United States.

''(b) DESTRUCTION.—Controlled substances seized under subsection (a) shall be destroyed, subject to subsection (d). Section 801(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(b)) does not authorize the delivery of the substances pursuant to the execution of a bond, and the substances may not be exported.

''(c) NOTICE.—

''(1) PROCEDURES.—The seizure and destruction of controlled substances under subsections (a) and (b) may be carried out without notice to the importer, owner, or consignee of the controlled substances involved. Appraisement of such substances is required only to the extent sufficient to document that the substances are subject to subsection (a).

''(2) GOALS.—Procedures promulgated under paragraph (1) shall be designed toward the goal of ensuring that, with respect to efficiently utilizing Federal resources available for carrying out this subsection, a substantial majority of shipments of controlled substances subject to subsection (a) are identified and seized under such paragraph and destroyed under subsection (b).

''(d) PRESENTATION OF EVIDENCE.—Controlled substances may not be destroyed under subsection (b) to the extent that the Attorney General of the United States determines that the controlled substances should be preserved as evidence or potential evidence with respect to an offense against the United States.''.

Mrs. FEINSTEIN. Mr. President, I am pleased to join Senator Coleman again this year to re-introduce the Ryan Haight Internet Pharmacy Consumer Protection Act. Our legislation will protect the safety of Americans who choose to purchase their prescription drugs legally over the Internet.

This legislation is necessary because of a growing problem of illegal prescription drug diversion and abuse of prescription drugs. Coupled with the ease of access to the Internet, it has led to an environment where illegitimate pharmacy websites can bypass traditional regulations and established safeguards for the sale of prescription drugs. Internet websites that allow consumers to obtain prescriptions drugs without the existence of a bona fide physician-patient relationship pose an immediate threat to public health and safety.

To address this problem, the Internet Pharmacy Consumer Protection Act makes several critical steps, to ensure safety and to assist regulatory authorities in shutting down ''rogue'' Internet pharmacies.

First, this bill establishes disclosure standards for Internet pharmacies.

Second, this bill prohibits the dispensing or sale of a prescription drug based solely on communications via the Internet such as the completion of an online medical questionnaire.

Third, it allows a State Attorney General to bring a civil action in a Federal district court to enjoin a pharmacy operation and to enforce compliance with the provisions of this law.

Under this bill, for a domestic Web site to sell prescription drugs legally, the web site would have to display identifying information such as the names, addresses, and medical licensing information for pharmacists and physicians associated with the Web site.

In addition, if a person wants to use the Internet to purchase their prescription drugs he or she will not be prohibited from doing so under this bill but, in order to do so, must already have a prescription for the drug that is valid in the United States prior to making the Internet purchase.

Reliance on the Internet for public health purposes and the expansion of telemedicine, particularly in rural areas, make it essential that there be at the very least a minimum standard for what qualifies as an acceptable medical relationship between patients and their physicians.

According to the American Medical Association, a health care practitioner who offers a prescription for a patient he or she has never seen before, based solely on an online questionnaire, generally does not meet the appropriate medical standard of care.

Let me illustrate the situation facing our country today. If a physician's office prescribed and dispensed prescription drugs the same way Internet pharmacies currently can do, it would look something like this: a physician opens a physical office, asks a patient to fill out a medical history questionnaire in the lobby and give his or her credit card information to the office manager. There is no nurse, and therefore no one to take the patients' height, weight, blood pressure, verify his or her medical history, and so forth and no one to answer the patient's questions regarding their health.

The questionnaire is then slipped through a hole in the window; the office manager takes it to the physician, or person acting as the physician, who then writes the prescription and hands it to the pharmacist, or person acting as the pharmacist, in the next room. Once the patient signs his credit card, he is on his way out the door, drugs in hand.

No examination is performed, no questions asked, and no verification or clarification of the answers provided on the medical history questionnaire.

This illustration is not an exaggeration. It occurs everyday all across the United States. The National Association of Boards of Pharmacy estimates that there are around 500 identifiable rogue pharmacy Web sites operating on the Internet.

According to the Federation of State Medical Boards, 31 States and the District of Columbia either have laws or medical board initiatives addressing Internet medical practice.

Many States have already enacted laws defining acceptable practices for qualifying medical relationships between doctors and patients and this bill would not affect any existing State laws.

For example, California law was changed in 2000 to say: ''no person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished dangerous drugs or dangerous devices [defined as any drug or device unsafe for self-use] on the Internet for delivery to any person in this state, without a good faith prior examination and medical indication . . .''

I believe California's law is a perfect example of why this legislation is needed. The law only applies to persons living in California. As we all know, however, the Internet is not bound by State or even country borders.

This legislation makes a critical step forward by providing additional authority for State Attorneys General to file an injunction in Federal court to shut down an Internet site operating in another State that violates the provisions in the bill.

Under current law, in order to close down an Internet website selling prescription drugs prosecutors must take enforcement actions in every State where the Internet pharmacy operates, requiring a tremendous amount of resources in an environment where the location of the website is difficult, if not impossible, to determine or keep track of.

This bill will allow a State Attorney General to bring a civil action in a Federal district court to enjoin a pharmacy operation and to enforce compliance with the provisions of the law in every jurisdiction where the pharmacy is operating.

While this legislation pertains to domestic Internet pharmacies, the practice of international pharmacies selling low-cost drugs to U.S. consumers who have valid prescriptions from their doctors deserves to be discussed and debated on the Senate floor. It is my hope that the Senate will act this year on prescription drug importation legislation.

In closing, I want to share with you the story of Ryan T. Haight of La Mesa, California in whose memory this bill is named.

Ryan was an 18-year old honor student from La Mesa, CA, when he died in his home on February 12, 2001.

His parents found a bottle of Vicodin in his room with a label from an out-of-State pharmacy.

It turns out that Ryan had been ordering addictive drugs online and paying with a debit card his parents gave him to buy baseball cards on eBay.

Without a physical exam or his parents' consent, Ryan had been obtaining controlled substances, some from an Internet site in Oklahoma. It only took a few months before Ryan's life was ended by an overdose on a cocktail of painkillers.

Ryan's story and others like it force us to ask why anyone in the U.S. would be able to access such highly addictive and dangerous drugs over the Internet with such ease?

Why was there no physician or pharmacist on the other end of this teenager's computer verifying his age, his medical history and that there was a valid prescription?

That is why I support this legislation. It makes sensible requirements of Internet pharmacy websites that will not impact access to convenient, oftentimes cost-saving drugs.

With simple disclosure requirements for Internet sites such as names, addresses and medical or pharmacy licensing information, patients will be better off and State medica1 and pharmacy boards can ensure that pharmacists and doctors are properly licensed.

Lastly, this bill will give State attorneys general the authority they need to shut down rogue Internet pharmacies operating in other states.

I urge my colleagues to support this bill.

By Mr. HARKIN (for himself, Mr. SPECTER, Mr. KENNEDY, Mr. KERRY, Mr. BIDEN, Mr. DAYTON, Ms. LANDRIEU, Mr. SCHUMER, Mr. CORZINE, Mr. LAUTENBERG, Mr. LIEBERMAN, and Mr. DODD):

S. 401. A bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes; to the Committee on Finance.

Mr. HARKIN. Mr. President, today, Senator SPECTER and I and others introduce the Medicaid Community-Based Attendant Services and Supports Act of 2003 (MiCASSA). This legislation is needed to truly bring people with disabilities into the mainstream of society and provide equal opportunity for employment and community activities.

We anticipate that there will be some discussions of so called ''reform'' of the Medicaid system in this Congress. The Medicaid program is a critical source of services and supports for millions of Americans with disabilities. Any attempt to cap resources or decrease the availability of services under that program will meet strong opposition from myself and others.

But there is one area where Medicaid should be improved. Services should be expanded to increase access to personal attendant services. In order to work or live in their own homes, Americans with Disabilities and older Americans need access to community-based services and supports. Unfortunately, under current Federal Medicaid policy, the deck is stacked in favor of living in an institutional setting. Federal law requires that states cover nursing homes in their Medicaid programs. But there is no similar requirement for attendant services. The purpose of our bill is to level the playing field and give eligible individuals equal access to community-based services and supports they need.

The Medicaid Community Attendant Services and Supports Act will accomplish four goals.

First, the bill amends Title XIX of the Social Security Act to provide a new Medicaid plan benefit that would give individuals who are currently eligible for nursing home services or an intermediate care facility for the mentally retarded equal access to community-based attendant services and supports.

Second, for a limited time, States would have the opportunity to receive additional funds to support community attendant services and supports and for certain administrative activities. Each State currently gets federal money for their Medicaid program based on a set percentage. This percentage is the Medicaid match rate. This bill would increase that percentage to provide some additional funding to States to help them reform their long term care systems.

Third, the bill provides States with financial assistance to support ''real choice systems change initiatives'' that include specific action steps to increase the provision of home and community based services.

Finally, the bill establishes a demonstration project to evaluate service coordination and cost sharing approaches with respect to the provision of services and supports for individuals with disabilities under the age of 65 who are dually eligible for Medicaid and Medicare.

Although some states have already recognized the benefits of home and community based services, they are unevenly distributed and only reach a small percentage of eligible individuals. Every State offers services under home and community based waiver programs, but they only serve a capped number of individuals. Some states also are now providing the personal care optional benefit through their Medicaid program, but others do not.

Those left behind are often needlessly institutionalized because they cannot access community alternatives. A person with a disability's civil right to be integrated into his or her community should not depend on his or her address. In Olmstead v. LC, the Supreme Court recognized that needless institutionalization is a form of discrimination under the Americans With Disabilities Act. We in Congress have a responsibility to help States meet their obligations under Olmstead.

This MICASSA legislation is designed to do just that and make the promise of the ADA a reality. It will help rebalance the current Medicaid long term care system, which spends a disproportionate amount on institutional services. For example, in 2003, 67 percent of long term care Medicaid dollars were spent on institutional care, compared to 33 percent community based care.

And that means that individuals do not have equal access to community based care throughout this country. An individual should not be asked to move to another state in order to avoid needless segregation. They also should not be moved away from family and friends because their only choice is an institution.

Federal Medicaid policy should reflect the consensus reached in the ADA that Americans with Disabilities should have equal opportunity to contribute to our communities and participate in our society as full citizens. That means no one has to sacrifice their full participation in society because they need help getting out of the house in the morning or assistance with personal care or some other basic service.

I applaud the President's New Freedom Initiative for People with Disabilities and believe that this legislation helps promote the goals of that initiative. I will be reintroducing the Money Follows the Person legislation that is part of the New Freedom Initiative and believe that MICASSA and Money Follows the Person complement each other. Together these two bills could substantially reform long term services in this country.

Community based attendant services and supports allow people with disabilities to lead independent lives, have jobs, and participate in the community. Some will become taxpayers, some will get an education, and some will participate in recreational and civic activities. But all will experience a chance to make their own choices and govern their own lives.

This bill will open the door to full participation by people with disabilities in our workplaces, our economy, and our American Dream, and I urge

all my colleagues to support us on this issue. I want to thank Senator SPECTER for his leadership on this issue and his commitment to improving access to home and community based services for people with disabilities. I would also like to thank Senators KENNEDY, KERRY, BIDEN, DAYTON, LANDRIEU, CORZINE, SCHUMER, LAUTENBERG, LIEBERMAN and DODD for joining me in this important initiative.

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. 401

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 ''Medicaid Community-Based Attendant Services and Supports Act of 2005''.

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Long-term services and supports provided under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) must meet the ability and life choices of individuals with disabilities and older Americans, including the choice to live in one's own home or with one's own family and to become a productive member of the community.

(2) Research on the provision of long-term services and supports under the medicaid program (conducted by and on behalf of the Department of Health and Human Services) has revealed a significant funding bias toward institutional care. Only about 33 percent of long term care funds expended under the medicaid program, and only about 11 percent of all funds expended under that program, pay for services and supports in home and community-based settings.

(3) In the case of medicaid beneficiaries who need long term care, the only long-term care service currently guaranteed by Federal law in every State is nursing home care. Only 30 States have adopted the benefit option of providing personal care services under the medicaid program. Although every State has chosen to provide certain services under home and community-based waivers, these services are unevenly available within and across States, and reach a small percentage of eligible individuals. In fiscal year 2003, only 7 States spent 50 percent or more of their medicaid long term care funds under the medicaid program on home and community-based care.

(4) The goals of the Nation properly include providing families of children with disabilities, working-age adults with disabilities, and older Americans with—

(A) a meaningful choice of receiving long-term services and supports in the most integrated setting appropriate to their needs;

(B) the greatest possible control over the services received and, therefore, their own lives and futures; and

(C) quality services that maximize independence in the home and community, including in the workplace.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To reform the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to provide equal access to community-based attendant services and supports.

(2) To provide financial assistance to States as they reform their long-term care systems to provide comprehensive statewide long-term services and supports, including community-based attendant services and supports that provide consumer choice and direction, in the most integrated setting appropriate.

TITLE I—ESTABLISHMENT OF MEDICAID PLAN BENEFIT

SEC. 101. COVERAGE OF COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS UNDER THE MEDICAID PROGRAM.

(a) MANDATORY COVERAGE.—Section 1902(a)(10)(D) of the Social Security Act (42 U.S.C. 1396a(a)(10)(D)) is amended—

(1) by inserting ''(i)'' after ''(D)'';

(2) by adding ''and'' after the semicolon; and

(3) by adding at the end the following new clause:

''(ii) subject to section 1936, for the inclusion of community-based attendant services and supports for any individual who—

''(I) is eligible for medical assistance under the State plan;

''(II) with respect to whom there has been a determination that the individual requires the level of care provided in a nursing facility or an intermediate care facility for the mentally retarded (whether or not coverage of such intermediate care facility is provided under the State plan); and

''(III) chooses to receive such services and supports;''.

(b) COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.—

(1) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(A) by redesignating section 1936 as section 1937; and

(B) by inserting after section 1935 the following:

''COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS

''SEC. 1936. (a) REQUIRED COVERAGE.—

''(1) IN GENERAL.—Not later than October 1, 2009, a State shall provide through a plan amendment for the inclusion of community-based attendant services and supports (as defined in subsection (g)(1)) for individuals described in section 1902(a)(10)(D)(ii) in accordance with this section.

''(2) ENHANCED FMAP AND ADDITIONAL FEDERAL FINANCIAL SUPPORT FOR EARLIER COVERAGE.—Notwithstanding section 1905(b), during the period that begins on October 1, 2005, and ends on September 30, 2009, in the case of a State with an approved plan amendment under this section during that period that also satisfies the requirements of subsection (c) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 2105(b) with respect to medical assistance in the form of community-based attendant services and supports provided to individuals described in section 1902(a)(10)(D)(ii) in accordance with this section on or after the date of the approval of such plan amendment.

''(b) DEVELOPMENT AND IMPLEMENTATION OF BENEFIT.—In order for a State plan amendment to be approved under this section, a State shall provide the Secretary with the following assurances:

''(1) ASSURANCE OF DEVELOPMENT AND IMPLEMENTATION COLLABORATION.—That the State has developed and shall implement the provision of community-based attendant services and supports under the State plan through active collaboration with—

''(A) individuals with disabilities;

''(B) elderly individuals;

''(C) representatives of such individuals; and

''(D) providers of, and advocates for, services and supports for such individuals.

''(2) ASSURANCE OF PROVISION ON A STATEWIDE BASIS AND IN MOST INTEGRATED SETTING.—That community-based attendant services and supports will be provided under the State plan to individuals described in section 1902(a)(10)(D)(ii) on a statewide basis and in a manner that provides such services and supports in the most integrated setting appropriate for each individual eligible for such services and supports.

''(3) ASSURANCE OF NONDISCRIMINATION.—That the State will provide community-based attendant services and supports to an individual described in section 1902(a)(10)(D)(ii) without regard to the individual's age, type of disability, or the form of community-based attendant services and supports that the individual requires in order to lead an independent life.

''(4) ASSURANCE OF MAINTENANCE OF EFFORT.—That the level of State expenditures for optional medical assistance that—

''(A) is described in a paragraph other than paragraphs (1) through (5), (17) and (21) of section 1905(a) or that is provided under a waiver under section 1915, section 1115, or otherwise; and

''(B) is provided to individuals with disabilities or elderly individuals for a fiscal year, shall not be less than the level of such expenditures for the fiscal year preceding the fiscal year in which the State plan amendment to provide community-based attendant services and supports in accordance with this section is approved.

''(c) REQUIREMENTS FOR ENHANCED FMAP FOR EARLY COVERAGE.—In addition to satisfying the other requirements for an approved plan amendment under this section, in order for a State to be eligible under subsection (a)(2) during the period described in that subsection for the enhanced FMAP for early coverage under subsection (a)(2), the State shall satisfy the following requirements:

''(1) SPECIFICATIONS.—With respect to a fiscal year, the State shall provide the Secretary with the following specifications regarding the provision of community-based attendant services and supports under the plan for that fiscal year:

''(A)(i) The number of individuals who are estimated to receive community-based attendant services and supports under the plan during the fiscal year.

''(ii) The number of individuals that received such services and supports during the preceding fiscal year.

''(B) The maximum number of individuals who will receive such services and supports under the plan during that fiscal year.

''(C) The procedures the State will implement to ensure that the models for delivery of such services and supports are consumer controlled (as defined in subsection (g)(2)(B)).

''(D) The procedures the State will implement to inform all potentially eligible individuals and relevant other individuals of the availability of such services and supports under this title, and of other items and services that may be provided to the individual under this title or title XVIII.

''(E) The procedures the State will implement to ensure that such services and supports are provided in accordance with the requirements of subsection (b)(1).

''(F) The procedures the State will implement to actively involve individuals with disabilities, elderly individuals, and representatives of such individuals in the design, delivery, administration, and evaluation of the provision of such services and supports under this title.

''(2) PARTICIPATION IN EVALUATIONS.—The State shall provide the Secretary with such substantive input into, and participation in, the design and conduct of data collection, analyses, and other qualitative or quantitative evaluations of the provision of community-based attendant services and supports under this section as the Secretary deems necessary in order to determine the effectiveness of the provision of such services and supports in allowing the individuals receiving such services and supports to lead an independent life to the maximum extent possible.

''(d) QUALITY ASSURANCE PROGRAM.—

''(1) STATE RESPONSIBILITIES.—In order for a State plan amendment to be approved under this section, a State shall establish and maintain a quality assurance program with respect to community-based attendant services and supports that provides for the following:

''(A) The State shall establish requirements, as appropriate, for agency-based and other delivery models that include—

''(i) minimum qualifications and training requirements for agency-based and other models;

''(ii) financial operating standards; and

''(iii) an appeals procedure for eligibility denials and a procedure for resolving disagreements over the terms of an individualized plan.

''(B) The State shall modify the quality assurance program, as appropriate, to maximize consumer independence and consumer control in both agency-provided and other delivery models.

''(C) The State shall provide a system that allows for the external monitoring of the quality of services and supports by entities consisting of consumers and their representatives, disability organizations, providers, families of disabled or elderly individuals, members of the community, and others.

''(D) The State shall provide for ongoing monitoring of the health and well-being of each individual who receives community-based attendant services and supports.

''(E) The State shall require that quality assurance mechanisms appropriate for the individual be included in the individual's written plan.

''(F) The State shall establish a process for the mandatory reporting, investigation, and resolution of allegations of neglect, abuse, or exploitation in connection with the provision of such services and supports.

''(G) The State shall obtain meaningful consumer input, including consumer surveys, that measure the extent to which an individual receives the services and supports described in the individual's plan and the individual's satisfaction with such services and supports.

''(H) The State shall make available to the public the findings of the quality assurance program.

''(I) The State shall establish an ongoing public process for the development, implementation, and review of the State's quality assurance program.

''(J) The State shall develop and implement a program of sanctions for providers of community-based services and supports that violate the terms or conditions for the provision of such services and supports.

''(2) FEDERAL RESPONSIBILITIES.—

''(A) PERIODIC EVALUATIONS.—The Secretary shall conduct a periodic sample review of outcomes for individuals who receive community-based attendant services and supports under this title.

''(B) INVESTIGATIONS.—The Secretary may conduct targeted reviews and investigations upon receipt of an allegation of neglect, abuse, or exploitation of an individual receiving community-based attendant services and supports under this section.

''(C) DEVELOPMENT OF PROVIDER SANCTION GUIDELINES.—The Secretary shall develop guidelines for States to use in developing the sanctions required under paragraph (1)(J).

''(e) REPORTS.—The Secretary shall submit to Congress periodic reports on the provision of community-based attendant services and supports under this section, particularly with respect to the impact of the provision of such services and supports on—

''(1) individuals eligible for medical assistance under this title;

''(2) States; and

''(3) the Federal Government.

''(f) NO EFFECT ON ABILITY TO PROVIDE COVERAGE UNDER A WAIVER.—

''(1) IN GENERAL.—Nothing in this section shall be construed as affecting the ability of a State to provide coverage under the State plan for community-based attendant services and supports (or similar coverage) under a waiver approved under section 1915, section 1115, or otherwise.

''(2) ELIGIBILITY FOR ENHANCED MATCH.—In the case of a State that provides coverage for such services and supports under a waiver, the State shall not be eligible under subsection (a)(2) for the enhanced FMAP for the early provision of such coverage unless the State submits a plan amendment to the Secretary that meets the requirements of this section.

''(g) DEFINITIONS.—In this title:

''(1) COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.—

''(A) IN GENERAL.—The term 'community-based attendant services and supports' means attendant services and supports furnished to an individual, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related functions through hands-on assistance, supervision, or cueing—

''(i) under a plan of services and supports that is based on an assessment of functional need and that is agreed to by the individual or, as appropriate, the individual's representative;

''(ii) in a home or community setting, which may include a school, workplace, or recreation or religious facility, but does not include a nursing facility or an intermediate care facility for the mentally retarded;

''(iii) under an agency-provider model or other model (as defined in paragraph (2)(C)); and

''(iv) the furnishing of which is selected, managed, and dismissed by the individual, or, as appropriate, with assistance from the individual's representative.

''(B) INCLUDED SERVICES AND SUPPORTS.—Such term includes—

''(i) tasks necessary to assist an individual in accomplishing activities of daily living, instrumental activities of daily living, and health-related functions;

''(ii) the acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish activities of daily living, instrumental activities of daily living, and health-related functions;

''(iii) backup systems or mechanisms (such as the use of beepers) to ensure continuity of services and supports; and

''(iv) voluntary training on how to select, manage, and dismiss attendants.

''(C) EXCLUDED SERVICES AND SUPPORTS.—Subject to subparagraph (D), such term does not include—

''(i) the provision of room and board for the individual;

''(ii) special education and related services provided under the Individuals with Disabilities Education Act and vocational rehabilitation services provided under the Rehabilitation Act of 1973;

''(iii) assistive technology devices and assistive technology services;

''(iv) durable medical equipment; or

''(v) home modifications.

''(D) FLEXIBILITY IN TRANSITION TO COMMUNITY-BASED HOME SETTING.—Such term may include expenditures for transitional costs, such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or intermediate care facility for the mentally retarded to a community-based home setting where the individual resides.

''(2) ADDITIONAL DEFINITIONS.—

''(A) ACTIVITIES OF DAILY LIVING.—The term 'activities of daily living' includes eating, toileting, grooming, dressing, bathing, and transferring.

''(B) CONSUMER CONTROLLED.—The term 'consumer controlled' means a method of providing services and supports that allow the individual, or where appropriate, the individual's representative, maximum control of the community-based attendant services and supports, regardless of who acts as the employer of record.

''(C) DELIVERY MODELS.—

''(i) AGENCY-PROVIDER MODEL.—The term 'agency-provider model' means, with respect to the provision of community-based attendant services and supports for an individual, a method of providing consumer controlled services and supports under which entities contract for the provision of such services and supports.

''(ii) OTHER MODELS.—The term 'other models' means methods, other than an agency-provider model, for the provision of consumer controlled services and supports. Such models may include the provision of vouchers, direct cash payments, or use of a fiscal agent to assist in obtaining services.

''(D) HEALTH-RELATED FUNCTIONS.—The term 'health-related functions' means functions that can be delegated or assigned by licensed health-care professionals under State law to be performed by an attendant.

''(E) INSTRUMENTAL ACTIVITIES OF DAILY LIVING.—The term 'instrumental activities of daily living' includes meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone and other media, and traveling around and participating in the community.

''(F) INDIVIDUAL'S REPRESENTATIVE.—The term 'individual's representative' means a parent, a family member, a guardian, an advocate, or an authorized representative of an individual.''.

(c) CONFORMING AMENDMENTS.—

(1) MANDATORY BENEFIT.—Section 1902(a)(10)(A) of the Social Security Act (42

U.S.C. 1396a(a)(10)(A)) is amended, in the matter preceding clause (i), by striking ''(17) and (21)'' and inserting ''(17), (21), and (28)''.

(2) DEFINITION OF MEDICAL ASSISTANCE.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) by striking ''and'' at the end of paragraph (27);

(B) by redesignating paragraph (28) as paragraph (29); and

(C) by inserting after paragraph (27) the following:

''(28) community-based attendant services and supports (to the extent allowed and as defined in section 1936); and''.

(3) IMD/ICFMR REQUIREMENTS.—Section 1902(a)(10)(C)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by inserting ''and (28)'' after ''(24)''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section (other than the amendment made by subsection (c)(1)) take effect on October 1, 2005, and apply to medical assistance provided for community-based attendant services and supports described in section 1936 of the Social Security Act furnished on or after that date.

(2) MANDATORY BENEFIT.—The amendment made by subsection (c)(1) takes effect on October 1, 2009.

SEC. 102. ENHANCED FMAP FOR ONGOING ACTIVITIES OF EARLY COVERAGE STATES THAT ENHANCE AND PROMOTE THE USE OF COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.

(a) IN GENERAL.—Section 1936 of the Social Security Act, as added by section 101(b), is amended—

(1) by redesignating subsections (d) through (g) as subsections (f) through (i), respectively;

(2) in subsection (a)(1), by striking ''subsection (g)(1)'' and inserting ''subsection (i)(1)'';

(3) in subsection (a)(2), by inserting '', and with respect to expenditures described in subsection (d), the Secretary shall pay the State the amount described in subsection (d)(1)'' before the period;

(4) in subsection (c)(1)(C), by striking ''subsection (g)(2)(B)'' and inserting ''subsection (i)(2)(B)''; and

(5) by inserting after subsection (c), the following:

''(d) INCREASED FEDERAL FINANCIAL PARTICIPATION FOR EARLY COVERAGE STATES THAT MEET CERTAIN BENCHMARKS.—

''(1) IN GENERAL.—Subject to paragraph (2), for purposes of subsection (a)(2), the amount and expenditures described in this subsection are an amount equal to the Federal medical assistance percentage, increased by 10 percentage points, of the expenditures incurred by the State for the provision or conduct of the services or activities described in paragraph (3).

''(2) EXPENDITURE CRITERIA.—A State shall—

''(A) develop criteria for determining the expenditures described in paragraph (1) in collaboration with the individuals and representatives described in subsection (b)(1); and

''(B) submit such criteria for approval by the Secretary.

''(3) SERVICES AND ACTIVITIES DESCRIBED.—For purposes of paragraph (1), the services and activities described in this subparagraph are the following:

''(A) One-stop intake, referral, and institutional diversion services.

''(B) Identifying and remedying gaps and inequities in the State's current provision of long-term services, particularly those services that are provided based on such factors as age, disability type, ethnicity, income, institutional bias, or other similar factors.

''(C) Establishment of consumer participation and consumer governance mechanisms, such as cooperatives and regional service authorities, that are managed and controlled by individuals with significant disabilities who use community-based services and supports or their representatives.

''(D) Activities designed to enhance the skills, earnings, benefits, supply, career, and future prospects of workers who provide community-based attendant services and supports.

''(E) Continuous improvement activities that are designed to ensure and enhance the health and well-being of individuals who rely on community-based attendant services and supports, particularly activities involving or initiated by consumers of such services and supports or their representatives.

''(F) Family support services to augment the efforts of families and friends to enable individuals with disabilities of all ages to live in their own homes and communities.

''(G) Health promotion and wellness services and activities.

''(H) Provider recruitment and enhancement activities, particularly such activities that encourage the development and maintenance of consumer controlled cooperatives or other small businesses or microenterprises that provide community-based attendant services and supports or related services.

''(I) Activities designed to ensure service and systems coordination.

''(J) Any other services or activities that the Secretary deems appropriate.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on October 1, 2005.

SEC. 103. INCREASED FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN EXPENDITURES.

(a) IN GENERAL.—Section 1936 of the Social Security Act, as added by section 101(b) and amended by section 102, is amended by inserting after subsection (d) the following:

''(e) INCREASED FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN EXPENDITURES.—

''(1) ELIGIBILITY FOR PAYMENT.—

''(A) IN GENERAL.—In the case of a State that the Secretary determines satisfies the requirements of subparagraph (B), the Secretary shall pay the State the amounts described in paragraph (2) in addition to any other payments provided for under section 1903 or this section for the provision of community-based attendant services and supports.

''(B) REQUIREMENTS.—The requirements of this subparagraph are the following:

''(i) The State has an approved plan amendment under this section.

''(ii) The State has incurred expenditures described in paragraph (2).

''(iii) The State develops and submits to the Secretary criteria to identify and select such expenditures in accordance with the requirements of paragraph (3).

''(iv) The Secretary determines that payment of the applicable percentage of such expenditures (as determined under paragraph (2)(B)) would enable the State to provide a meaningful choice of receiving community-based services and supports to individuals with disabilities and elderly individuals who would otherwise only have the option of receiving institutional care.

''(2) AMOUNTS AND EXPENDITURES DESCRIBED.—

''(A) EXPENDITURES IN EXCESS OF 150 PERCENT OF BASELINE AMOUNT.—The amounts and expenditures described in this paragraph are an amount equal to the applicable percentage, as determined by the Secretary in accordance with subparagraph (B), of the expenditures incurred by the State for the provision of community-based attendant services and supports to an individual that exceed 150 percent of the average cost of providing nursing facility services to an individual who resides in the State and is eligible for such services under this title, as determined in accordance with criteria established by the Secretary.

''(B) APPLICABLE PERCENTAGE.—The Secretary shall establish a payment scale for the expenditures described in subparagraph (A) so that the Federal financial participation for such expenditures gradually increases from 70 percent to 90 percent as such expenditures increase.

''(3) SPECIFICATION OF ORDER OF SELECTION FOR EXPENDITURES.—In order to receive the amounts described in paragraph (2), a State shall—

''(A) develop, in collaboration with the individuals and representatives described in subsection (b)(1) and pursuant to guidelines established by the Secretary, criteria to identify and select the expenditures submitted under that paragraph; and

''(B) submit such criteria to the Secretary.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2005.

TITLE II—PROMOTION OF SYSTEMS CHANGE AND CAPACITY BUILDING

SEC. 201. GRANTS TO PROMOTE SYSTEMS CHANGE AND CAPACITY BUILDING.

(a) AUTHORITY TO AWARD GRANTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall award grants to eligible States to carry out the activities described in subsection (b).

(2) APPLICATION.—In order to be eligible for a grant under this section, a State shall submit to the Secretary an application in such form and manner, and that contains such information, as the Secretary may require.

(b) PERMISSIBLE ACTIVITIES.—A State that receives a grant under this section may use funds provided under the grant for any of the following activities, focusing on areas of need identified by the State and the Consumer Task Force established under subsection (c):

(1) The development and implementation of the provision of community-based attendant services and supports under section 1936 of the Social Security Act (as added by section 101(b) and amended by sections 102 and 103) through active collaboration with—

(A) individuals with disabilities;

(B) elderly individuals;

(C) representatives of such individuals; and

(D) providers of, and advocates for, services and supports for such individuals.

(2) Substantially involving individuals with significant disabilities and representatives of such individuals in jointly developing, implementing, and continually improving a mutually acceptable comprehensive, effectively working statewide plan for preventing and alleviating unnecessary institutionalization of such individuals.

(3) Engaging in system change and other activities deemed necessary to achieve any or all of the goals of such statewide plan.

(4) Identifying and remedying disparities and gaps in services to classes of individuals with disabilities and elderly individuals who are currently experiencing or who face substantial risk of unnecessary institutionalization.

(5) Building and expanding system capacity to offer quality consumer controlled community-based services and supports to individuals with disabilities and elderly individuals, including by—

(A) seeding the development and effective use of community-based attendant services

and supports cooperatives, independent living centers, small businesses, microenterprises and similar joint ventures owned and controlled by individuals with disabilities or representatives of such individuals and community-based attendant services and supports workers;

(B) enhancing the choice and control individuals with disabilities and elderly individuals exercise, including through their representatives, with respect to the personal assistance and supports they rely upon to lead independent, self-directed lives;

(C) enhancing the skills, earnings, benefits, supply, career, and future prospects of workers who provide community-based attendant services and supports;

(D) engaging in a variety of needs assessment and data gathering;

(E) developing strategies for modifying policies, practices, and procedures that result in unnecessary institutional bias or the overmedicalization of long-term services and supports;

(F) engaging in interagency coordination and single point of entry activities;

(G) providing training and technical assistance with respect to the provision of community-based attendant services and supports;

(H) engaging in—

(i) public awareness campaigns;

(ii) facility-to-community transitional activities; and

(iii) demonstrations of new approaches; and

(I) engaging in other systems change activities necessary for developing, implementing, or evaluating a comprehensive statewide system of community-based attendant services and supports.

(6) Ensuring that the activities funded by the grant are coordinated with other efforts to increase personal attendant services and supports, including—

(A) programs funded under or amended by the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1860);

(B) grants funded under the Families of Children With Disabilities Support Act of 2000 (42 U.S.C. 15091 et seq.); and

(C) other initiatives designed to enhance the delivery of community-based services and supports to individuals with disabilities and elderly individuals.

(7) Engaging in transition partnership activities with nursing facilities and intermediate care facilities for the mentally retarded that utilize and build upon items and services provided to individuals with disabilities or elderly individuals under the medicaid program under title XIX of the Social Security Act, or by Federal, State, or local housing agencies, independent living centers, and other organizations controlled by consumers or their representatives.

(c) CONSUMER TASK FORCE.—

(1) ESTABLISHMENT AND DUTIES.—To be eligible to receive a grant under this section, each State shall establish a Consumer Task Force (referred to in this subsection as the ''Task Force'') to assist the State in the development, implementation, and evaluation of real choice systems change initiatives.

(2) APPOINTMENT.—Members of the Task Force shall be appointed by the Chief Executive Officer of the State in accordance with the requirements of paragraph (3), after the solicitation of recommendations from representatives of organizations representing a broad range of individuals with disabilities, elderly individuals, representatives of such individuals, and organizations interested in individuals with disabilities and elderly individuals.

(3) COMPOSITION.—

(A) IN GENERAL.—The Task Force shall represent a broad range of individuals with disabilities from diverse backgrounds and shall include representatives from Developmental Disabilities Councils, Mental Health Councils, State Independent Living Centers and Councils, Commissions on Aging, organizations that provide services to individuals with disabilities and consumers of long-term services and supports.

(B) INDIVIDUALS WITH DISABILITIES.—A majority of the members of the Task Force shall be individuals with disabilities or representatives of such individuals.

(C) LIMITATION.—The Task Force shall not include employees of any State agency providing services to individuals with disabilities other than employees of entities described in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.).

(d) ANNUAL REPORT.—

(1) STATES.—A State that receives a grant under this section shall submit an annual report to the Secretary on the use of funds provided under the grant in such form and manner as the Secretary may require.

(2) SECRETARY.—The Secretary shall submit to Congress an annual report on the grants made under this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, $50,000,000 for each of fiscal years 2006 through 2008.

(2) AVAILABILITY.—Amounts appropriated to carry out this section shall remain available without fiscal year limitation.

SEC. 202. DEMONSTRATION PROJECT TO ENHANCE COORDINATION OF CARE UNDER THE MEDICARE AND MEDICAID PROGRAMS FOR NON-ELDERLY DUAL ELIGIBLE INDIVIDUALS.

(a) DEFINITIONS.—In this section:

(1) NON-ELDERLY DUALLY ELIGIBLE INDIVIDUAL.—The term ''non-elderly dually eligible individual'' means an individual who—

(A) has not attained age 65; and

(B) is enrolled in the medicare and medicaid programs established under titles XVIII and XIX, respectively, of the Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.).

(2) PROJECT.—The term ''project'' means the demonstration project authorized to be conducted under this section.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(b) AUTHORITY TO CONDUCT PROJECT.—The Secretary shall conduct a project under this section for the purpose of evaluating service coordination and cost-sharing approaches with respect to the provision of community-based services and supports to non-elderly dually eligible individuals.

(c) REQUIREMENTS.—

(1) NUMBER OF PARTICIPANTS.—Not more than 5 States may participate in the project.

(2) APPLICATION.—A State that desires to participate in the project shall submit an application to the Secretary, at such time and in such form and manner as the Secretary shall specify.

(3) DURATION.—The project shall be conducted for at least 5, but not more than 10 years.

(d) EVALUATION AND REPORT.—

(1) EVALUATION.—Not later than 1 year prior to the termination date of the project, the Secretary, in consultation with States participating in the project, representatives of non-elderly dually eligible individuals, and others, shall evaluate the impact and effectiveness of the project.

(2) REPORT.—The Secretary shall submit a report to Congress that contains the findings of the evaluation conducted under paragraph (1) along with recommendations regarding whether the project should be extended or expanded, and any other legislative or administrative actions that the Secretary considers appropriate as a result of the project.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

Mr. SPECTER. Mr. President, I have sought recognition to join Senator TOM HARKIN, my colleague and distinguished ranking member of the Appropriations Subcommittee on Labor, Health and Human Services and Education, which I chair, in introducing the ''Medicaid Attendant Care Services and Supports Act of 2005.'' This creative proposal addresses a glaring gap in Federal health coverage, and assists one of our Nation's most vulnerable populations, persons with disabilities.

In an effort to improve the delivery of care and the comfort of those with long-term disabilities, this vital legislation would allow for reimbursement for community-based attendant care services, in lieu of institutionalization, for eligible individuals who require such services based on functional need, without regard to the individual's age or the nature of the disability. Under this proposal, Medicaid would provide States funding to offer and allow individuals who are currently eligible for nursing home services or an intermediate care facility for the mentally retarded equal access to community-based attendants.

The most recent data available tell us that 8.9 million individuals receive care for disabilities under the Medicaid program. The number of disabled who are currently enrolled in Medicaid and would apply for this improved benefit has been estimated at 2 million, a substantial number due largely to the preference of home and community-based care over institutional care. Currently, each State gets Federal money for their Medicaid program based on a Medicaid match rate. This bill would temporarily increase the Medicaid matching percentage providing States with additional funding to reform their long term care systems and implement this benefit.

Let me speak briefly about why such a change in Medicaid law is so desperately needed. The Supreme Court held in Olmstead v. L.C., 119 S. Ct. 2176 (1999), that the Americans with Disabilities Act, ADA, requires States, under some circumstances, to provide community-based treatment to persons with mental disabilities rather than placing them in institutions. This decision and several lower court decisions have pointed to the need for a structured Medicaid attendant-care services benefit in order to meet obligations under the ADA. Disability advocates strongly support this legislation, arguing that the lack of Medicaid community-based services options is discriminatory and unhealthful for disabled individuals. Virtually every major disability advocacy group supports this bill, including ADAPT, the Arc, the National Council on Independent Living, Paralyzed Veterans of America,

and the National Spinal Cord Injury Association.

Senator HARKIN and I recognize that such a shift in the Medicaid program is a huge undertaking—but feel that it is a vitally important one. We are introducing this legislation today in an attempt to move ahead with the consideration of crucial disability legislation and to provide a starting point for debate. The time has come for concerted action in this arena.

I urge the Congressional leadership, including the appropriate committee chairmen, to move forward in considering this legislation, and take the significant next step forward in achieving the objective of providing individuals with disabilities the freedom to live in their own communities.

By Mr. REID:

S. 404. A bill to make a technical correction relating to the land conveyance authorized by Public Law 108–67; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, 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. 404

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

SECTION 1. WASHOE TRIBE OF NEVADA AND CALIFORNIA LAND CONVEYANCE.

Section 2 of Public Law 108–67 (117 Stat. 880) is amended by striking ''the parcel'' and all that follows and inserting ''a portion of Lots 3 and 4, as shown on the United States and Encumbrance Map revised January 10, 1991, for the Toiyabe National Forest, Ranger District Carson −1, located in the S½ of NW¼ and N½ of SW¼ of the SE¼ of sec. 27, T. 15N, R. 18E, Mt. Diablo Base and Meridian, comprising 24.3 acres.''.

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

S. 405. A bill to provide for the conveyance of certain public land in Clark County, Nevada, for use as a heliport; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today, for myself and Senator ENSIGN, to introduce legislation to establish a public heliport facility in Clark County, NY.

The purpose of this bill is simple: It would convey about a third of a square mile of public land managed by the Bureau of Land Management to Clark County for dedicated use as a heliport. The land is located just south of the Henderson city limits and east of Interstate 15.

The establishment of this heliport will help eliminate the ongoing conflict between air tour operators whose overflights of the Grand Canyon represent a classic component of the Las Vegas visitor experience and residents in the west-central and southwestern parts of the Las Vegas Valley whose every day lives are adversely affected by helicopter noise.

Local officials are committed to establishing a heliport within the Las Vegas Valley. The county and local municipalities have previously considered a site, currently in use as a go-kart track, near Interstate 15 near Henderson. The drawback of developing this site is that tours originating from this location would fly over the most sensitive parts of the Sloan Canyon National Conservation Area, with no restrictions on routing or elevation. Sloan Canyon itself—one of the richest petroglyph sites in the Mohave Desert—would be subject to regular overflights. That outcome would be entirely legal, entirely predictable and entirely regrettable.

In 2002, I worked closely with Senator ENSIGN, Congresswoman BERKLEY, Congressman GIBBONS and local advocates to protect the Sloan Canyon area and its unique cultural resources. Through our combined efforts we created the Sloan Canyon National Conservation Area and the McCullough Mountains Wilderness, I am proud of these efforts and today I offer this legislation as a further effort to protect the precious resources that we worked to safeguard in 2002.

The bill I am introducing in the Senate today, and which I offered in the 108th Congress, would not prohibit helicopter overflights of the Sloan Canyon National Conservation Area. But it does ensure that such flights steer clear of the most sensitive and special cultural resources and minimize the impact on the majestic bighorn sheep and other wildlife that live in the McCullough Mountains.

My legislation stipulates that any helicopter flight originating from and/or landing at this heliport would be required by law to fly within a set path—between 3 and 5 miles north of the southernmost boundary of the Sloan Canyon National Conservation Area—and at a minimum height—at least 500 to 1000 feet above ground level while in the NCA. Further, it requires that every such flight contribute 3 dollars per passenger to a special fund dedicated to the protection of the cultural, wilderness, and wildlife resources in Nevada.

These provisions justify conveying the land to Clark County at no cost because they provide a stable, long-term source of funding in excess of the market value of the land and because the conveyance and use are in the public interest.

It was my pleasure to introduce this bill during the last Congress. My fellow Senators, particularly the Chairman and Ranking member of the Senate Energy and Natural Resources Committee, were generous in their support of this measure, allowing us to hold a prompt hearing. I am hopeful that my distinguished colleagues will work with me to complete work on this important legislation during the current session.

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. 405

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

SECTION 1. CONVEYANCE OF PROPERTY TO CLARK COUNTY, NEVADA.

(a) FINDINGS.—Congress finds that—

(1) the Las Vegas Valley in the State of Nevada is the fastest growing community in the United States;

(2) helicopter tour operations are conflicting with the needs of long-established residential communities in the Valley; and

(3) the designation of a public heliport in the Valley that would reduce conflicts between helicopter tour operators and residential communities is in the public interest.

(b) PURPOSE.—The purpose of this Act is to provide a suitable location for the establishment of a commercial service heliport facility to serve the Las Vegas Valley in the State of Nevada while minimizing and mitigating the impact of air tours on the Sloan Canyon National Conservation Area and North McCullough Mountains Wilderness.

(c) DEFINITIONS.—In this Act:

(1) CONSERVATION AREA.—The term ''Conservation Area'' means the Sloan Canyon National Conservation Area established by section 604(a) of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 2010).

(2) COUNTY.—The term ''County'' means Clark County, Nevada.

(3) HELICOPTER TOUR.—

(A) IN GENERAL.—The term ''helicopter tour'' means a commercial helicopter tour operated for profit.

(B) EXCLUSION.—The term ''helicopter tour'' does not include a helicopter tour that is carried out to assist a Federal, State, or local agency.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(5) WILDERNESS.—The term ''Wilderness'' means the North McCullough Mountains Wilderness established by section 202(a)(13) of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 2000).

(d) CONVEYANCE.—As soon as practicable after the date of enactment of this Act, the Secretary shall convey to the County, subject to valid existing rights, for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (e).

(e) DESCRIPTION OF LAND.—The parcel of land to be conveyed under subsection (d) is the parcel of approximately 229 acres of land depicted as tract A on the map entitled ''Clark County Public Heliport Facility'' and dated May 3, 2004.

(f) USE OF LAND.—

(1) IN GENERAL.—The parcel of land conveyed under subsection (d)—

(A) shall be used by the County for the operation of a heliport facility under the conditions stated in paragraphs (2) and (3); and

(B) shall not be disposed of by the County.

(2) IMPOSITION OF FEES.—

(A) IN GENERAL.—Any operator of a helicopter tour originating from or concluding at the parcel of land described in subsection (e) shall pay to the Clark County Department of Aviation a $3 conservation fee for each passenger on the helicopter tour if any portion of the helicopter tour occurs over the Conservation Area.

(B) DISPOSITION OF FUNDS.—Any amounts collected under subparagraph (A) shall be deposited in a special account in the Treasury of the United States, which shall be available to the Secretary, without further appropriation, for the management of cultural,

wildlife, and wilderness resources on public land in the State of Nevada.

(3) FLIGHT PATH.—Except for safety reasons, any helicopter tour originating or concluding at the parcel of land described in subsection (e) that flies over the Conservation Area shall not fly—

(A) over any area in the Conservation Area except the area that is between 3 and 5 miles north of the latitude of the southernmost boundary of the Conservation Area;

(B) lower than 1,000 feet over the eastern segments of the boundary of the Conservation Area; or

(C) lower than 500 feet over the western segments of the boundary of the Conservation Area.

(4) REVERSION.—If the County ceases to use any of the land described in subsection (d) for the purpose described in paragraph (1)(A) and under the conditions stated in paragraphs (2) and (3)—

(A) title to the parcel shall revert to the United States, at the option of the United States; and

(B) the County shall be responsible for any reclamation necessary to revert the parcel to the United States.

(g) ADMINISTRATIVE COSTS.—The Secretary shall require, as a condition of the conveyance under subsection (d), that the County pay the administrative costs of the conveyance, including survey costs and any other costs associated with the transfer of title.

By Ms. SNOWE (for herself, Mr. TALENT, Mr. BOND, Mr. BYRD, Mrs. DOLE, Mr. MCCAIN, Mrs. HUTCHISON, Mr. COLEMAN, Mr. VITTER, and Mr. MARTINEZ):

S. 406. A bill to amend title I of the Employee Retirement Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees; to the Committee on Health, Education, Labor, and Pensions.

Ms. SNOWE. Mr. President, as Chair of the Committee on Small Business and Entrepreneurship, I rise to introduce the Small Business Health Fairness Act of 2005. I am joined in this bipartisan effort by Senators TALENT, BOND, BYRD, DOLE, MCCAIN, HUTCHISON, COLEMAN, VITTER and MARTINEZ.

This bill creates Association Health Plans (AHPs), also called Small Business Health Plans, that give small businesses the same market based advantages and leverage that large employers and unions currently enjoy when providing health insurance to their employees.

AHPs directly address one of the most critical issues facing small businesses nationwide: the crisis small businesses face trying to provide health insurance for their employees. No other issue has been mentioned so frequently or by so many of the small businesses with whom I have met since I became Chair. While the problem has been growing for years, the outcry has built so that now it is indeed a loud chorus of small businesses desperate for relief and demanding that something be done.

Without exception, every small business person who has approached me has asked me to do something about the crushing burden from increased health insurance costs. The anecdotal accounts that I have heard have been confirmed by reports detailing how much health insurance costs are increasing across the board for all employers and especially for small businesses.

The Kaiser Family Foundation has reported that health insurance premiums increased between the spring of 2003 and spring of 2004 by 11.2 percent. This is the fourth such year of double digit increases and follows increases of 13.9 percent, 12.9 percent and 10.9 percent. In contrast, overall inflation during the last three years was 2.3 percent, 2.2 percent and 1.6 percent, wage gains for non-supervisory workers were similarly stable at 2.2 percent, 3.1 percent and 3.2 percent, respectively. This is an astonishing trend.

Not only are the costs for employers increasing, but these are now being passed onto the employees. As a result, the amount of premium employees pay for family coverage has increased almost 64 percent over the past 4 years, from $1,619 to $2,661. As I have heard from many small businesses, increases in insurance costs often mean employees do not get the benefit of salary and wage increases. Employers are rewarding employees with raises and then requiring them to pay more of their health insurance. These employers are disheartened that they are giving a raise with one hand and then turning around and taking it away with the other.

The Kaiser report also shows that this year, firms with 3 to 199 workers had premium increases of 9.1 percent and the smallest firms with 3 to 9 workers averaged 12.4 percent increases. So we see that as bad as things have gotten they're worse for the smallest businesses who are the source of as much as 75 percent of our country's new jobs. In my meetings with small businesses, they invariably report increases far greater than even these percentages, generally 30 percent, 40 percent or more.

The increase in these costs can not be dismissed as just another cost of doing business and absorbed or passed on to customers, because we know small businesses often have lower profit margins for their goods and services than other businesses. These skyrocketing costs often mean the difference between the business expanding or struggling to survive.

The high cost of health insurance can even make the difference in whether a small business creates new jobs. Small businesses have told me that the high cost of providing health care is preventing small businesses from adding more employees because they can not afford the additional health insurance expenses. In other cases, employers are turning to temporary or part time employees, again to avoid paying outrageous health insurance costs.

The result of these higher costs is that, according to the U.S. Census Bureau, in 2003 there were 45 million people without insurance, 1.4 million more than the year before and 3.8 million since 2001. This is being attributed to a decrease in the number of people covered by insurance through their employers—down 61 percent in 2004. Disturbingly, the Kaiser study says that only 52 percent of firms with 3 to 9 employees offer health benefits. Indeed, sometimes I wonder how small businesses can provide insurance at all. The fact that so many do is testimony to their recognition of how essential this is to their employees, and their determination to offer this benefit even in the face of constantly skyrocketing costs.

Last year's Kaiser report suggests that the greater increase in premiums for traditionally insured plans of 15.6 percent versus self insured plans at 12.4 percent ''may indicate that part of the rise in health care premiums is due to insurers expanding their underwriting gains.'' They also say that one of the factors driving the high rate of premium growth appears to be ''insurers' efforts to emphasize profitability in their pricing.''

What these statements really mean is that insurance companies are getting as much as they can out of their small business customers because they know these customers have no other options. Large employers, unlike small businesses, have competition for their business because they have many employees through whom to spread the risks. This makes them attractive to insurance companies who compete for their business.

Large employers also have the option of self insuring under ERISA which is only practical for employers who are large enough to afford the costs. This approach, though, offers significant savings by eliminating the administrative costs of the middle man—the insurance companies. A study by SBA's Office of Advocacy has shown that these plans have administrative costs as much as 30 percent lower.

Small businesses from my home state of Maine have made it clear that they have only one choice for their health care. Even when they band together in local purchasing pools, they are unable to attract any other insurance carriers to provide them with less expensive and more flexible options. Right after small businesses tell me how high their rates are they tell me how they have no choices and in some cases are even lucky to have anyone offering them any coverage at all.

In response to this health care crisis facing the small business community, I am introducing the Small Business Health Fairness Act of 2005.

This bill creates national Association Health Plans which allow small businesses to pool their employees together under the auspices of their bona fide associations to get the same bulk purchasing and administrative efficiencies already enjoyed by large employers and unions with their health care plans. It builds on the success of the ERISA self

insurance plans used by large employers and the Taft-Hartley plans available to union employers. These two types of plans currently provide health benefits for 72 million people, more than half of the 130 million total people who get their health insurance through their employer.

It is ludicrous that we have a two tiered health insurance system in this country where one group of employers—large ones and those who are union employers—get preferential treatment over those who create over 75 percent of the new jobs. I am at a loss to understand why small businesses should be denied the same advantages that these other employers already have. This is a matter of basic fairness.

AHPs will be able to offer less expensive plans, and also greater flexibility because they will be exempt from the myriad state benefit regulations. Associations will be able to design their plans to meet the needs of their members and their employees. By administering one national plan, it will further reduce the administrative costs instead of trying to administer a plan subject to the mandates of each state.

Even though the benefit mandates will not be in effect, associations will need to design their plans so that enough members participate in them to attract the necessary employees to make them work. This means that they will naturally provide a full range of benefits similar to what many states currently require. In many cases, the plans offered by large employers and unions, which are also exempt from the state benefit mandates, are the most generous plans available. People will often stay in those jobs specifically to keep their health care coverage.

The bill would also provide extensive new protections to ensure that the health care coverage is there when employees need it. Associations sponsoring these plans would need to be established for at least three years for purposes other than providing health insurance—this is intended to prevent the current epidemic of fraud and abuse that is occurring through sham associations who take money from unsuspecting small businesses and then cease to exist when someone files a claim.

In addition, self-funded AHPs would be required to have sufficient funds in reserve, specific stop-loss insurances, indemnification insurance, and other funding and certification requirements to make sure the insurance coverage would be available when needed. None of these requirements apply to any of the plans currently regulated by the Department of Labor, either the large employer plans under the Employee Retirement Income Security Act (ERISA), or the union plans under the Taft-Hartley Act.

Yet, the opponents of this bill have mis-characterized it in ways that make it sound like this would be the worst thing in the world for small businesses.

They have said that this bill would lead to ''cherry picking''—where AHPs would only take young healthy people. There is language in the bill which explicitly states that an association which offers a plan must offer it to all of their members, and a member who participates in the plan must offer the plan to every employee. Violation of these requirements is subject to enforcement by the Department of Labor under ERISA.

They have said that the Department of Labor would not be able to handle their responsibilities under this bill. The Department of Labor is already overseeing 275,000 similarly structured plans. We do not hear employees complain about these plans, or that they are failing and leaving subscribers without coverage. The additional plans from AHPs would not add that much of a burden to their operations and the Secretary of Labor has testified before the Small Business Committee that sufficient resources would be available to make sure the Department fulfilled its obligations.

Opponents have claimed that AHPs would not be subject to any solvency protections or other insurance regulations. This is flat out not true. The bill specifies detailed solvency protections that self funded AHPs would have to implement which are far beyond anything current self funded large employer plans have to implement. In fact those plans are not required to have any solvency protections. Insurance companies that would provide the coverage for fully insured AHPs would continue to be subject to state solvency requirements, as well as other state protections in the same way as they are now.

Opponents of this bill are basically saying that small businesses do not need more options and that they should be satisfied with the few that they have. They want to preserve the status quo which does nothing for small businesses. This bill would create competition in the small group market where there currently is none. If we expect our small employers to provide health insurance to their employees, we must pass AHP legislation to give them the same advantages enjoyed by large employers and union employers.

Giving small businesses better and more affordable options for their health care will also have an impact on the larger problem of the uninsured. The latest Census Bureau figures indicate that in 2003 approximately 45 million people had no health insurance. We also know that about 60 percent of these uninsured work for a small business, or are in a family of someone who works for a small business. The CBO has estimated that 600,000 people would go from being uninsured to being insured if AHPs were available. There are other studies that show this number could be more like 4.5 million and possibly as high as 8.5 million. What is clear is that giving small businesses AHPs as an option will mean that more of them who currently do not offer health insurance will be able to provide this benefit to their employees and their families.

This bill is supported by a large coalition of small business interests with approximately 12 million employers who represent about 80 million employees. President Bush included AHPs in the State of the Union and has made this part of his agenda for providing more health care options and helping small businesses. During the campaign he called for passage of this bill on almost a daily basis. And he continues to call for its passage. Our Majority Leader has indicated his support for taking up this bill. The House has passed the bill several times with strong bipartisan support and will pass it again this year. Significantly, the Senate Task Force on the Uninsured included AHPs among its recommendation for increasing coverage. The time has come to get this bill through the Senate. We must pass AHPs this session.

In the time I have been Chair of the Small Business Committee, I have come to understand even more that the entrepreneurial spirit burns bright throughout our nation. There are millions of people who seek a better life and personal satisfaction through starting and running small businesses. These folks are not looking for a handout, or preferential treatment. They are merely looking to us to recognize the absolutely essential role they play in our economy and to be treated accordingly and fairly. If we want more jobs, and better family lives, we must give small businesses the support they are seeking.

While this bill has passed the House with bipartisan support on several occasions, it has not been considered in the Senate. I intend to change that. I will work with Senator ENZI as the new chair of the HELP Committee, Senate Leaders, and others to find ways and develop enhancements to get this bill through the Senate. If there are changes that can be made, I am willing to consider them.

I believe we will see movement on this issue this Congress, and I look forward to working with my colleagues to bring relief and assistance to our nation's small businesses.

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

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

S. 406

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Small Business Health Fairness Act of 2005''.

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

SEC. 2. RULES GOVERNING ASSOCIATION HEALTH PLANS.

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

"PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

"SEC. 801. ASSOCIATION HEALTH PLANS.

''(a) IN GENERAL.—For purposes of this part, the term 'association health plan' means a group health plan whose sponsor is (or is deemed under this part to be) described in subsection (b).

''(b) SPONSORSHIP.—The sponsor of a group health plan is described in this subsection if such sponsor—

''(1) is organized and maintained in good faith, with a constitution and bylaws specifically stating its purpose and providing for periodic meetings on at least an annual basis, as a bona fide trade association, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, including a corporation or similar organization that operates on a cooperative basis (within the meaning of section 1381 of the Internal Revenue Code of 1986)), for substantial purposes other than that of obtaining or providing medical care;

''(2) is established as a permanent entity which receives the active support of its members and requires for membership payment on a periodic basis of dues or payments necessary to maintain eligibility for membership in the sponsor; and

''(3) does not condition membership, such dues or payments, or coverage under the plan on the basis of health status-related factors with respect to the employees of its members (or affiliated members), or the dependents of such employees, and does not condition such dues or payments on the basis of group health plan participation.

Any sponsor consisting of an association of entities which meet the requirements of paragraphs (1), (2), and (3) shall be deemed to be a sponsor described in this subsection.

"SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH PLANS.

''(a) IN GENERAL.—The applicable authority shall prescribe by regulation a procedure under which, subject to subsection (b), the applicable authority shall certify association health plans which apply for certification as meeting the requirements of this part.

''(b) STANDARDS.—Under the procedure prescribed pursuant to subsection (a), in the case of an association health plan that provides at least one benefit option which does not consist of health insurance coverage, the applicable authority shall certify such plan as meeting the requirements of this part only if the applicable authority is satisfied that the applicable requirements of this part are met (or, upon the date on which the plan is to commence operations, will be met) with respect to the plan.

''(c) REQUIREMENTS APPLICABLE TO CERTIFIED PLANS.—An association health plan with respect to which certification under this part is in effect shall meet the applicable requirements of this part, effective on the date of certification (or, if later, on the date on which the plan is to commence operations).

''(d) REQUIREMENTS FOR CONTINUED CERTIFICATION.—The applicable authority may provide by regulation for continued certification of association health plans under this part.

''(e) CLASS CERTIFICATION FOR FULLY INSURED PLANS.—The applicable authority shall establish a class certification procedure for association health plans under which all benefits consist of health insurance coverage. Under such procedure, the applicable authority shall provide for the granting of certification under this part to the plans in each class of such association health plans upon appropriate filing under such procedure in connection with plans in such class and payment of the prescribed fee under section 807(a).

''(f) CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—An association health plan which offers one or more benefit options which do not consist of health insurance coverage may be certified under this part only if such plan consists of any of the following:

''(1) A plan which offered such coverage on the date of the enactment of the Small Business Health Fairness Act of 2005.

''(2) A plan under which the sponsor does not restrict membership to one or more trades and businesses or industries and whose eligible participating employers represent a broad cross-section of trades and businesses or industries.

''(3) A plan whose eligible participating employers represent one or more trades or businesses, or one or more industries, consisting of any of the following: agriculture; equipment and automobile dealerships; barbering and cosmetology; certified public accounting practices; child care; construction; dance, theatrical and orchestra productions; disinfecting and pest control; financial services; fishing; foodservice establishments; hospitals; labor organizations; logging; manufacturing (metals); mining; medical and dental practices; medical laboratories; professional consulting services; sanitary services; transportation (local and freight); warehousing; wholesaling/distributing; or any other trade or business or industry which has been indicated as having average or above-average risk or health claims experience by reason of State rate filings, denials of coverage, proposed premium rate levels, or other means demonstrated by such plan in accordance with regulations.

"SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND BOARDS OF TRUSTEES.

''(a) SPONSOR.—The requirements of this subsection are met with respect to an association health plan if the sponsor has met (or is deemed under this part to have met) the requirements of section 801(b) for a continuous period of not less than 3 years ending with the date of the application for certification under this part.

''(b) BOARD OF TRUSTEES.—The requirements of this subsection are met with respect to an association health plan if the following requirements are met:

''(1) FISCAL CONTROL.—The plan is operated, pursuant to a trust agreement, by a board of trustees which has complete fiscal control over the plan and which is responsible for all operations of the plan.

''(2) RULES OF OPERATION AND FINANCIAL CONTROLS.—The board of trustees has in effect rules of operation and financial controls, based on a 3-year plan of operation, adequate to carry out the terms of the plan and to meet all requirements of this title applicable to the plan.

''(3) RULES GOVERNING RELATIONSHIP TO PARTICIPATING EMPLOYERS AND TO CONTRACTORS.—

''(A) BOARD MEMBERSHIP.—

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the members of the board of trustees are individuals selected from individuals who are the owners, officers, directors, or employees of the participating employers or who are partners in the participating employers and actively participate in the business.

''(ii) LIMITATION.—

''(I) GENERAL RULE.—Except as provided in subclauses (II) and (III), no such member is an owner, officer, director, or employee of, or partner in, a contract administrator or other service provider to the plan.

''(II) LIMITED EXCEPTION FOR PROVIDERS OF SERVICES SOLELY ON BEHALF OF THE SPONSOR.—Officers or employees of a sponsor which is a service provider (other than a contract administrator) to the plan may be members of the board if they constitute not more than 25 percent of the membership of the board and they do not provide services to the plan other than on behalf of the sponsor.

''(III) TREATMENT OF PROVIDERS OF MEDICAL CARE.—In the case of a sponsor which is an association whose membership consists primarily of providers of medical care, subclause (I) shall not apply in the case of any service provider described in subclause (I) who is a provider of medical care under the plan.

''(iii) CERTAIN PLANS EXCLUDED.—Clause (i) shall not apply to an association health plan which is in existence on the date of the enactment of the Small Business Health Fairness Act of 2005.

''(B) SOLE AUTHORITY.—The board has sole authority under the plan to approve applications for participation in the plan and to contract with a service provider to administer the day-to-day affairs of the plan.

''(c) TREATMENT OF FRANCHISE NETWORKS.—In the case of a group health plan which is established and maintained by a franchiser for a franchise network consisting of its franchisees—

''(1) the requirements of subsection (a) and section 801(a) shall be deemed met if such requirements would otherwise be met if the franchiser were deemed to be the sponsor referred to in section 801(b), such network were deemed to be an association described in section 801(b), and each franchisee were deemed to be a member (of the association and the sponsor) referred to in section 801(b); and

''(2) the requirements of section 804(a)(1) shall be deemed met.

The Secretary may by regulation define for purposes of this subsection the terms 'franchiser', 'franchise network', and 'franchisee'.

"SEC. 804. PARTICIPATION AND COVERAGE REQUIREMENTS.

''(a) COVERED EMPLOYERS AND INDIVIDUALS.—The requirements of this subsection are met with respect to an association health plan if, under the terms of the plan—

''(1) each participating employer must be—

''(A) a member of the sponsor;

''(B) the sponsor; or

''(C) an affiliated member of the sponsor with respect to which the requirements of subsection (b) are met, except that, in the case of a sponsor which is a professional association or other individual-based association, if at least one of the officers, directors, or employees of an employer, or at least one of the individuals who are partners in an employer and who actively participates in the business, is a member or such an affiliated member of the sponsor, participating employers may also include such employer; and

''(2) all individuals commencing coverage under the plan after certification under this part must be—

''(A) active or retired owners (including self-employed individuals), officers, directors, or employees of, or partners in, participating employers; or

''(B) the beneficiaries of individuals described in subparagraph (A).

''(b) COVERAGE OF PREVIOUSLY UNINSURED EMPLOYEES.—In the case of an association health plan in existence on the date of the enactment of the Small Business Health Fairness Act of 2005, an affiliated member of the sponsor of the plan may be offered coverage under the plan as a participating employer only if—

''(1) the affiliated member was an affiliated member on the date of certification under this part; or

''(2) during the 12-month period preceding the date of the offering of such coverage, the affiliated member has not maintained or contributed to a group health plan with respect to any of its employees who would otherwise be eligible to participate in such association health plan.

''(c) INDIVIDUAL MARKET UNAFFECTED.—The requirements of this subsection are met with respect to an association health plan if, under the terms of the plan, no participating employer may provide health insurance coverage in the individual market for any employee not covered under the plan which is similar to the coverage contemporaneously provided to employees of the employer under the plan, if such exclusion of the employee from coverage under the plan is based on a health status-related factor with respect to the employee and such employee would, but for such exclusion on such basis, be eligible for coverage under the plan.

''(d) PROHIBITION OF DISCRIMINATION AGAINST EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—The requirements of this subsection are met with respect to an association health plan if—

''(1) under the terms of the plan, all employers meeting the preceding requirements of this section are eligible to qualify as participating employers for all geographically available coverage options, unless, in the case of any such employer, participation or contribution requirements of the type referred to in section 2711 of the Public Health Service Act are not met;

''(2) upon request, any employer eligible to participate is furnished information regarding all coverage options available under the plan; and

''(3) the applicable requirements of sections 701, 702, and 703 are met with respect to the plan.

''SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN DOCUMENTS, CONTRIBUTION RATES, AND BENEFIT OPTIONS.

''(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if the following requirements are met:

''(1) CONTENTS OF GOVERNING INSTRUMENTS.—The instruments governing the plan include a written instrument, meeting the requirements of an instrument required under section 402(a)(1), which—

''(A) provides that the board of trustees serves as the named fiduciary required for plans under section 402(a)(1) and serves in the capacity of a plan administrator (referred to in section 3(16)(A));

''(B) provides that the sponsor of the plan is to serve as plan sponsor (referred to in section 3(16)(B)); and

''(C) incorporates the requirements of section 806.

''(2) CONTRIBUTION RATES MUST BE NONDISCRIMINATORY.—

''(A) IN GENERAL.—The contribution rates for any participating small employer shall not vary on the basis of any health status-related factor in relation to employees of such employer or their beneficiaries and shall not vary on the basis of the type of business or industry in which such employer is engaged.

''(B) EFFECT OF TITLE.—Nothing in this title or any other provision of law shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from—

''(i) setting contribution rates based on the claims experience of the plan; or

''(ii) varying contribution rates for small employers in a State to the extent that such rates could vary using the same methodology employed in such State for regulating premium rates in the small group market with respect to health insurance coverage offered in connection with bona fide associations (within the meaning of section 2791(d)(3) of the Public Health Service Act), subject to the requirements of section 702(b) relating to contribution rates.

''(3) FLOOR FOR NUMBER OF COVERED INDIVIDUALS WITH RESPECT TO CERTAIN PLANS.—If any benefit option under the plan does not consist of health insurance coverage, the plan has as of the beginning of the plan year not fewer than 1,000 participants and beneficiaries.

''(4) MARKETING REQUIREMENTS.—

''(A) IN GENERAL.—If a benefit option which consists of health insurance coverage is offered under the plan, State-licensed insurance agents shall be used to distribute to small employers coverage which does not consist of health insurance coverage in a manner comparable to the manner in which such agents are used to distribute health insurance coverage.

''(B) STATE-LICENSED INSURANCE AGENTS.—For purposes of subparagraph (A), the term 'State-licensed insurance agents' means one or more agents who are licensed in a State and are subject to the laws of such State relating to licensure, qualification, testing, examination, and continuing education of persons authorized to offer, sell, or solicit health insurance coverage in such State.

''(5) REGULATORY REQUIREMENTS.—Such other requirements as the applicable authority determines are necessary to carry out the purposes of this part, which shall be prescribed by the applicable authority by regulation.

''(b) ABILITY OF ASSOCIATION HEALTH PLANS TO DESIGN BENEFIT OPTIONS.—Subject to section 514(d), nothing in this part or any provision of State law (as defined in section 514(c)(1)) shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from exercising its sole discretion in selecting the specific items and services consisting of medical care to be included as benefits under such plan or coverage, except (subject to section 514) in the case of (1) any law to the extent that it is not preempted under section 731(a)(1) with respect to matters governed by section 711, 712, or 713, or (2) any law of the State with which filing and approval of a policy type offered by the plan was initially obtained to the extent that such law prohibits an exclusion of a specific disease from such coverage.

''SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS FOR SOLVENCY FOR PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

''(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if—

''(1) the benefits under the plan consist solely of health insurance coverage; or

''(2) the plan provides any additional benefit options which do not consist of health insurance coverage, the plan—

''(A) establishes and maintains reserves with respect to such additional benefit options, in amounts recommended by the qualified actuary, consisting of—

''(i) a reserve sufficient for unearned contributions;

''(ii) a reserve sufficient for benefit liabilities which have been incurred, which have not been satisfied, and for which risk of loss has not yet been transferred, and for expected administrative costs with respect to such benefit liabilities;

''(iii) a reserve sufficient for any other obligations of the plan; and

''(iv) a reserve sufficient for a margin of error and other fluctuations, taking into account the specific circumstances of the plan; and

''(B) establishes and maintains aggregate and specific excess/stop loss insurance and solvency indemnification, with respect to such additional benefit options for which risk of loss has not yet been transferred, as follows:

''(i) The plan shall secure aggregate excess/stop loss insurance for the plan with an attachment point which is not greater than 125 percent of expected gross annual claims. The applicable authority may by regulation provide for upward adjustments in the amount of such percentage in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(ii) The plan shall secure specific excess/stop loss insurance for the plan with an attachment point which is at least equal to an amount recommended by the plan's qualified actuary. The applicable authority may by regulation provide for adjustments in the amount of such insurance in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(iii) The plan shall secure indemnification insurance for any claims which the plan is unable to satisfy by reason of a plan termination.

Any person issuing to a plan insurance described in clause (i), (ii), or (iii) of subparagraph (B) shall notify the Secretary of any failure of premium payment meriting cancellation of the policy prior to undertaking such a cancellation. Any regulations prescribed by the applicable authority pursuant to clause (i) or (ii) of subparagraph (B) may allow for such adjustments in the required levels of excess/stop loss insurance as the qualified actuary may recommend, taking into account the specific circumstances of the plan.

''(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS RESERVES.—In the case of any association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan establishes and maintains surplus in an amount at least equal to—

''(1) $500,000, or

''(2) such greater amount (but not greater than $2,000,000) as may be set forth in regulations prescribed by the applicable authority, considering the level of aggregate and specific excess /stop loss insurance provided with respect to such plan and other factors related to solvency risk, such as the plan's projected levels of participation or claims, the nature of the plan's liabilities, and the types of assets available to assure that such liabilities are met.

''(c) ADDITIONAL REQUIREMENTS.—In the case of any association health plan described in subsection (a)(2), the applicable authority may provide such additional requirements relating to reserves, excess /stop loss insurance, and indemnification insurance as the applicable authority considers appropriate. Such requirements may be provided by regulation with respect to any such plan or any class of such plans.

''(d) ADJUSTMENTS FOR EXCESS /STOP LOSS INSURANCE.—The applicable authority may

provide for adjustments to the levels of reserves otherwise required under subsections (a) and (b) with respect to any plan or class of plans to take into account excess /stop loss insurance provided with respect to such plan or plans.

''(e) ALTERNATIVE MEANS OF COMPLIANCE.—The applicable authority may permit an association health plan described in subsection (a)(2) to substitute, for all or part of the requirements of this section (except subsection (a)(2)(B)(iii)), such security, guarantee, hold-harmless arrangement, or other financial arrangement as the applicable authority determines to be adequate to enable the plan to fully meet all its financial obligations on a timely basis and is otherwise no less protective of the interests of participants and beneficiaries than the requirements for which it is substituted. The applicable authority may take into account, for purposes of this subsection, evidence provided by the plan or sponsor which demonstrates an assumption of liability with respect to the plan. Such evidence may be in the form of a contract of indemnification, lien, bonding, insurance, letter of credit, recourse under applicable terms of the plan in the form of assessments of participating employers, security, or other financial arrangement.

''(f) MEASURES TO ENSURE CONTINUED PAYMENT OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

''(1) PAYMENTS BY CERTAIN PLANS TO ASSOCIATION HEALTH PLAN FUND.—

''(A) IN GENERAL.—In the case of an association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan makes payments into the Association Health Plan Fund under this subparagraph when they are due. Such payments shall consist of annual payments in the amount of $5,000, and, in addition to such annual payments, such supplemental payments as the Secretary may determine to be necessary under paragraph (2). Payments under this paragraph are payable to the Fund at the time determined by the Secretary. Initial payments are due in advance of certification under this part. Payments shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure.

''(B) PENALTIES FOR FAILURE TO MAKE PAYMENTS.—If any payment is not made by a plan when it is due, a late payment charge of not more than 100 percent of the payment which was not timely paid shall be payable by the plan to the Fund.

''(C) CONTINUED DUTY OF THE SECRETARY.—The Secretary shall not cease to carry out the provisions of paragraph (2) on account of the failure of a plan to pay any payment when due.

''(2) PAYMENTS BY SECRETARY TO CONTINUE EXCESS /STOP LOSS INSURANCE COVERAGE AND INDEMNIFICATION INSURANCE COVERAGE FOR CERTAIN PLANS.—In any case in which the applicable authority determines that there is, or that there is reason to believe that there will be—

''(A) a failure to take necessary corrective actions under section 809(a) with respect to an association health plan described in subsection (a)(2); or

''(B) a termination of such a plan under section 809(b) or 810(b)(8) (and, if the applicable authority is not the Secretary, certifies such determination to the Secretary)

the Secretary shall determine the amounts necessary to make payments to an insurer (designated by the Secretary) to maintain in force excess /stop loss insurance coverage or indemnification insurance coverage for such plan, if the Secretary determines that there is a reasonable expectation that, without such payments, claims would not be satisfied by reason of termination of such coverage. The Secretary shall, to the extent provided in advance in appropriation Acts, pay such amounts so determined to the insurer designated by the Secretary.

''(3) ASSOCIATION HEALTH PLAN FUND.—

''(A) IN GENERAL.—There is established on the books of the Treasury a fund to be known as the 'Association Health Plan Fund'. The Fund shall be available for making payments pursuant to paragraph (2). The Fund shall be credited with payments received pursuant to paragraph (1)(A), penalties received pursuant to paragraph (1)(B); and earnings on investments of amounts of the Fund under subparagraph (B).

''(B) INVESTMENT.—Whenever the Secretary determines that the moneys of the fund are in excess of current needs, the Secretary may request the investment of such amounts as the Secretary determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

''(g) EXCESS /STOP LOSS INSURANCE.—For purposes of this section—

''(1) AGGREGATE EXCESS /STOP LOSS INSURANCE.—The term 'aggregate excess /stop loss insurance' means, in connection with an association health plan, a contract—

''(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to aggregate claims under the plan in excess of an amount or amounts specified in such contract;

''(B) which is guaranteed renewable; and

''(C) which allows for payment of premiums by any third party on behalf of the insured plan.

''(2) SPECIFIC EXCESS /STOP LOSS INSURANCE.—The term 'specific excess /stop loss insurance' means, in connection with an association health plan, a contract—

''(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to claims under the plan in connection with a covered individual in excess of an amount or amounts specified in such contract in connection with such covered individual;

''(B) which is guaranteed renewable; and

''(C) which allows for payment of premiums by any third party on behalf of the insured plan.

''(h) INDEMNIFICATION INSURANCE.—For purposes of this section, the term 'indemnification insurance' means, in connection with an association health plan, a contract—

''(1) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to claims under the plan which the plan is unable to satisfy by reason of a termination pursuant to section 809(b) (relating to mandatory termination);

''(2) which is guaranteed renewable and noncancellable for any reason (except as the applicable authority may prescribe by regulation); and

''(3) which allows for payment of premiums by any third party on behalf of the insured plan.

''(i) RESERVES.—For purposes of this section, the term 'reserves' means, in connection with an association health plan, plan assets which meet the fiduciary standards under part 4 and such additional requirements regarding liquidity as the applicable authority may prescribe by regulation.

''(j) SOLVENCY STANDARDS WORKING GROUP.—

''(1) IN GENERAL.—Within 90 days after the date of the enactment of the Small Business Health Fairness Act of 2005, the applicable authority shall establish a Solvency Standards Working Group. In prescribing the initial regulations under this section, the applicable authority shall take into account the recommendations of such Working Group.

''(2) MEMBERSHIP.—The Working Group shall consist of not more than 15 members appointed by the applicable authority. The applicable authority shall include among persons invited to membership on the Working Group at least one of each of the following:

''(A) A representative of the National Association of Insurance Commissioners.

''(B) A representative of the American Academy of Actuaries.

''(C) A representative of the State governments, or their interests.

''(D) A representative of existing self-insured arrangements, or their interests.

''(E) A representative of associations of the type referred to in section 801(b)(1), or their interests.

''(F) A representative of multiemployer plans that are group health plans, or their interests.

''SEC. 807. REQUIREMENTS FOR APPLICATION AND RELATED REQUIREMENTS.

''(a) FILING FEE.—Under the procedure prescribed pursuant to section 802(a), an association health plan shall pay to the applicable authority at the time of filing an application for certification under this part a filing fee in the amount of $5,000, which shall be available in the case of the Secretary, to the extent provided in appropriation Acts, for the sole purpose of administering the certification procedures applicable with respect to association health plans.

''(b) INFORMATION TO BE INCLUDED IN APPLICATION FOR CERTIFICATION.—An application for certification under this part meets the requirements of this section only if it includes, in a manner and form which shall be prescribed by the applicable authority by regulation, at least the following information:

''(1) IDENTIFYING INFORMATION.—The names and addresses of—

''(A) the sponsor; and

''(B) the members of the board of trustees of the plan.

''(2) STATES IN WHICH PLAN INTENDS TO DO BUSINESS.—The States in which participants and beneficiaries under the plan are to be located and the number of them expected to be located in each such State.

''(3) BONDING REQUIREMENTS.—Evidence provided by the board of trustees that the bonding requirements of section 412 will be met as of the date of the application or (if later) commencement of operations.

''(4) PLAN DOCUMENTS.—A copy of the documents governing the plan (including any bylaws and trust agreements), the summary plan description, and other material describing the benefits that will be provided to participants and beneficiaries under the plan.

''(5) AGREEMENTS WITH SERVICE PROVIDERS.—A copy of any agreements between the plan and contract administrators and other service providers.

''(6) FUNDING REPORT.—In the case of association health plans providing benefits options in addition to health insurance coverage, a report setting forth information with respect to such additional benefit options determined as of a date within the 120-day period ending with the date of the application, including the following:

''(A) RESERVES.—A statement, certified by the board of trustees of the plan, and a statement of actuarial opinion, signed by a qualified actuary, that all applicable requirements of section 806 are or will be met in accordance with regulations which the applicable authority shall prescribe.

''(B) ADEQUACY OF CONTRIBUTION RATES.—A statement of actuarial opinion, signed by a

qualified actuary, which sets forth a description of the extent to which contribution rates are adequate to provide for the payment of all obligations and the maintenance of required reserves under the plan for the 12-month period beginning with such date within such 120-day period, taking into account the expected coverage and experience of the plan. If the contribution rates are not fully adequate, the statement of actuarial opinion shall indicate the extent to which the rates are inadequate and the changes needed to ensure adequacy.

''(C) CURRENT AND PROJECTED VALUE OF ASSETS AND LIABILITIES.—A statement of actuarial opinion signed by a qualified actuary, which sets forth the current value of the assets and liabilities accumulated under the plan and a projection of the assets, liabilities, income, and expenses of the plan for the 12-month period referred to in subparagraph (B). The income statement shall identify separately the plan's administrative expenses and claims.

''(D) COSTS OF COVERAGE TO BE CHARGED AND OTHER EXPENSES.—A statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with the operation of the plan.

''(E) OTHER INFORMATION.—Any other information as may be determined by the applicable authority, by regulation, as necessary to carry out the purposes of this part.

''(c) FILING NOTICE OF CERTIFICATION WITH STATES.—A certification granted under this part to an association health plan shall not be effective unless written notice of such certification is filed with the applicable State authority of each State in which at least 25 percent of the participants and beneficiaries under the plan are located. For purposes of this subsection, an individual shall be considered to be located in the State in which a known address of such individual is located or in which such individual is employed.

''(d) NOTICE OF MATERIAL CHANGES.—In the case of any association health plan certified under this part, descriptions of material changes in any information which was required to be submitted with the application for the certification under this part shall be filed in such form and manner as shall be prescribed by the applicable authority by regulation. The applicable authority may require by regulation prior notice of material changes with respect to specified matters which might serve as the basis for suspension or revocation of the certification.

''(e) REPORTING REQUIREMENTS FOR CERTAIN ASSOCIATION HEALTH PLANS.—An association health plan certified under this part which provides benefit options in addition to health insurance coverage for such plan year shall meet the requirements of section 103 by filing an annual report under such section which shall include information described in subsection (b)(6) with respect to the plan year and, notwithstanding section 104(a)(1)(A), shall be filed with the applicable authority not later than 90 days after the close of the plan year (or on such later date as may be prescribed by the applicable authority). The applicable authority may require by regulation such interim reports as it considers appropriate.

''(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The board of trustees of each association health plan which provides benefits options in addition to health insurance coverage and which is applying for certification under this part or is certified under this part shall engage, on behalf of all participants and beneficiaries, a qualified actuary who shall be responsible for the preparation of the materials comprising information necessary to be submitted by a qualified actuary under this part. The qualified actuary shall utilize such assumptions and techniques as are necessary to enable such actuary to form an opinion as to whether the contents of the matters reported under this part—

''(1) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

''(2) represent such actuary's best estimate of anticipated experience under the plan.

The opinion by the qualified actuary shall be made with respect to, and shall be made a part of, the annual report.

''SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TERMINATION.

''Except as provided in section 809(b), an association health plan which is or has been certified under this part may terminate (upon or at any time after cessation of accruals in benefit liabilities) only if the board of trustees, not less than 60 days before the proposed termination date—

''(1) provides to the participants and beneficiaries a written notice of intent to terminate stating that such termination is intended and the proposed termination date;

''(2) develops a plan for winding up the affairs of the plan in connection with such termination in a manner which will result in timely payment of all benefits for which the plan is obligated; and

''(3) submits such plan in writing to the applicable authority.

Actions required under this section shall be taken in such form and manner as may be prescribed by the applicable authority by regulation.

''SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMINATION.

''(a) ACTIONS TO AVOID DEPLETION OF RESERVES.—An association health plan which is certified under this part and which provides benefits other than health insurance coverage shall continue to meet the requirements of section 806, irrespective of whether such certification continues in effect. The board of trustees of such plan shall determine quarterly whether the requirements of section 806 are met. In any case in which the board determines that there is reason to believe that there is or will be a failure to meet such requirements, or the applicable authority makes such a determination and so notifies the board, the board shall immediately notify the qualified actuary engaged by the plan, and such actuary shall, not later than the end of the next following month, make such recommendations to the board for corrective action as the actuary determines necessary to ensure compliance with section 806. Not later than 30 days after receiving from the actuary recommendations for corrective actions, the board shall notify the applicable authority (in such form and manner as the applicable authority may prescribe by regulation) of such recommendations of the actuary for corrective action, together with a description of the actions (if any) that the board has taken or plans to take in response to such recommendations. The board shall thereafter report to the applicable authority, in such form and frequency as the applicable authority may specify to the board, regarding corrective action taken by the board until the requirements of section 806 are met.

''(b) MANDATORY TERMINATION.—In any case in which—

''(1) the applicable authority has been notified under subsection (a) (or by an issuer of excess /stop loss insurance or indemnity insurance pursuant to section 806(a)) of a failure of an association health plan which is or has been certified under this part and is described in section 806(a)(2) to meet the requirements of section 806 and has not been notified by the board of trustees of the plan that corrective action has restored compliance with such requirements; and

''(2) the applicable authority determines that there is a reasonable expectation that the plan will continue to fail to meet the requirements of section 806, the board of trustees of the plan shall, at the direction of the applicable authority, terminate the plan and, in the course of the termination, take such actions as the applicable authority may require, including satisfying any claims referred to in section 806(a)(2)(B)(iii) and recovering for the plan any liability under subsection (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure that the affairs of the plan will be, to the maximum extent possible, wound up in a manner which will result in timely provision of all benefits for which the plan is obligated.

''SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOLVENT ASSOCIATION HEALTH PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

''(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR INSOLVENT PLANS.—Whenever the Secretary determines that an association health plan which is or has been certified under this part and which is described in section 806(a)(2) will be unable to provide benefits when due or is otherwise in a financially hazardous condition, as shall be defined by the Secretary by regulation, the Secretary shall, upon notice to the plan, apply to the appropriate United States district court for appointment of the Secretary as trustee to administer the plan for the duration of the insolvency. The plan may appear as a party and other interested persons may intervene in the proceedings at the discretion of the court. The court shall appoint such Secretary trustee if the court determines that the trusteeship is necessary to protect the interests of the participants and beneficiaries or providers of medical care or to avoid any unreasonable deterioration of the financial condition of the plan. The trusteeship of such Secretary shall continue until the conditions described in the first sentence of this subsection are remedied or the plan is terminated.

''(b) POWERS AS TRUSTEE.—The Secretary, upon appointment as trustee under subsection (a), shall have the power—

''(1) to do any act authorized by the plan, this title, or other applicable provisions of law to be done by the plan administrator or any trustee of the plan;

''(2) to require the transfer of all (or any part) of the assets and records of the plan to the Secretary as trustee;

''(3) to invest any assets of the plan which the Secretary holds in accordance with the provisions of the plan, regulations prescribed by the Secretary, and applicable provisions of law;

''(4) to require the sponsor, the plan administrator, any participating employer, and any employee organization representing plan participants to furnish any information with respect to the plan which the Secretary as trustee may reasonably need in order to administer the plan;

''(5) to collect for the plan any amounts due the plan and to recover reasonable expenses of the trusteeship;

''(6) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan;

''(7) to issue, publish, or file such notices, statements, and reports as may be required by the Secretary by regulation or required by any order of the court;

''(8) to terminate the plan (or provide for its termination in accordance with section 809(b)) and liquidate the plan assets, to restore the plan to the responsibility of the sponsor, or to continue the trusteeship;

''(9) to provide for the enrollment of plan participants and beneficiaries under appropriate coverage options; and

''(10) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries and providers of medical care.

''(c) NOTICE OF APPOINTMENT.—As soon as practicable after the Secretary's appointment as trustee, the Secretary shall give notice of such appointment to—

''(1) the sponsor and plan administrator;

''(2) each participant;

''(3) each participating employer; and

''(4) if applicable, each employee organization which, for purposes of collective bargaining, represents plan participants.

''(d) ADDITIONAL DUTIES.—Except to the extent inconsistent with the provisions of this title, or as may be otherwise ordered by the court, the Secretary, upon appointment as trustee under this section, shall be subject to the same duties as those of a trustee under section 704 of title 11, United States Code, and shall have the duties of a fiduciary for purposes of this title.

''(e) OTHER PROCEEDINGS.—An application by the Secretary under this subsection may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

''(f) JURISDICTION OF COURT.—

''(1) IN GENERAL.—Upon the filing of an application for the appointment as trustee or the issuance of a decree under this section, the court to which the application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of the United States having jurisdiction over cases under chapter 11 of title 11, United States Code. Pending an adjudication under this section such court shall stay, and upon appointment by it of the Secretary as trustee, such court shall continue the stay of, any pending mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan, the sponsor, or property of such plan or sponsor, and any other suit against any receiver, conservator, or trustee of the plan, the sponsor, or property of the plan or sponsor. Pending such adjudication and upon the appointment by it of the Secretary as trustee, the court may stay any proceeding to enforce a lien against property of the plan or the sponsor or any other suit against the plan or the sponsor.

''(2) VENUE.—An action under this section may be brought in the judicial district where the sponsor or the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

''(g) PERSONNEL.—In accordance with regulations which shall be prescribed by the Secretary, the Secretary shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel as may be necessary in connection with the Secretary's service as trustee under this section.

''SEC. 811. STATE ASSESSMENT AUTHORITY.

''(a) IN GENERAL.—Notwithstanding section 514, a State may impose by law a contribution tax on an association health plan described in section 806(a)(2), if the plan commenced operations in such State after the date of the enactment of the Small Business Health Fairness Act of 2005.

''(b) CONTRIBUTION TAX.—For purposes of this section, the term 'contribution tax' imposed by a State on an association health plan means any tax imposed by such State if—

''(1) such tax is computed by applying a rate to the amount of premiums or contributions, with respect to individuals covered under the plan who are residents of such State, which are received by the plan from participating employers located in such State or from such individuals;

''(2) the rate of such tax does not exceed the rate of any tax imposed by such State on premiums or contributions received by insurers or health maintenance organizations for health insurance coverage offered in such State in connection with a group health plan;

''(3) such tax is otherwise nondiscriminatory; and

''(4) the amount of any such tax assessed on the plan is reduced by the amount of any tax or assessment otherwise imposed by the State on premiums, contributions, or both received by insurers or health maintenance organizations for health insurance coverage, aggregate excess /stop loss insurance (as defined in section 806(g)(1)), specific excess /stop loss insurance (as defined in section 806(g)(2)), other insurance related to the provision of medical care under the plan, or any combination thereof provided by such insurers or health maintenance organizations in such State in connection with such plan.

''SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.

''(a) DEFINITIONS.—For purposes of this part—

''(1) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning provided in section 733(a)(1) (after applying subsection (b) of this section).

''(2) MEDICAL CARE.—The term 'medical care' has the meaning provided in section 733(a)(2).

''(3) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning provided in section 733(b)(1).

''(4) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning provided in section 733(b)(2).

''(5) APPLICABLE AUTHORITY.—The term 'applicable authority' means the Secretary, except that, in connection with any exercise of the Secretary's authority regarding which the Secretary is required under section 506(d) to consult with a State, such term means the Secretary, in consultation with such State.

''(6) HEALTH STATUS-RELATED FACTOR.—The term 'health status-related factor' has the meaning provided in section 733(d)(2).

''(7) INDIVIDUAL MARKET.—

''(A) IN GENERAL.—The term 'individual market' means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

''(B) TREATMENT OF VERY SMALL GROUPS.—

''(i) IN GENERAL.—Subject to clause (ii), such term includes coverage offered in connection with a group health plan that has fewer than 2 participants as current employees or participants described in section 732(d)(3) on the first day of the plan year.

''(ii) STATE EXCEPTION.—Clause (i) shall not apply in the case of health insurance coverage offered in a State if such State regulates the coverage described in such clause in the same manner and to the same extent as coverage in the small group market (as defined in section 2791(e)(5) of the Public Health Service Act) is regulated by such State.

''(8) PARTICIPATING EMPLOYER.—The term 'participating employer' means, in connection with an association health plan, any employer, if any individual who is an employee of such employer, a partner in such employer, or a self-employed individual who is such employer (or any dependent, as defined under the terms of the plan, of such individual) is or was covered under such plan in connection with the status of such individual as such an employee, partner, or self-employed individual in relation to the plan.

''(9) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of title XXVII of the Public Health Service Act for the State involved with respect to such issuer.

''(10) QUALIFIED ACTUARY.—The term 'qualified actuary' means an individual who is a member of the American Academy of Actuaries.

''(11) AFFILIATED MEMBER.—The term 'affiliated member' means, in connection with a sponsor—

''(A) a person who is otherwise eligible to be a member of the sponsor but who elects an affiliated status with the sponsor,

''(B) in the case of a sponsor with members which consist of associations, a person who is a member of any such association and elects an affiliated status with the sponsor, or

''(C) in the case of an association health plan in existence on the date of the enactment of the Small Business Health Fairness Act of 2005, a person eligible to be a member of the sponsor or one of its member associations.

''(12) LARGE EMPLOYER.—The term 'large employer' means, in connection with a group health plan with respect to a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(13) SMALL EMPLOYER.—The term 'small employer' means, in connection with a group health plan with respect to a plan year, an employer who is not a large employer.

''(b) RULES OF CONSTRUCTION.—

''(1) EMPLOYERS AND EMPLOYEES.—For purposes of determining whether a plan, fund, or program is an employee welfare benefit plan which is an association health plan, and for purposes of applying this title in connection with such plan, fund, or program so determined to be such an employee welfare benefit plan—

''(A) in the case of a partnership, the term 'employer' (as defined in section 3(5)) includes the partnership in relation to the partners, and the term 'employee' (as defined in section 3(6)) includes any partner in relation to the partnership; and

''(B) in the case of a self-employed individual, the term 'employer' (as defined in section 3(5)) and the term 'employee' (as defined in section 3(6)) shall include such individual.

''(2) PLANS, FUNDS, AND PROGRAMS TREATED AS EMPLOYEE WELFARE BENEFIT PLANS.—In the case of any plan, fund, or program which was established or is maintained for the purpose of providing medical care (through the purchase of insurance or otherwise) for employees (or their dependents) covered thereunder and which demonstrates to the Secretary that all requirements for certification under this part would be met with respect to such plan, fund, or program if such plan, fund, or program were a group health plan, such plan, fund, or program shall be treated for purposes of this title as an employee welfare benefit plan on and after the date of such demonstration.''.

(b) CONFORMING AMENDMENTS TO PREEMPTION RULES.—

(1) Section 514(b)(6) of such Act (29 U.S.C. 1144(b)(6)) is amended by adding at the end the following new subparagraph:

''(E) The preceding subparagraphs of this paragraph do not apply with respect to any State law in the case of an association health plan which is certified under part 8.''.

(2) Section 514 of such Act (29 U.S.C. 1144) is amended—

(A) in subsection (b)(4), by striking ''Subsection (a)'' and inserting ''Subsections (a) and (d)'';

(B) in subsection (b)(5), by striking ''subsection (a)'' in subparagraph (A) and inserting ''subsection (a) of this section and subsections (a)(2)(B) and (b) of section 805'', and by striking ''subsection (a)'' in subparagraph (B) and inserting ''subsection (a) of this section or subsection (a)(2)(B) or (b) of section 805'';

(C) by redesignating subsection (d) as subsection (e); and

(D) by inserting after subsection (c) the following new subsection:

''(d)(1) Except as provided in subsection (b)(4), the provisions of this title shall supersede any and all State laws insofar as they may now or hereafter preclude, or have the effect of precluding, a health insurance issuer from offering health insurance coverage in connection with an association health plan which is certified under part 8.

''(2) Except as provided in paragraphs (4) and (5) of subsection (b) of this section—

''(A) In any case in which health insurance coverage of any policy type is offered under an association health plan certified under part 8 to a participating employer operating in such State, the provisions of this title shall supersede any and all laws of such State insofar as they may preclude a health insurance issuer from offering health insurance coverage of the same policy type to other employers operating in the State which are eligible for coverage under such association health plan, whether or not such other employers are participating employers in such plan.

''(B) In any case in which health insurance coverage of any policy type is offered in a State under an association health plan certified under part 8 and the filing, with the applicable State authority (as defined in section 812(a)(9)), of the policy form in connection with such policy type is approved by such State authority, the provisions of this title shall supersede any and all laws of any other State in which health insurance coverage of such type is offered, insofar as they may preclude, upon the filing in the same form and manner of such policy form with the applicable State authority in such other State, the approval of the filing in such other State.

''(3) Nothing in subsection (b)(6)(E) or the preceding provisions of this subsection shall be construed, with respect to health insurance issuers or health insurance coverage, to supersede or impair the law of any State—

''(A) providing solvency standards or similar standards regarding the adequacy of insurer capital, surplus, reserves, or contributions, or

''(B) relating to prompt payment of claims.

''(4) For additional provisions relating to association health plans, see subsections (a)(2)(B) and (b) of section 805.

''(5) For purposes of this subsection, the term 'association health plan' has the meaning provided in section 801(a), and the terms 'health insurance coverage', 'participating employer', and 'health insurance issuer' have the meanings provided such terms in section 812, respectively.''.

(3) Section 514(b)(6)(A) of such Act (29 U.S.C. 1144(b)(6)(A)) is amended—

(A) in clause (i)(II), by striking ''and'' at the end;

(B) in clause (ii), by inserting ''and which does not provide medical care (within the meaning of section 733(a)(2)),'' after ''arrangement,'', and by striking ''title.'' and inserting ''title, and''; and

(C) by adding at the end the following new clause:

''(iii) subject to subparagraph (E), in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement and which provides medical care (within the meaning of section 733(a)(2)), any law of any State which regulates insurance may apply.''.

(4) Section 514(e) of such Act (as redesignated by paragraph (2)(C)) is amended—

(A) by striking ''Nothing'' and inserting ''(1) Except as provided in paragraph (2), nothing''; and

(B) by adding at the end the following new paragraph:

''(2) Nothing in any other provision of law enacted on or after the date of the enactment of the Small Business Health Fairness Act of 2005 shall be construed to alter, amend, modify, invalidate, impair, or supersede any provision of this title, except by specific cross-reference to the affected section.''.

(c) PLAN SPONSOR.—Section 3(16)(B) of such Act (29 U.S.C. 102(16)(B)) is amended by adding at the end the following new sentence: ''Such term also includes a person serving as the sponsor of an association health plan under part 8.''.

(d) DISCLOSURE OF SOLVENCY PROTECTIONS RELATED TO SELF-INSURED AND FULLY INSURED OPTIONS UNDER ASSOCIATION HEALTH PLANS.—Section 102(b) of such Act (29 U.S.C. 102(b)) is amended by adding at the end the following: ''An association health plan shall include in its summary plan description, in connection with each benefit option, a description of the form of solvency or guarantee fund protection secured pursuant to this Act or applicable State law, if any.''.

(e) SAVINGS CLAUSE.—Section 731(c) of such Act is amended by inserting ''or part 8'' after ''this part''.

(f) REPORT TO CONGRESS REGARDING CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—Not later than January 1, 2010, the Secretary of Labor shall report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives the effect association health plans have had, if any, on reducing the number of uninsured individuals.

(g) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 734 the following new items:

''PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

''801. Association health plans.
''802. Certification of association health plans.
''803. Requirements relating to sponsors and boards of trustees.
''804. Participation and coverage requirements.
''805. Other requirements relating to plan documents, contribution rates, and benefit options.
''806. Maintenance of reserves and provisions for solvency for plans providing health benefits in addition to health insurance coverage.
''807. Requirements for application and related requirements.
''808. Notice requirements for voluntary termination.
''809. Corrective actions and mandatory termination.
''810. Trusteeship by the Secretary of insolvent association health plans providing health benefits in addition to health insurance coverage.
''811. State assessment authority.
''812. Definitions and rules of construction.''.

SEC. 3. CLARIFICATION OF TREATMENT OF SINGLE EMPLOYER ARRANGEMENTS.

Section 3(40)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amended—

(1) in clause (i), by inserting after ''control group,'' the following: ''except that, in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), 2 or more trades or businesses, whether or not incorporated, shall be deemed a single employer for any plan year of such plan, or any fiscal year of such other arrangement, if such trades or businesses are within the same control group during such year or at any time during the preceding 1-year period,'';

(2) in clause (iii), by striking ''(iii) the determination'' and inserting the following:

''(iii)(I) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), the determination of whether a trade or business is under 'common control' with another trade or business shall be determined under regulations of the Secretary applying principles consistent and coextensive with the principles applied in determining whether employees of 2 or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, an interest of greater than 25 percent may not be required as the minimum interest necessary for common control, or

''(II) in any other case, the determination'';

(3) by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively; and

(4) by inserting after clause (iii) the following new clause:

''(iv) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), in determining, after the application of clause (i), whether benefits are provided to employees of 2 or more employers, the arrangement shall be treated as having only one participating employer if, after the application of clause (i), the number of individuals who are employees and former employees of any one participating employer and who are covered under the arrangement is greater than 75 percent of the aggregate number of all individuals who are employees or former employees of participating employers and who are covered under the arrangement,''.

SEC. 4. ENFORCEMENT PROVISIONS RELATING TO ASSOCIATION HEALTH PLANS.

(a) CRIMINAL PENALTIES FOR CERTAIN WILLFUL MISREPRESENTATIONS.—Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by inserting ''(a)'' after ''Sec. 501.''; and

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

''(b) Any person who willfully falsely represents, to any employee, any employee's beneficiary, any employer, the Secretary, or any State, a plan or other arrangement established or maintained for the purpose of offering or providing any benefit described in section 3(1) to employees or their beneficiaries as—

''(1) being an association health plan which has been certified under part 8;

''(2) having been established or maintained under or pursuant to one or more collective bargaining agreements which are reached pursuant to collective bargaining described in section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d)) or paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152, paragraph Fourth) or which

are reached pursuant to labor-management negotiations under similar provisions of State public employee relations laws; or

''(3) being a plan or arrangement described in section 3(40)(A)(i), shall, upon conviction, be imprisoned not more than 5 years, be fined under title 18, United States Code, or both.''.

(b) CEASE ACTIVITIES ORDERS.—Section 502 of such Act (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

''(n) ASSOCIATION HEALTH PLAN CEASE AND DESIST ORDERS.—

''(1) IN GENERAL.—Subject to paragraph (2), upon application by the Secretary showing the operation, promotion, or marketing of an association health plan (or similar arrangement providing benefits consisting of medical care (as defined in section 733(a)(2))) that—

''(A) is not certified under part 8, is subject under section 514(b)(6) to the insurance laws of any State in which the plan or arrangement offers or provides benefits, and is not licensed, registered, or otherwise approved under the insurance laws of such State; or

''(B) is an association health plan certified under part 8 and is not operating in accordance with the requirements under part 8 for such certification, a district court of the United States shall enter an order requiring that the plan or arrangement cease activities.

''(2) EXCEPTION.—Paragraph (1) shall not apply in the case of an association health plan or other arrangement if the plan or arrangement shows that—

''(A) all benefits under it referred to in paragraph (1) consist of health insurance coverage; and

''(B) with respect to each State in which the plan or arrangement offers or provides benefits, the plan or arrangement is operating in accordance with applicable State laws that are not superseded under section 514.

''(3) ADDITIONAL EQUITABLE RELIEF.—The court may grant such additional equitable relief, including any relief available under this title, as it deems necessary to protect the interests of the public and of persons having claims for benefits against the plan.''.

(c) RESPONSIBILITY FOR CLAIMS PROCEDURE.—Section 503 of such Act (29 U.S.C. 1133) is amended by inserting ''(a) IN GENERAL.—'' before ''In accordance'', and by adding at the end the following new subsection:

''(b) ASSOCIATION HEALTH PLANS.—The terms of each association health plan which is or has been certified under part 8 shall require the board of trustees or the named fiduciary (as applicable) to ensure that the requirements of this section are met in connection with claims filed under the plan.''.

SEC. 5. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.

Section 506 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by adding at the end the following new subsection:

''(d) CONSULTATION WITH STATES WITH RESPECT TO ASSOCIATION HEALTH PLANS.—

''(1) AGREEMENTS WITH STATES.—The Secretary shall consult with the State recognized under paragraph (2) with respect to an association health plan regarding the exercise of—

''(A) the Secretary's authority under sections 502 and 504 to enforce the requirements for certification under part 8; and

''(B) the Secretary's authority to certify association health plans under part 8 in accordance with regulations of the Secretary applicable to certification under part 8.

''(2) RECOGNITION OF PRIMARY DOMICILE STATE.—In carrying out paragraph (1), the Secretary shall ensure that only one State will be recognized, with respect to any particular association health plan, as the State with which consultation is required. In carrying out this paragraph—

''(A) in the case of a plan which provides health insurance coverage (as defined in section 812(a)(3)), such State shall be the State with which filing and approval of a policy type offered by the plan was initially obtained, and

''(B) in any other case, the Secretary shall take into account the places of residence of the participants and beneficiaries under the plan and the State in which the trust is maintained.''.

SEC. 6. EFFECTIVE DATE AND TRANSITIONAL AND OTHER RULES.

(a) EFFECTIVE DATE.—The amendments made by this Act shall take effect one year after the date of the enactment of this Act. The Secretary of Labor shall first issue all regulations necessary to carry out the amendments made by this Act within one year after the date of the enactment of this Act.

(b) TREATMENT OF CERTAIN EXISTING HEALTH BENEFITS PROGRAMS.—

(1) IN GENERAL.—In any case in which, as of the date of the enactment of this Act, an arrangement is maintained in a State for the purpose of providing benefits consisting of medical care for the employees and beneficiaries of its participating employers, at least 200 participating employers make contributions to such arrangement, such arrangement has been in existence for at least 10 years, and such arrangement is licensed under the laws of one or more States to provide such benefits to its participating employers, upon the filing with the applicable authority (as defined in section 812(a)(5) of the Employee Retirement Income Security Act of 1974 (as amended by this subtitle)) by the arrangement of an application for certification of the arrangement under part 8 of subtitle B of title I of such Act—

(A) such arrangement shall be deemed to be a group health plan for purposes of title I of such Act;

(B) the requirements of sections 801(a) and 803(a) of the Employee Retirement Income Security Act of 1974 shall be deemed met with respect to such arrangement;

(C) the requirements of section 803(b) of such Act shall be deemed met, if the arrangement is operated by a board of directors which—

(i) is elected by the participating employers, with each employer having one vote; and

(ii) has complete fiscal control over the arrangement and which is responsible for all operations of the arrangement;

(D) the requirements of section 804(a) of such Act shall be deemed met with respect to such arrangement; and

(E) the arrangement may be certified by any applicable authority with respect to its operations in any State only if it operates in such State on the date of certification.

The provisions of this subsection shall cease to apply with respect to any such arrangement at such time after the date of the enactment of this Act as the applicable requirements of this subsection are not met with respect to such arrangement.

(2) DEFINITIONS.—For purposes of this subsection, the terms ''group health plan'', ''medical care'', and ''participating employer'' shall have the meanings provided in section 812 of the Employee Retirement Income Security Act of 1974, except that the reference in paragraph (7) of such section to an ''association health plan'' shall be deemed a reference to an arrangement referred to in this subsection.

Mr. BOND. Mr. President, with approximately 45 million uninsured Americans, expanding access to quality, affordable health care should be a top priority for the Senate. We hear about the cost explosion that insurance companies are imposing on small businesses and how small business owners are now finding it virtually impossible to provide the health insurance coverage that they, as well as their employees, need. No one is harder hit by large premium increases than small business—studies indicate more than 60 percent of these uninsured Americans either work for a small business or are dependent upon someone who does. As health care costs skyrocket and place more and more small business employees in jeopardy of losing their health benefits, it becomes more important that Congress turn its attention to the uninsured and act in a swift and bipartisan manner to address this problem.

Today we are here to offer hope to the millions of uninsured. Today we are here to talk about a solution that can help millions of small business employees access the same type of health care that their counterparts in large corporations and unions already enjoy.

The solution to this problem is to allow small businesses across the country to pool together and access health insurance through their membership with a bona fide trade or professional organization. This will provide small businesses the same opportunities as other large insurance purchasers. These Association Health Plans, AHPs, would reduce costs through greater economies of scale to spread costs and risk, increase group bargaining power with large insurance companies, and generate more insurance options for small businesses.

AHPs are not a new idea. They have been talked about, bandied about, argued about and compromised about for almost a decade. And during that period, what was once thought to be a manageable problem—became the crisis that we have today. Had we passed AHP legislation, we would not be seeing the problems we see today for small business.

The principle underpinning AHPs is simple. This is the same principle that makes it cheaper to buy your soda by the case instead of by individual cans. Bulk purchasing is why large companies and unions can get better rates for their employees than small businesses and it is about time that we bring Fortune 500 style health benefits to the Nation's Main Street small businesses and their employees.

In the words of President Bush, ''It makes no sense in America, to isolate small businesses as little health care islands unto themselves.'' AHPs will mean more coverage for the employees of these companies, especially their families and children.

It is time that we take control and find a way to curtail the explosive costs of health care. Small businesses deserve a chance to channel these funds toward other needs, such as expanding and creating more jobs for the

economy. Association Health Plans will level the playing field and break down the barriers that prevent small businesses from providing health insurance.

I commend Senator SNOWE for taking the lead on this critical issue and for using her position as chairwomen of the Small Business Committee to advance the number one health care priority of the small business community. With the support of President Bush, the Department of Labor, the Small Business Administration, and a broad and diverse coalition of over 100 groups, I hope that this bill will more quickly.

For the sake of small businesses throughout this country, their employees, and their families we must pass AHP legislation. We must bring fortune 500 health care to small business. The time to act is now. I thank Senators SNOWE and TALENT for their leadership, dedication and commitment on behalf of small business, and I look forward to working with them to pass Association Health Plans legislation in the Senate.

By Mr. DEWINE (for himself, Mr. DODD, Mr. HAGEL, Mr. WARNER, Mr. CORZINE, Mr. LIEBERMAN, Mr. LAUTENBERG, Ms. LANDRIEU, Mr. JEFFORDS, and Mr. SALAZAR):

S. 408. A bill to provide for programs and activities with respect to the prevention of underage drinking; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, I rise today, along with my good friend and colleague Senator DODD, to reintroduce the Sober Truth on Preventing Underage Drinking Act—also known as the STOP Underage Drinking Act. I thank Senator DODD for his commitment to this issue, as well as our colleagues on the House side—Representatives ROYBAL-ALLARD, WOLF, OSBORNE, DELAURO, and WAMP for working so diligently with us to draft this bill. It is a good bill—a carefully crafted, bipartisan, bi-cameral piece of legislation.

I also want to thank the additional Senate co-sponsors of this legislation—Senators HAGEL, WARNER, LIEBERMAN, LAUTENBERG, LANDRIEU, CORZINE, JEFFORDS, and SALAZAR. I thank them for their support. They know that underage drinking is a serious, and often deadly, problem for our Nation's children and youth and that we have to do something about it.

In September 2003, I chaired a HELP Subcommittee hearing about underage drinking. As we discussed at that hearing, it is well known that underage drinking is a significant problem for youth in this country. We've known that for a very long time.

We know that underage drinking often contributes to the four leading causes of deaths among 15 to 20 year olds—that 69 percent of youths who died in alcohol-related traffic fatalities in the year 2000 involved young drinking drivers and that in 1999, nearly 40 percent of people under the age of 21 who were victims of drownings, burns, and falls tested positive for alcohol. We also know that alcohol has been reported to be involved in 36 percent of homicides, 12 percent of male suicides, and 8 percent of female suicides involving people under 21.

How did we get here. These statistics are frightening. Too many American kids are drinking regularly, and they are drinking in quantities that can be of great, long-term harm. As a nation, we clearly haven't done enough to address this problem. We haven't done enough to acknowledge how prevalent and widespread teenage drinking is in this country. We haven't done enough to let parents know that they, too, are a part of this problem and can be a part of the solution.

We talk about drugs and the dangers of drug use, as we should, but the reality is that we, as a society, have become complacent about the problem of underage drinking. This has to change. The culture has to change.

One way to begin changing this culture is with the STOP Underage Drinking Act. Our legislation has four major areas of policy development:

First, there is a federal coordination and reporting provision. This title would create an Interagency Coordinating Committee to coordinate the efforts and expertise of various federal agencies to combat underage drinking. It would be chaired by the Secretary of Health and Human Services and would include other agencies and departments, such as the Department of Education, the Office of Juvenile Justice and Delinquency Prevention, and the Federal Trade Commission. This title also would mandate an annual report to Congress from the Interagency Committee on their efforts to combat underage drinking, as well as an annual report card on State efforts to combat the problem. Two million dollars annually would be appropriated under this section.

Second, the bill contains an authorization for an adult-oriented national media campaign against underage drinking. This title would provide $1 million in fiscal years 2006 and 2007 to authorize a national media campaign for which the Ad Council has received start up funding. The campaign is expected to launch in August of this year.

Third, the bill would support new intervention programs to prevent underage drinking. This section of the bill would provide $5 million for enhancement grants to the Drug Free Communities program to be directed at the problem of underage drinking. This title also would create a program which would provide competitive grants to states, non-profit entities, and institutions of higher education to create state-wide coalitions to prevent underage drinking. These grants will work to change the culture of underage drinking at our Nation's institutions of higher education and their surrounding communities. This program would be funded at $5 million annually, as well.

Finally, our bill contains a section devoted to research. This title would provide $6 million for increased federal research and data collection on underage drinking, including reporting on the types and brands of alcohol that kids use and the short-term and long-term impacts of underage drinking upon adolescent brain development.

Again, I thank Senator DODD for working with me on this issue here in the Senate, and I look forward to continuing to work with my colleagues in the House and Senate to pass this very important bill.

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

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

S. 408

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 ''Sober Truth on Preventing Underage Drinking Act'', or the ''STOP Underage Drinking Act''.

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

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Drinking alcohol under the age of 21 is illegal in each of the 50 States and the District of Columbia. Enforcement of current laws and regulations in States and communities, such as minimum age drinking laws, zero tolerance laws, and laws and regulations which restrict availability of alcohol, must supplement other efforts to reduce underage drinking.

(2) Data collected annually by the Department of Health and Human Services shows that alcohol is the most heavily used drug by children in the United States, and that—

(A) more youths consume alcoholic beverages than use tobacco products or illegal drugs;

(B) by the end of the eighth grade, 45.6 percent of children have engaged in alcohol use,

and by the end of high school, 76.6 percent have done so; and

(C) the annual societal cost of underage drinking is estimated at $53 to $58 billion.

(3) Data collected by the Department of Health and Human Services and the Department of Transportation indicate that alcohol use by youth has many negative consequences, such as immediate risk from acute impairment; traffic fatalities; violence; suicide; and unprotected sex.

(4) Research confirms that the harm caused by underage drinking lasts beyond the underage years. Compared to persons who wait until age 21 or older to start drinking, those who start to drink before age 14 are, as adults, four times more likely to become alcohol dependent; seven times more likely to be in a motor vehicle crash because of drinking; and more likely to suffer mental and physical damage from alcohol abuse.

(5) Alcohol abuse creates long-term risk developmentally and is associated with negative physical impacts on the brain.

(6) Research indicates that adults greatly underestimate the extent of alcohol use by youths, its negative consequences, and its use by their own children. The IOM report concluded that underage drinking cannot be successfully addressed by focusing on youth alone. Ultimately, adults are responsible for young people obtaining alcohol by selling, providing, or otherwise making it available to them. Parents are the most important channel of influence on their children's underage drinking, according to the IOM report, which also recommends a national adult-oriented media campaign.

(7) Research shows that public service health messages, in combination with community-based efforts, can reduce health-damaging behavior. The Department of Health and Human Services and the Ad Council have undertaken a public health campaign targeted at parents to combat underage alcohol consumption. The Ad Council estimates that, for a typical public health campaign, it receives an average of $28 million per year in free media through its 28,000 media outlets nationwide.

(8) A significant percentage of the total alcohol consumption in the United States each year is by underage youth. The Substance Abuse and Mental Health Services Administration reports that the percentage is over 11 percent.

(9) Youth are exposed to a significant amount of alcohol advertising through a variety of media. Some studies indicate that youth awareness of alcohol advertising correlates to their drinking behavior and beliefs.

(10) According to the Center on Alcohol Marketing and Youth, in 2002, the alcoholic beverage industry spent $927,900,000 on product advertising on television, and $24,700,000 on television advertising designed to promote the responsible use of alcohol. For every one television ad discouraging underage alcohol use, there were 215 product ads.

(11) Alcohol use occurs in 76 percent of movies rated G or PG and 97 percent of movies rated PG-13. The Federal Trade Commission has recommended restricting paid alcohol beverage promotional placements to films rated R or NC-17.

(12) Youth spend 9 to 11 hours per week listening to music, and 17 percent of all lyrics contain alcohol references; 30 percent of those songs include brand-name mentions.

(13) Studies show that adolescents watch 20 to 27 hours of television each week, and 71 percent of prime-time television episodes depict alcohol use and 77 percent contain some reference to alcohol.

(14) College and university presidents have cited alcohol abuse as the number one health problem on college and university campuses.

(15) According to the National Institute on Alcohol Abuse and Alcoholism, two of five college students are binge drinkers; 1,400 college students die each year from alcohol-related injuries, a majority of which involve motor vehicle crashes; more than 70,000 students are victims of alcohol-related sexual assault; and 500,000 students are injured under the influence of alcohol each year.

(16) According to the Center on Alcohol Marketing and Youth, in 2002, alcohol producers spent a total of $58 million to place 6,251 commercials in college sports programs, and spent $27.7 million advertising during the NCAA men's basketball tournament, which had as many alcohol ads (939) as the Super Bowl, World Series, College Bowl Games and the National Football League's Monday Night Football broadcasts combined (925).

(17) The IOM report recommended that colleges and universities ban alcohol advertising and promotion on campus in order to demonstrate their commitment to discouraging alcohol use among underage students.

(18) According to the Government Accountability Office (''GAO''), the Federal Government spends $1.8 billion annually to combat youth drug use and $71 million to prevent underage alcohol use.

(19) The GAO concluded that there is a lack of reporting about how these funds are specifically expended, inadequate collaboration among the agencies, and no central coordinating group or office to oversee how the funds are expended or to determine the effectiveness of these efforts.

(20) There are at least three major, annual, government funded national surveys in the United States that include underage drinking data: the National Household Survey on Drug Use and Health, Monitoring the Future, and the Youth Risk Behavior Survey. These surveys do not use common indicators to allow for direct comparison of youth alcohol consumption patterns. Analyses of recent years' data do, however, show similar results.

(21) Research shows that school-based and community-based interventions can reduce underage drinking and associated problems, and that positive outcomes can be achieved by combining environmental and institutional change with theory-based health education—a comprehensive, community-based approach.

(22) Studies show that a minority of youth who need treatment for their alcohol problems receive such services. Further, insufficient information exists to properly assist clinicians and other providers in their youth treatment efforts.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) The term ''binge drinking'' means a pattern of drinking alcohol that brings blood alcohol concentration (BAC) to 0.08 gm percent or above. For the typical adult, this pattern corresponds to consuming 5 or more drinks (male), or 4 or more drinks (female), in about 2 hours.

(2) The term ''heavy drinking'' means five or more drinks on the same occasion in the past 30 days.

(3) The term ''frequent heavy drinking'' means five or more drinks on at least five occasions in the last 30 days.

(4) The term ''alcoholic beverage industry'' means the brewers, vintners, distillers, importers, distributors, and retail outlets that sell and serve beer, wine, and distilled spirits.

(5) The term ''school-based prevention'' means programs, which are institutionalized, and run by staff members or school-designated persons or organizations in every grade of school, kindergarten through 12th grade.

(6) The term ''youth'' means persons under the age of 21.

(7) The term ''IOM report'' means the report released in September 2003 by the National Research Council, Institute of Medicine, and entitled ''Reducing Underage Drinking: A Collective Responsibility''.

TITLE I—SENSE OF CONGRESS

SEC. 101. SENSE OF CONGRESS.

It is the sense of the Congress that:

(1) A multi-faceted effort is needed to more successfully address the problem of underage drinking in the United States. A coordinated approach to prevention, intervention, treatment, and research is key to making progress. This Act recognizes the need for a focused national effort, and addresses particulars of the Federal portion of that effort.

(2) States and communities, including colleges and universities, are encouraged to adopt comprehensive prevention approaches, including—

(A) evidence-based screening, programs and curricula;

(B) brief intervention strategies;

(C) consistent policy enforcement; and

(D) environmental changes that limit underage access to alcohol.

(3) Public health and consumer groups have played an important role in drawing the Nation's attention to the health crisis of underage drinking. Working at the Federal, State, and community levels, and motivated by grass-roots support, they have initiated effective prevention programs that have made significant progress in the battle against underage drinking.

(4) The alcohol beverage industry has developed and paid for national education and awareness messages on illegal underage drinking directed to parents as well as consumers generally. According to the industry, it has also supported the training of more than 1.6 million retail employees, community-based prevention programs, point of sale education, and enforcement programs. All of these efforts are aimed at further reducing illegal underage drinking and preventing sales of alcohol to persons under the age of 21. All sectors of the alcohol beverage industry have also voluntarily committed to placing advertisements in broadcast and magazines where at least 70 percent of the audiences are expected to be 21 years of age or older. The industry should continue to monitor and tailor its advertising practices to further limit underage exposure, including the use of independent third party review. The industry should continue and expand evidence-based efforts to prevent underage drinking.

(5) Public health and consumer groups, in collaboration with the alcohol beverage industry, should explore opportunities to reduce underage drinking.

(6) The entertainment industries have a powerful impact on youth, and they should use rating systems and marketing codes to reduce the likelihood that underage audiences will be exposed to movies, recordings, or television programs with unsuitable alcohol content, even if adults are expected to predominate in the viewing or listening audiences.

(7) Objective scientific evidence and data should be generated and made available to the general public and policy makers at the local, state, and national levels to help them make informed decisions, implement judicious policies, and monitor progress in preventing childhood/adolescent alcohol use.

(8) The National Collegiate Athletic Association, its member colleges and universities, and athletic conferences should affirm a commitment to a policy of discouraging alcohol use among underage students and

other young fans by ending all alcohol advertising during radio and television broadcasts of collegiate sporting events.

TITLE II—INTERAGENCY COORDINATING COMMITTEE; ANNUAL REPORT CARD

SEC. 201. ESTABLISHMENT OF INTERAGENCY COORDINATING COMMITTEE TO PREVENT UNDERAGE DRINKING.

(a) IN GENERAL.—The Secretary of Health and Human Services, in collaboration with the Federal officials specified in subsection (b), shall establish an interagency coordinating committee focusing on underage drinking (referred to in this section as the ''Committee'').

(b) OTHER AGENCIES.—The officials referred to in subsection (a) are the Secretary of Education, the Attorney General, the Secretary of Transportation, the Secretary of the Treasury, the Secretary of Defense, the Surgeon General, the Director of the Centers for Disease Control and Prevention, the Director of the National Institute on Alcohol Abuse and Alcoholism, the Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the National Institute on Drug Abuse, the Assistant Secretary for Children and Families, the Director of the Office of National Drug Control Policy, the Administrator of the National Highway Traffic Safety Administration, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Chairman of the Federal Trade Commission, and such other Federal officials as the Secretary of Health and Human Services determines to be appropriate.

(c) CHAIR.—The Secretary of Health and Human Services shall serve as the chair of the Committee.

(d) DUTIES.—The Committee shall guide policy and program development across the Federal Government with respect to underage drinking.

(e) CONSULTATIONS.—The Committee shall actively seek the input of and shall consult with all appropriate and interested parties, including public health research and interest groups, foundations, and alcohol beverage industry trade associations and companies.

(f) ANNUAL REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services, on behalf of the Committee, shall annually submit to the Congress a report that summarizes—

(A) all programs and policies of Federal agencies designed to prevent underage drinking;

(B) the extent of progress in reducing underage drinking nationally;

(C) data that the Secretary shall collect with respect to the information specified in paragraph (2); and

(D) such other information regarding underage drinking as the Secretary determines to be appropriate.

(2) CERTAIN INFORMATION.—The report under paragraph (1) shall include information on the following:

(A) Patterns and consequences of underage drinking.

(B) Measures of the availability of alcohol to underage populations and the exposure of this population to messages regarding alcohol in advertising and the entertainment media.

(C) Surveillance data, including information on the onset and prevalence of underage drinking.

(D) Any additional findings resulting from research conducted or supported under section 501.

(E) Evidence-based best practices to both prevent underage drinking and provide treatment services to those youth who need them.

SEC. 202. ANNUAL REPORT CARD.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall, with input and collaboration from other appropriate Federal agencies, States, Indian tribes, territories, and public health, consumer, and alcohol beverage industry groups, annually issue a ''report card'' to accurately rate the performance of each state in enacting, enforcing, and creating laws, regulations, and programs to prevent or reduce underage drinking. The report card shall include ratings on outcome measures for categories related to the prevalence of underage drinking in each State.

(b) OUTCOME MEASURES.—

(1) IN GENERAL.—The Secretary shall develop, in consultation with the Committee established in section 201, a set of outcome measures to be used in preparing the report card.

(2) CATEGORIES.—In developing the outcome measures, the Secretary shall develop measures for categories related to the following:

(A) The degree of strictness of the minimum drinking age laws and dram shop liability statutes in each State.

(B) The number of compliance checks within alcohol retail outlets conducted measured against the number of total alcohol retail outlets in each State, and the results of such checks.

(C) Whether or not the State mandates or otherwise provides training on the proper selling and serving of alcohol for all sellers and servers of alcohol as a condition of employment.

(D) Whether or not the State has policies and regulations with regard to Internet sales and home delivery of alcoholic beverages.

(E) The number of adults in the State targeted by State programs to deter adults from purchasing alcohol for minors.

(F) The number of youths, parents, and caregivers who are targeted by State programs designed to deter underage drinking.

(G) Whether or not the State has enacted graduated drivers licenses and the extent of those provisions.

(H) The amount that the State invests, per youth capita, on the prevention of underage drinking, further broken down by the amount spent on—

(i) compliance check programs in retail outlets, including providing technology to prevent and detect the use of false identification by minors to make alcohol purchases;

(ii) checkpoints;

(iii) community-based, school-based, and higher-education-based programs to prevent underage drinking;

(iv) underage drinking prevention programs that target youth within the juvenile justice and child welfare systems; and

(v) other State efforts or programs as deemed appropriate.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title $2,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

TITLE III—NATIONAL MEDIA CAMPAIGN

SEC. 301. NATIONAL MEDIA CAMPAIGN TO PREVENT UNDERAGE DRINKING.

(a) SCOPE OF THE CAMPAIGN.—The Secretary of Health and Human Services shall continue to fund and oversee the production, broadcasting, and evaluation of the Ad Council's national adult-oriented media public service campaign.

(b) REPORT.—The Secretary of Health and Human Services shall provide a report to the Congress annually detailing the production, broadcasting, and evaluation of the campaign referred to in subsection (a), and to detail in the report the effectiveness of the campaign in reducing underage drinking, the need for and likely effectiveness of an expanded adult-oriented media campaign, and the feasibility and the likely effectiveness of a national youth-focused media campaign to combat underage drinking.

(c) CONSULTATION REQUIREMENT.—In carrying out the media campaign, the Secretary of Health and Human Services shall direct the Ad Council to consult with interested parties including both the alcohol beverage industry and public health and consumer groups. The progress of this consultative process is to be covered in the report under subsection (b).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $1,000,000 for each of the fiscal years 2006 and 2007, and such sums as may be necessary for each subsequent fiscal year.

TITLE IV—INTERVENTIONS

SEC. 401. COMMUNITY-BASED COALITION ENHANCEMENT GRANTS TO PREVENT UNDERAGE DRINKING.

(a) AUTHORIZATION OF PROGRAM.—The Director of the Office of National Drug Control Policy shall award ''enhancement grants'' to eligible entities to design, test, evaluate and disseminate strategies to maximize the effectiveness of community-wide approaches to preventing and reducing underage drinking.

(b) PURPOSES.—The purposes of this section are, in conjunction with the Drug-Free Communities Act of 1997 (21 U.S.C. 1521 et seq.), to—

(1) reduce alcohol use among youth in communities throughout the United States;

(2) strengthen collaboration among communities, the Federal Government, and State, local, and tribal governments;

(3) enhance intergovernmental cooperation and coordination on the issue of alcohol use among youth;

(4) serve as a catalyst for increased citizen participation and greater collaboration among all sectors and organizations of a community that first demonstrates a long-term commitment to reducing alcohol use among youth;

(5) disseminate to communities timely information regarding state-of-the-art practices and initiatives that have proven to be effective in reducing alcohol use among youth; and

(6) enhance, not supplant, local community initiatives for reducing alcohol use among youth.

(c) APPLICATION.—An eligible entity desiring an enhancement grant under this section shall submit an application to the Director at such time, and in such manner, and accompanied by such information as the Director may require. Each application shall include—

(1) a complete description of the entity's current underage alcohol use prevention initiatives and how the grant will appropriately enhance the focus on underage drinking issues; or

(2) a complete description of the entity's current initiatives, and how it will use this grant to enhance those initiatives by adding a focus on underage drinking prevention.

(d) USES OF FUNDS.—Each eligible entity that receives a grant under this section shall use the grant funds to carry out the activities described in such entity's application submitted pursuant to subsection (c). Grants under this section shall not exceed $50,000 per year, and may be awarded for each year the entity is funded as per subsection (f).

(e) SUPPLEMENT NOT SUPPLANT.—Grant funds provided under this section shall be used to supplement, not supplant, Federal and non-Federal funds available for carrying out the activities described in this section.

(f) DEFINITIONS.—For purposes of this section, the term ''eligible entity'' means an organization that is currently eligible to receive grant funds under the Drug-Free Communities Act of 1997 (21 U.S.C. 1521 et seq.).

(g) ADMINISTRATIVE EXPENSES.—Not more than 6 percent of a grant under this section may be expended for administrative expenses.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

SEC. 402. GRANTS DIRECTED AT REDUCING HIGHER-EDUCATION ALCOHOL ABUSE.

(a) AUTHORIZATION OF PROGRAM.—The Secretary shall award grants to eligible entities to enable the entities to reduce the rate of underage alcohol use and binge drinking among students at institutions of higher education.

(b) APPLICATIONS.—An eligible entity that desires to receive a grant under this Act shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each application shall include—

(1) a description of how the eligible entity will work to enhance an existing, or where none exists to build a, statewide coalition;

(2) a description of how the eligible entity will target underage students in the State;

(3) a description of how the eligible entity intends to ensure that the statewide coalition is actually implementing the purpose of this Act and moving toward indicators described in section (d);

(4) a list of the members of the statewide coalition or interested parties involved in the work of the eligible entity;

(5) a description of how the eligible entity intends to work with State agencies on substance abuse prevention and education;

(6) the anticipated impact of funds provided under this Act in reducing the rates of underage alcohol use;

(7) outreach strategies, including ways in which the eligible entity proposes to—

(A) reach out to students;

(B) promote the purpose of this Act;

(C) address the range of needs of the students and the surrounding communities; and

(D) address community norms for underage students regarding alcohol use; and

(8) such additional information as required by the Secretary.

(c) USES OF FUNDS.—Each eligible entity that receives a grant under this section shall use the grant funds to carry out the activities described in such entity's application submitted pursuant to subsection (b).

(d) ACCOUNTABILITY.—On the date on which the Secretary first publishes a notice in the Federal Register soliciting applications for grants under this section, the Secretary shall include in the notice achievement indicators for the program authorized under this section. The achievement indicators shall be designed—

(1) to measure the impact that the statewide coalitions assisted under this Act are having on the institutions of higher education and the surrounding communities, including changes in the number of alcohol incidents of any kind (including violations, physical assaults, sexual assaults, reports of intimidation, disruptions of school functions, disruptions of student studies, mental health referrals, illnesses, or deaths);

(2) to measure the quality and accessibility of the programs or information offered by the statewide coalitions; and

(3) to provide such other measures of program impact as the Secretary determines appropriate.

(e) SUPPLEMENT NOT SUPPLANT.—Grant funds provided under this Act shall be used to supplement, and not supplant, Federal and non-Federal funds available for carrying out the activities described in this section.

(f) DEFINITIONS.—For purposes of this section:

(1) ELIGIBLE ENTITY.—The term ''eligible entity'' means a State, institution of higher education, or nonprofit entity.

(2) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(4) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) STATEWIDE COALITION.—The term ''statewide coalition'' means a coalition that—

(A) includes—

(i) institutions of higher education within a State; and

(ii) a nonprofit group, a community underage drinking prevention coalition, or another substance abuse prevention group within a State; and

(B) works toward lowering the alcohol abuse rate by targeting underage students at institutions of higher education throughout the State and in the surrounding communities.

(6) SURROUNDING COMMUNITY.—The term ''surrounding community'' means the community—

(A) that surrounds an institution of higher education participating in a statewide coalition;

(B) where the students from the institution of higher education take part in the community; and

(C) where students from the institution of higher education live in off-campus housing.

(g) ADMINISTRATIVE EXPENSES.—Not more than 5 percent of a grant under this section may be expended for administrative expenses.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

TITLE V—ADDITIONAL RESEARCH

SEC. 501. ADDITIONAL RESEARCH ON UNDERAGE DRINKING.

(a) IN GENERAL.—The Secretary of Health and Human Services shall collect data on, and conduct or support research on, underage drinking with respect to the following:

(1) The short and long-range impact of alcohol use and abuse upon adolescent brain development and other organ systems.

(2) Comprehensive community-based programs or strategies and statewide systems to prevent underage drinking, across the underage years from early childhood to young adulthood, including programs funded and implemented by government entities, public health interest groups and foundations, and alcohol beverage companies and trade associations.

(3) Improved knowledge of the scope of the underage drinking problem and progress in preventing and treating underage drinking.

(4) Annually obtain more precise information than is currently collected on the type and quantity of alcoholic beverages consumed by underage drinkers, as well as information on brand preferences of these drinkers and their exposure to alcohol advertising.

(b) CERTAIN MATTERS.—The Secretary of Health and Human Services shall carry out activities toward the following objectives with respect to underage drinking:

(1) Testing every unnatural death of persons ages 12 to 20 in the United States for alcohol involvement, including suicides, homicides, and unintentional injuries such as falls, drownings, burns, poisonings, and motor vehicle crash deaths.

(2) Obtaining new epidemiological data within the National Epidemiological Study on Alcoholism and Related Conditions and other national or targeted surveys that identify alcohol use and attitudes about alcohol use during pre- and early adolescence, including second-hand effects of adolescent alcohol use such as date rapes, violence, risky sexual behavior, and prenatal alcohol exposure.

(3) Developing or identifying successful clinical treatments for youth with alcohol problems.

SEC. 502. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out section 501 $6,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

MR. DODD. Mr. President, I rise today with my colleague, Senator MIKE DEWINE, to reintroduce legislation designed to prevent our nation's children and youth from succumbing to the dangers associated with underage alcohol use. The legislation that we introduce today, the STOP, Sober Truth On Preventing, Underage Drinking Act, will greatly strengthen our Nation's ability to combat the too often deadly consequences associated with underage drinking.

An initial examination, of the problems presented by underage drinking is truly alarming. Alcohol is the most commonly used drug among America's youth. More young people drink alcohol than smoke tobacco or use marijuana combined. In 2002, 20 percent of eighth graders had drunk alcohol in the previous 30 days. Forty-nine percent of high school seniors are drinkers, and 29 percent report having had five or more drinks in a row, or binged in the past two weeks.

Tragically, we know that this year underage drinking will directly lead to more than 3,500 deaths, more than two million injuries, 1,200 babies born with fetal alcohol syndrome and more than 50,000 youths treated for alcohol dependence. We also know that the social costs associated with underage drinking total close to $53 billion annually, including $19 billion from automobile accidents and $29 billion from associated violent crime.

And while no one can argue with the tragic loss of life and significant financial costs associated with underage drinking, too few of us think of the equally devastating loss of potential that occurs when our children begin to drink. Research indicates that children who begin drinking do so at only 12 years of age. We also know that children that begin drinking at such an early age develop a predisposition for alcohol dependence later in life. Such early experimentation can have devastating consequences and derail a child's potential just as she or he is starting out on the path to adulthood. The consumption of alcohol by our children can literally rob them of their future.

The truly alarming and devastating effects of underage alcohol use are

what initially led Senator DEWINE and I to begin work to address this important issue. Since that time we have worked extensively with Representatives ROYBAL-ALLARD, WOLF, DELAURO, OSBOURNE and WAMP to craft the broad legislative initiative that we introduce today.

The STOP Underage Drinking Act creates the framework for a multifaceted, comprehensive national campaign to prevent underage drinking. Specifically, the legislation includes four major areas of policy development. First, the STOP Underage Drinking Act authorizes $2 million to establish an Interagency Coordinating Committee to coordinate all federal agency efforts and expertise designed to prevent underage drinking. Chaired by the Secretary of Health and Human Services, this committee will be required to report to the Congress on an annual basis the extent to which federal efforts are addressing the urgent need to curb underage drinking.

I am particularly pleased that one of the many items in this annual report to Congress will provide for the public health monitoring of the amount of alcohol advertising reaching our children. I have become increasingly concerned about the degree to which alcohol advertisements appear to target our Nation's children. It is my hope that the monitoring called for by this legislation will expose any unethical advertising practices that reach children. We must do all that we can to ensure that our children are not exposed to harmful and deceptive alcohol promotions.

In addition to the federal coordination of federal underage drinking prevention efforts, the STOP Underage Drinking Act additionally authorizes $1 million to fund an adult-oriented National Media Campaign against Underage Drinking. Research indicates that most children who drink obtain the alcohol from their parents or from other adults. The National Media Campaign against underage drinking will specifically seek to educate those who provide our children with alcohol about the dangers inherent in underage alcohol use. This media campaign will build upon the valuable underage drinking prevention efforts already underway by the Ad Council, whose campaigns average an estimated $28 million in donated media from media outlets nationwide.

The legislation additionally authorizes $10 million to provide states, not-for-profit groups and institutions of higher education the ability to create statewide coalitions to prevent underage drinking and alcohol abuse by college and university students. This section will also provide alcohol-specific enhancement grants through the Drug Free Communities program.

Lastly, the STOP Underage Drinking Act authorizes $6 million to expand research to assess the health effects of underage drinking on adolescent development, including its effect on the brain. This effort will additionally increase federal data collection on underage drinking, including reporting on the types and brands of alcohol that kids consume.

I want to convey my belief that this legislation truly offers a historical, first step toward addressing the national tragedy represented by underage drinking. I pledge to work strenuously toward passing the STOP Underage Drinking Act and building on its strong foundation and I ask for the support of my colleagues for this critically important initiative.

By Mr. COLEMAN (for himself, Mr. DEWINE, and Mr. ALEXANDER):

S. 409. A bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. COLEMAN. Mr. President, today I am pleased to introduce the Federal Youth Coordination Act with my good friends, Senator MIKE DEWINE and Senator LAMAR ALEXANDER.

The idea for this legislation emanated from the 2003 White House Task Force for Disadvantaged Youth report that indicated Federal youth programs were spread across 12 different departments and agencies. It identified 150 programs that served children and youth up to age 21, but also discovered several of these programs were no longer in existence.

Today, there is a real need for strong role models in our communities to help at-risk youth. As a parent, I know there are a number of things that influence and shape our children's lives and unfortunately sometimes there are more negative things than positive. Youth programs help combat the negative influences and help restore hope, provide guidance, and help kids stay on the right track. While we have the resources to help our kids, a lack of coordination among youth programs has limited the full potential we have to change lives. Our bill will unleash that potential and bring our youth groups to full strength.

The Federal Youth Coordination Act will bring efficiency and accountability to federal youth policy by developing a Federal Youth Development Council. Composed of Department Secretaries, youth serving organizations and youth themselves, the Council will coordinate existing federal programs, research and other initiatives, enabling a more comprehensive approach to serving the nation's young people.

The purpose of the Council is not to eliminate existing programs, nor to create new ones. The Council will ensure communication among youth serving agencies, assess the needs of youth, set quantifiable goals and objectives for federal youth programs and develop a coordinated plan to achieve those goals. This approach is also cost-effective. The Council will only cost about $1.5 million, and the cost-savings that will be achieved through improved efficiency and reduced duplication of efforts will easily recoup those costs.

This legislation has bipartisan support and the strong support of our nation's youth serving organizations including the Boy Scouts of America, the Girl Scouts of America, the Boys & Girls Clubs of America, the YMCA and the Child Welfare League of America. I hope the Senate will be able to act on this important legislation early this year to ensure our kids have the support they need.

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. 409

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 ''Federal Youth Coordination Act''.

SEC. 2. ESTABLISHMENT AND MEMBERSHIP.

(a) MEMBERS AND TERMS.—There is established the Federal Youth Development Council (in this Act referred to as the ''Council'') composed of—

(1) the Attorney General, the Secretary of Agriculture, the Secretary of Labor, the Secretary of Health and Human Services, Secretary of Housing and Urban Development, the Secretary of Education, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Defense, the Secretary of Homeland Security, the Director of National Drug Control Policy, the Director of the Office of Management and Budget, the Assistant to the President for Domestic Policy, the Director of the U.S.A. Freedom Corps, the Deputy Assistant to the President and Director of the Office of Faith-Based and Community Initiatives, and the Chief Executive Officer of the Corporation for National and Community Service, and other Federal officials as directed by the President, to serve for the life of the Council; and

(2) such additional members as the President, in consultation with the majority and minority leadership of the House of Representatives and the Senate, shall appoint from among representatives of faith-based organizations, community based organizations, child and youth focused foundations, universities, non-profit organizations, youth service providers, State and local government, and youth in disadvantaged situations, to serve for terms of 2 years and who may be reappointed by the President for a second 2-year term.

(b) CHAIRPERSON.—The Chairperson of the Council shall be designated by the President.

(c) MEETINGS.—The Council shall meet at the call of the Chairperson, not less frequently than 4 times each year. The first meeting shall be not less than 6 months after the date of enactment of this Act.

SEC. 3. DUTIES OF THE COUNCIL.

The duties of the Council shall be—

(1) to ensure communication among agencies administering programs designed to serve youth, especially those in disadvantaged situations;

(2) to assess the needs of youth, especially those in disadvantaged situations, and those who work with youth, and the quantity and quality of Federal programs offering services, supports, and opportunities to help

youth in their educational, social, emotional, physical, vocational, and civic development;

(3) to set objectives and quantifiable 5-year goals for such programs;

(4) to make recommendations for the allocation of resources in support of such goals and objectives;

(5) to identify target populations of youth who are disproportionately at risk and assist agencies in focusing additional resources on them;

(6) to develop a plan, including common indicators of youth well-being, and assist agencies in coordinating to achieve such goals and objectives;

(7) to assist Federal agencies, at the request of one or more such agency, in collaborating on model programs and demonstration projects focusing on special populations, including youth in foster care, migrant youth, projects to promote parental involvement, and projects that work to involve young people in service programs;

(8) to solicit and document ongoing input and recommendations from—

(A) youth, especially those in disadvantaged situations, by forming an advisory council of youth to work with the Council;

(B) national youth development experts, parents, faith and community-based organizations, foundations, business leaders, youth service providers, and teachers;

(C) researchers; and

(D) State and local government officials; and

(9) to work with Federal agencies to conduct high-quality research and evaluation, identify and replicate model programs, and provide technical assistance, and, subject to the availability of appropriations, to fund additional research to fill identified needs.

SEC. 4. ASSISTANCE OF STAFF.

(a) DIRECTOR AND STAFF.—The Chairperson, in consultation with the Council, shall employ and set the rate of pay for a Director and any necessary staff to assist in carrying out its duties.

(b) STAFF OF FEDERAL AGENCIES.—Upon request of the Council, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Council to assist it in carrying out its duties under this Act.

SEC. 5. POWERS OF THE COUNCIL.

(a) MAILS.—The Council may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(b) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Council, the Administrator of General Services shall provide to the Council, on a reimbursable basis, the administrative support services necessary for the Council to carry out its responsibilities under this Act.

SEC. 6. ASSISTANCE TO STATES.

(a) IN GENERAL.—Subject to the availability of appropriations, the Council may provide technical assistance and make grants to States to support State councils for coordinating State youth efforts.

(b) APPLICATIONS.—Applicants for grants must be States. Applications for grants under this section shall be submitted at such time and in such form as determined by the Council.

(c) PRIORITY.—Priority for grants will be given to States that—

(1) have already initiated an interagency coordination effort focused on youth;

(2) plan to work with at least 1 locality to support a local youth council for coordinating local youth efforts;

(3) demonstrate the inclusion of nonprofit organizations, including faith-based and community-based organizations, in the work of the State council; and

(4) demonstrate the inclusion of young people, especially those in disadvantaged situations, in the work of the State council.

SEC. 7. REPORT.

Not later than 1 year after the Council holds its first meeting, and on an annual basis for a period of 4 years thereafter, the Council shall transmit to the President and to Congress a report of the findings and recommendations of the Council. The report shall—

(1) include a comprehensive compilation of recent research and statistical reporting by various Federal agencies on the overall wellbeing of youth;

(2) include the assessment of the needs of youth and those who serve them, the goals and objectives, the target populations of at-risk youth, and the plan called for in section 3;

(3) report on the link between quality of service provision, technical assistance and successful youth outcomes and recommend ways to coordinate and improve Federal training and technical assistance, information sharing, and communication among the various programs and agencies serving youth;

(4) include recommendations to better integrate and coordinate policies across agencies at the Federal, State, and local levels, including recommendations for legislation and administrative actions;

(5) include a summary of actions the Council has taken at the request of Federal agencies to facilitate collaboration and coordination on youth serving programs and the results of those collaborations, if available; and

(6) include a summary of the input and recommendations from the groups identified in section 3(8).

SEC. 8. TERMINATION.

The Council shall terminate 60 days after transmitting its fifth and final report pursuant to section 6.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal years 2005 through 2009 such sums as may be necessary to carry out this Act.

By Mr. McCAIN:

S. 410. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine; to the Committee on Finance.

Mr. McCAIN. Mr. President, the recent ''Orange Revolution'' in Ukraine marked a huge victory for the advancement of democracy in the world. The Ukrainian people made clear that they would not stand idle as a corrupt regime sought to deny them their democratic rights. Now that the people of Ukraine have seized control of their destiny, the United States must stand ready to assist them as they do the hard work of consolidating democracy. The Jackson-Vanik amendment is, with respect to Ukraine, now anachronistic and inappropriate. Therefore, I am pleased to introduce legislation that would terminate it.

The bill would authorize the President to terminate the application of Jackson-Vanik, Title IV of the Trade Act of 1974, to Ukraine. Ukraine would then be eligible to receive permanent normal trade relations (PNTR) tariff status in its trade with the United States. I am pleased to note that Representatives HYDE and LANTOS will be introducing an identical bill in the House.

Beyond any benefits to our bilateral trading relationship, lifting Jackson-Vanik for Ukraine constitutes an important symbol of Ukraine's new democracy and its relationship with the United States. I led a delegation of four Senators and six representatives to Kiev last week; where we met with President Yuschenko, Prime Minister Tymoshenko, and students who led protests in Independence Square. I was struck by the great enthusiasm for democracy and freedom that has taken hold in Ukraine, and I wish the new leaders all the best a they begin the challenge of governing. I pledged to them that I would work toward the lifting of Jackson-Vanik on Ukraine, and today I am happy to take the first step toward that end.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. 411. A bill to amend title XVIII of the Social Security Act to improve the provisions of items and services provided to Medicare beneficiaries residing in States with more cost-effective health care delivery systems; to the Committee on Finance.

Mrs. MURRAY. Mr. President, I rise today to again join my colleague, Senator CANTWELL, in introducing the MediFair Act of 2005. My bill will restore fairness to the Medicare program and provide greater equity for health providers participating in Medicare. Most importantly, it will open doors of care to more seniors and the disabled in my State.

Today, in Washington state, unfair Medicare reimbursement rates are causing doctors to limit their care for Medicare beneficiaries. Throughout my State, seniors and the disabled are having a hard time finding a doctor who will accept new Medicare patients.

Unfortunately, the Medicare Modernization Act, enacted in 2003, creates even greater inequities for my State. Prior to enactment, Washington State was 41st in per beneficiary reimbursement costs. When fully implemented, this legislation will push Washington State to 45th in per beneficiary costs. This growing inequity places health care providers in my State at an economic disadvantage and further limits access to health care for Washington patients.

My bill will reduce the regional inequities that have resulted in vastly different levels of care and access to care by ensuring that every state receives at least the national average of per beneficiary spending. This measure will encourage more doctors to accept Medicare patients and will also guarantee that seniors are not penalized when they choose to retire in the State of Washington. The regional inequities in Medicare reimbursement have created a very different program for my seniors, one that offers them fewer benefits.

In addition to ensuring that no state receives less than the national average, my legislation will encourage healthy outcomes and the efficient use of Medicare payments. The current Medicare structure punishes health care providers who practice efficient health care and who produce higher levels of healthy outcomes. Physicians and hospitals in my state are proud of the pioneering role they have played in providing high quality, cost-effective medicine. Unfortunately, instead of being rewarded for their exceptional service, they are being punished with unfair Medicare payments that only cover a fraction of their actual costs.

I applaud recent efforts by the Centers for Medicare and Medicaid Services (CMS) to direct Medicare resources to performance-based medicine. I believe this effort to reward providers who practice performance-based health care is an important step forward. It's a wise investment to shift Medicare from a disease-based program, which rewards over utilization and medical errors, to a prevention-based program that encourages healthy outcomes based on performance. It will mean better care for seniors and will slow the hemorrhaging of Medicare dollars. I am hopeful that CMS will expand these efforts.

Performance-based medicine will also begin to close the gap in Medicare reimbursement. We must invest in this new approach and begin to make changes system wide. In the 2003 Medicare Modernization Act, we worked to close the gap between rural and urban providers. I believe it is time to take the next step. When doctors and hospitals work to improve outcomes and lower utilization rates they should not be punished with unfair Medicare payments.

I want to acknowledge the lead sponsor of the MediFair bill in the House, Congressman ADAM SMITH, as well as the other House cosponsors, Congressman BAIRD, Congressman MCDERMOTT, Congressman DICKS, Congressman INSLEE, and Congressman LARSEN.

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

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

S. 411

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 ''MediFair Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Regional inequities in medicare reimbursement has created barriers to care for seniors and the disabled.

(2) The regional inequities in medicare reimbursement penalize States that have cost-effective health care delivery systems and rewards those States with high utilization rates and that provide inefficient care.

(3) Over a lifetime, those inequities can mean as much as a $50,000 difference in the cost of care provided per beneficiary.

(4) Regional inequities have resulted in creating very different medicare programs for seniors and the disabled based on where they live.

(5) Because the Medicare+Choice rate is based on the fee-for-service reimbursement rate, regional inequities have allowed some medicare beneficiaries access to plans with significantly more benefits including prescription drugs. Beneficiaries in States with lower reimbursement rates have not benefitted to the same degree as beneficiaries in other parts of the country.

(6) Regional inequities in medicare reimbursement have created an unfair competitive advantage for hospitals and other health care providers in States that receive above average payments. Higher payments mean that those providers can pay higher salaries in a tight, competitive market.

(7) Regional inequities in medicare reimbursement can limit timely access to new technology for beneficiaries in States with lower reimbursement rates.

(8) Regional inequities in medicare reimbursement, if left unchecked, will reduce access to medicare services and impact healthy outcomes for beneficiaries.

(9) Regional inequities in medicare reimbursement are not just a rural versus urban problem. Many States with large urban centers are at the bottom of the national average for per beneficiary costs.

SEC. 3. IMPROVING FAIRNESS OF PAYMENTS TO PROVIDERS UNDER THE MEDICARE FEE-FOR-SERVICE PROGRAM.

Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

''IMPROVING PAYMENT EQUITY UNDER THE ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM

''SEC. 1898. (a) ESTABLISHMENT OF SYSTEM.—Notwithstanding any other provision of law, the Secretary shall establish a system for making adjustments to the amount of payment made to entities and individuals for items and services provided under the original medicare fee-for-service program under parts A and B.

''(b) SYSTEM REQUIREMENTS.—

''(1) INCREASE FOR STATES BELOW THE NATIONAL AVERAGE.—Under the system established under subsection (a), if a State average per beneficiary amount for a year is less than the national average per beneficiary amount for such year, then the Secretary (beginning in 2006) shall increase the amount of applicable payments in such a manner as will result (as estimated by the Secretary) in the State average per beneficiary amount for the subsequent year being equal to the national average per beneficiary amount for such subsequent year.

''(2) REDUCTION FOR CERTAIN STATES ABOVE THE NATIONAL AVERAGE TO ENHANCE QUALITY CARE AND MAINTAIN BUDGET NEUTRALITY.—

''(A) IN GENERAL.—The Secretary shall ensure that the increase in payments under paragraph (1) does not cause the estimated amount of expenditures under this title for a year to increase or decrease from the estimated amount of expenditures under this title that would have been made in such year if this section had not been enacted by reducing the amount of applicable payments in each State that the Secretary determines has—

''(i) a State average per beneficiary amount for a year that is greater than the national average per beneficiary amount for such year; and

''(ii) healthy outcome measurements or quality care measurements that indicate that a reduction in applicable payments would encourage more efficient use of, and reduce overuse of, items and services for which payment is made under this title.

''(B) LIMITATION.—The Secretary shall not reduce applicable payments under subparagraph (A) to a State that—

''(i) has a State average per beneficiary amount for a year that is greater than the national average per beneficiary amount for such year; and

''(ii) has healthy outcome measurements or quality care measurements that indicate that the applicable payments are being used to improve the access of beneficiaries to quality care.

''(3) DETERMINATION OF AVERAGES.—

''(A) STATE AVERAGE PER BENEFICIARY AMOUNT.—Each year (beginning in 2005), the Secretary shall determine a State average per beneficiary amount for each State which shall be equal to the Secretary's estimate of the average amount of expenditures under the original medicare fee-for-service program under parts A and B for the year for a beneficiary enrolled under such parts that resides in the State.

''(B) NATIONAL AVERAGE PER BENEFICIARY AMOUNT.—Each year (beginning in 2005), the Secretary shall determine the national average per beneficiary amount which shall be equal to the average of the State average per beneficiary amount determined under subparagraph (A) for the year.

''(4) DEFINITIONS.—In this section:

''(A) APPLICABLE PAYMENTS.—The term 'applicable payments' means payments made to entities and individuals for items and services provided under the original medicare fee-for-service program under parts A and B to beneficiaries enrolled under such parts that reside in the State.

''(B) STATE.—The term 'State' has the meaning given such term in section 210(h).

''(c) BENEFICIARIES HELD HARMLESS.—The provisions of this section shall not affect—

''(1) the entitlement to items and services of a beneficiary under this title, including the scope of such items and services; or

''(2) any liability of the beneficiary with respect to such items and services.

''(d) REGULATIONS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Medicare Payment Advisory Commission, shall promulgate regulations to carry out this section.

''(2) PROTECTING RURAL COMMUNITIES.—In promulgating the regulations pursuant to paragraph (1), the Secretary shall give special consideration to rural areas.''.

SEC. 4. MEDPAC RECOMMENDATIONS ON HEALTHY OUTCOMES AND QUALITY CARE.

(a) RECOMMENDATIONS.—The Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6) shall develop recommendations on policies and practices that, if implemented, would encourage—

(1) healthy outcomes and quality care under the medicare program in States with respect to which payments are reduced under section 1898(b)(2) of such Act (as added by section 3); and

(2) the efficient use of payments made under the medicare program in such States.

(b) SUBMISSION.—Not later than the date that is 9 months after the date of enactment of this Act, the Commission shall submit to Congress the recommendations developed under subsection (a).

By Mr. DORGAN (for himself and Mr. INOUYE):

S. 412. A bill to reauthorize the Native American Programs Act of 1974; to the Committee on Indian Affairs.

Mr. DORGAN. Mr. President, I rise today to introduce a bill that would reauthorize the Native American Programs Act. This Act provides authority

for the social and economic development grants that are so critical to Indian Country. Senator INOUYE joins me in sponsoring this measure.

The Native American Programs Act of 1974 is administered by the Administration for Native Americans (ANA) within the Department of Health and Human Services. The purpose of the Act is to promote economic and social self-sufficiency by assisting Native American institutions and tribal governments to exercise control and decision making over their own resources; to foster the development of stable, diversified local tribal economies and economic activities that provide jobs, promote economic well-being, and reduce dependency on public funds and social services; and to support access, control and coordination of services and programs that safeguard the health and well-being of native people that are essential to their communities.

The ANA awards annual grants to tribal entities on a competitive basis and provides many native communities with critical startup funds for social, governance, economic, environmental, and cultural programs that are developed by the communities themselves. The program addresses key needs for native communities by helping them begin and expand businesses, enhancing tribal ability to promote natural environments, and preserving and restoring native languages. The Native American Programs Act supports Native American self-governance in the development of economic, social, and governance capacities of Native American communities.

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. 412

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

SECTION 1. NATIVE AMERICAN PROGRAMS ACT OF 1974.

(a) INTRA-DEPARTMENTAL COUNCIL ON NATIVE AMERICAN AFFAIRS.—Section 803B(d)(1) of the Native American Programs Act of 1974 (42 U.S.C. 2991b–2(d)(1)) is amended by striking ''There'' and all that follows and inserting the following: ''There is established in the Office of the Secretary the Intra-Departmental Council on Native American Affairs. The Commissioner and the Director of the Indian Health Service shall serve as co-chairpersons of the Council. The co-chairpersons shall advise the Secretary on all matters affecting Native Americans that involve the Department.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended—

(1) by striking subsections (a) through (c) and inserting the following:

''(a) IN GENERAL.—There are authorized to be appropriated—

''(1) to carry out section 803(d), $8,000,000 for each of fiscal years 2006 through 2010; and

''(2) to carry out provisions of this title other than section 803(d) and any other provision having an express authorization of appropriations, such sums as are necessary for each of fiscal years 2006 through 2010.

''(b) LIMITATION.—Not less than 90 percent of the funds made available to carry out this title for a fiscal year (other than funds made available to carry out sections 803(d), 803A, 803C, and 804, and any other provision of this title having an express authorization of appropriations) shall be expended to carry out section 803(a).'';

(2) by redesignating subsection (d) as subsection (c); and

(3) by striking subsection (e).

(c) REPORTS.—Section 811A of the Native American Programs Act of 1974 (42 U.S.C. 2992–1) is amended—

(1) by striking the section heading and all that follows through ''each year,'' and inserting the following:

''SEC. 811A. REPORTS.

''Every 5 years, the Secretary shall''; and

(2) by striking ''an annual report'' and inserting ''a report''.

SEC. 2. RESEARCH AND EDUCATIONAL ACTIVITIES.

Section 7205(a)(3) of the Native Hawaiian Education Act (20 U.S.C. 7515(a)(3)) is amended—

(1) by redesignating subparagraphs (K) and (L) as subparagraphs (L) and (M), respectively; and

(2) by inserting after subparagraph (J) the following:

''(K) research and educational activities relating to Native Hawaiian law;''.

By Mrs. FEINSTEIN (for herself, Ms. SNOWE, Mr. MCCAIN, Mr. CHAFEE, Mrs. MURRAY, Mr. JEFFORDS, Mr. DURBIN, Mr. LIEBERMAN, Mr. LEAHY, Mr. LAUTENBERG, Mrs. BOXER, Ms. CANTWELL, Mr. AKAKA, and Mr. REED):

S.J. Res. 5. A joint resolution expressing the sense of Congress that the United States should act to reduce greenhouse gas emissions; to the Committee on Foreign Relations.

Mrs. FEINSTEIN. Mr. President, I rise today to offer a resolution with Senators SNOWE, MCCAIN, CHAFEE, MURRAY, JEFFORDS, DURBIN, LIEBERMAN, LEAHY, LAUTENBERG, BOXER, CANTWELL, AKAKA and REED that urges the Administration to participate in international negotiations and actively reduce our greenhouse gas emissions that contribute to global warming.

The Kyoto Protocol goes into effect today. More than 140 nations, including all 25 members of the European Union, Russia and China, have ratified the agreement to reduce man-made emissions of greenhouse gases.

The United States, which accounts for about one-fourth of the greenhouse gases believed responsible for global warming, has refused to ratify the treaty.

Thirty-five of the world's thirty-eight industrialized countries—except for the United States, Australia, and Monaco—have ratified this important treaty.

This means that industrialized nations are bound to cut their combined greenhouse gases by 5 percent below 1990 levels between 2008 and 2012.

The United States is missing an important opportunity to protect our planet's environment by not ratifying the Protocol.

I believe this is a huge mistake.

There is emerging consensus that global warming is real.

According to the National Academy of Sciences, ''Since the 1900s global average temperature and atmospheric carbon dioxide concentration have increased dramatically, particularly compared to their levels in the 900 preceding years.''

Scientists now agree on three main Facts about global warming.

Fact 1: The Earth is warming.

Fact 2: The primary cause of this warming is man-made activities, especially fossil fuel consumption.

Fact 3: If we don't act now to reduce emissions, the problem will only get worse.

We have already begun to see the impacts of climate change: four hurricanes of significant force pounded the state of Florida in a six week period last fall. The storms formed over an area of the ocean where surface temperatures have increased an average of 17 degrees over the past decade.

Eskimos are being forced inland in Alaska as their native homes on the coastline are melting into the sea.

Glaciers are beginning to disappear in Glacier National Park in Montana. In 100 years, the Park has gone from having 150 glaciers to fewer than 30. And the 30 that remain are two-thirds smaller than they once were.

In California, water supplies are threatened by smaller snowpacks in the Sierra Nevada. Record snowfalls this winter have provided hope for this summer but the region still could face drought or floods unless temperatures stay cold enough to maintain the snowpack and average snowfall continues for the rest of the precipitation season.

If we take strong action to reduce greenhouse gas emissions, there will be 27 percent snowpack remaining in the Sierras at the end of the century.

However, if we do nothing to reduce our greenhouse gas emissions, there will only be 11 percent snowpack left in the Sierras at the end of the century.

The San Diego based Scripps Institution of Oceanography, a preeminent center for marine science research, will release a study later this week showing that global warming will likely have serious ramifications in the very near future, including: a water crisis in the western United States in the next 20 years due to smaller snowpacks.

The disappearance of the glaciers in the Andes in Peru in as little as 10 years, leaving the population without an adequate water supply during the summer.

The melting of two-thirds of the glaciers in western China by 2050, seriously diminishing the water supply for the region's 300 million inhabitants.

Further, the UN Comprehensive Assessment of Freshwater Resources of the World estimates that by 2025, around 5 billion people, out of a total

world population of 8 billion, will not have access to adequate water supplies.

And concern about the effects of climate change is mounting around the world.

Scientists fear that an ''ecological catastrophe'' is developing in Tibet with the melting of the region's glaciers as a result of global warming.

Glaciers in West Antarctica are thinning twice as fast as they did in the 1990s

The mean air temperature has risen 4–5 degrees in Alaska in the past three decades causing glaciers to melt and the coastline to recede.

Peru's Quelccaya ice cap, the largest in the tropics, could be gone by 2100 if it continues to melt at its current rate—contracting more than 600 feet a year in some places.

In addition, according to National Geographic, ''the famed snows of Kilimanjaro have melted more than 80 percent since 1912. Glaciers in the Garhwal Himalaya in India are retreating so fast that researchers believe that most central and eastern Himalayan glaciers could virtually disappear by 2035. Arctic sea ice has thinned significantly over the past half century, and its extent has declined by about 10 percent in the past 30 years. Greenland's ice sheet is shrinking.''

The Pew Center for Climate Change reports strong evidence of global warming in the United States. The findings included: the red fox has shifted its habitat northward, where it is encroaching on the Arctic fox's range.

Southern, warm-water fish have begun to infiltrate waters off Monterey, California, which were previously dominated by colder-water species.

The Alaskan tundra, which has for thousands of years been a depository for carbon dioxide, has begun to release more of the gas into the air than it removes because warmer winters are causing stored plant matter to decompose.

There have been documented trends in which the natural timing of animal or insect life cycles changed and the plants on which they depended did not. Many Southern species of butterflies have disappeared entirely over the past century as their range contracted.

According to the International Climate Change Taskforce, of which Senator SNOWE is a Co-Chair, if the earth's average temperature increases by more than 2 degres Celsius, or 3.6 degrees Fahrenheit, the world could face substantial agricultural losses, countless people at risk of water shortages, and widespread adverse health impacts such as malaria.

Even more critically, if the temperature rises more than 3.6 degrees Fahrenheit, we could be at risk for catastrophic/weather events. For instance, we would risk losing the West Antarctic and Greenland ice sheets, which could raise sea levels, shut down the Gulf Stream, and destroy the world's forests.

Climate change is real. Its impacts are already being felt. If emissions keep growing at projected levels, greenhouse gases in our atmosphere will reach levels unknown since the time of the dinosaurs during the lifetimes of children born today.

That is why my colleagues and I have introduced this resolution that: Urges the Administration to engage in international discussions on post-Kyoto greenhouse gas reductions.

Calls upon the Administration to take action NOW to reduce emissions domestically.

Encourages the United States to keep global average temperatures from increasing more than 3.6 degrees Fahrenheit over pre-industrial levels.

As the world's largest emitter of greenhouse gases, it is the responsibility of the United States to lead by example. By not ratifying the Kyoto Protocol, we have sent a harsh message to the world that the largest emitter and contributor to global warming refuses to participate in a worldwide program aimed at reducing greenhouse gases.

But fortunately, even though the federal government has refused to acknowledge global warming, many States have recognized that in spite of the federal government's inaction, action must be taken.

Nearly 40 States have developed their own climate plans.

A emission trading system is emerging in the Northeast that will require large power plants from Maine to Delaware to reduce their carbon emissions.

Eighteen States and Washington, DC have enacted renewable portfolio standards. They include Arizona, California, Colorado, Connecticut, Hawaii, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Texas, and Wisconsin.

California has enacted legislation that will reduce greenhouse gas emissions from vehicle tailpipes—it is expected that the Northeastern States and Canada will also follow California's lead.

Yet without concerted Federal action, the United States will not be able to achieve real, significant greenhouse gas reductions.

As the world's largest greenhouse gas emitter, we must act now to reduce the impacts of climate change and save the environment for future generations.

The Kyoto Protocol ends in 2012. Though the Protocol ends, the United States needs to lead and move to negotiate a post-Kyoto framework. There are many things we can do. For example, we can: use our forests and our farmland as a depository for carbon to prevent it from being released into the atmosphere; develop new technologies such as clean coal, renewable energy, and hydrogen vehicles; make better use of existing technologies such as hybrid vehicles and energy efficient buildings, appliances, and power generation; and use market-based programs, such as cap and trade, to reduce emissions with the least harm to economy.

Being a responsible steward of the climate is more than just taking steps to pollute less. It also requires participating in international negotiations on the policies the world will need to achieve significant, long-term reductions in greenhouse gas emissions.

I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 5

Whereas in May 1992, the Senate gave advice and consent to the ratification of the United Nations Framework Convention on Climate Change with the intent of reducing global manmade emissions of greenhouse gases, which committed the United States (along with other developed countries) to a nonbinding target of containing emissions levels at 1990 rates by 2000;

Whereas the United Nations Framework Convention on Climate Change was signed by President George Herbert Walker Bush and took effect in March 1994;

Whereas in December 1997, at the United Nations Framework Convention on Climate Change conference of the parties, the Kyoto Protocol, which set targets for reductions in the greenhouse gas emissions of industrialized countries, was established based on principles described in the 1992 framework agreement;

Whereas on February 16, 2005, the Kyoto Protocol will take effect, at which time more than 30 industrialized countries will be legally bound to meet quantitative targets for reducing or limiting the greenhouse gas emissions of those countries, an international carbon trading market will be established through an emissions trading program (which was originally proposed by the United States and enables any industrialized country to buy or sell emissions credits), and the clean development mechanism, which provides opportunities to invest in projects in developing countries that limit emissions while promoting sustainable development, will begin full operation;

Whereas 141 nations (including Canada, China, the European Union, India, Japan, and Russia) have ratified the Kyoto Protocol;

Whereas the United States is the only member of the Group of 8 that has not ratified the Kyoto Protocol;

Whereas, according to the National Academy of Sciences, ''Greenhouse gases are accumulating in Earth's atmosphere as a result of human activities, causing surface air temperatures and subsurface ocean temperatures to rise . . . Human-induced warming and associated sea level rises are expected to continue through the 21st century.'';

Whereas the Administrator of the Environmental Protection Agency stated that ''Scientists know for certain that human activities are changing the composition of Earth's atmosphere. Increasing levels of greenhouse gases, like carbon dioxide, in the atmosphere since pre-industrial times have been well documented. There is no doubt this atmospheric buildup of carbon dioxide and other greenhouse gases is largely the result of human activities.'';

Whereas major scientific organizations (including the American Association for the Advancement of Science, the American Meteorological Society, and the American Geophysical Union) have issued statements acknowledging the compelling scientific evidence of human modification of climate;

Whereas in 2001, the Intergovernmental Panel on Climate Change estimated that global average temperatures have risen by approximately 1 degree Fahrenheit in the past century;

Whereas the report entitled ''Our Changing Planet: The U.S. Climate Change Science Program for Fiscal Years 2004 and 2005'' states that ''Atmospheric concentrations of carbon dioxide and methane have been increasing for about two centuries as a result of human activities and are now higher than they have been for over 400,000 years.'';

Whereas according to the Arctic climate impact assessment published in November 2004, the Arctic is warming almost twice as fast as the rest of the planet, and winter temperatures in Alaska have increased approximately 5 to 7 degrees Fahrenheit over the past 50 years;

Whereas scientists at the Hadley Centre for Climate Prediction and Research in the United Kingdom have estimated that man-made climate change has already doubled the risk of heat waves, such as the heat wave that caused more than 15,000 deaths in Europe in 2003;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'', held in Exeter, England, from February 1, 2005, through February 3, 2005, predicted that an increase in temperature of 1.8 degrees Fahrenheit (which could occur within 25 years) would cause a decline in food production, water shortages, and a net loss of gross domestic product in some developing countries;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'' predicted that an increase in temperature of 3.6 degrees Fahrenheit (which could occur before 2050) could cause a substantial loss of Arctic Sea ice, widespread bleaching of coral reefs, an increased frequency of forest fires, and rivers to become too warm to support trout and salmon, and, in developing countries, would cause an increased risk of hunger, water shortages that would affect an additional 1,500,000,000 people, and significant losses of gross domestic product in some countries;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'' predicted that an increase in temperature of 5.4 degrees Fahrenheit (which could occur before 2070) would cause irreversible damage to the Amazon rainforest, destruction of many coral reefs, a rapid increase in hunger, large losses in crop production in certain regions, which could affect as many as 5,500,000,000 people, and water shortages that would affect an additional 3,000,000,000 people;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'' predicted that an increase in temperature of greater than 5.4 degrees Fahrenheit (which could occur after 2070) would cause certain regions to become unsuitable for food production, and have a substantial effect on the global gross domestic product;

Whereas in the United States, multiple mechanisms (including market cap and trade programs) exist to carry out mitigation of climate change, sequestration activities in agricultural sectors, and development of new technologies such as clean coal and hydrogen vehicles; and

Whereas, because the United States has critical economic and other interests in international climate policy, it is in the best interest of the United States to play an active role in any international discussion on climate policy: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That it is the sense of Congress that the United States should demonstrate international leadership and responsibility regarding reducing the health, environmental, and economic risks posed by climate change by—

(1) carrying out reasonable and responsible actions to ensure significant and meaningful reductions in emissions of all greenhouse gases;

(2) generating climate-friendly technologies by enacting and implementing policies and programs to address all greenhouse gas emissions to promote sustained economic growth;

(3) participating in international negotiations under the United Nations Framework Convention on Climate Change to achieve significant, long-term, cost-effective reductions in global greenhouse gas emissions; and

(4) supporting the establishment of a long-term objective to prevent the global average temperature from increasing by greater than 3.6 degrees Fahrenheit above preindustrial levels.

SEC. 2. The Secretary of State is authorized to and shall engage in efforts with other federal agencies to lead international negotiations to mitigate impacts of global warming.

SUBMITTED RESOLUTIONS—MONDAY, FEBRUARY 14, 2005

SENATE RESOLUTION 52—HONORING SHIRLEY CHISHOLM FOR HER SERVICE TO THE NATION AND EXPRESSING CONDOLENCES TO HER FAMILY, FRIENDS, AND SUPPORTERS ON HER DEATH

Mrs. CLINTON (for herself and Mr. LEVIN) submitted the following resolution; which was considered and agreed to:

S. RES. 52

Whereas Shirley Chisholm was born Shirley Anita St. Hill on November 30, 1924, in Brooklyn, New York, to Charles and Ruby St. Hill, immigrants from British Guyana and Barbados;

Whereas in 1949, Shirley Chisholm was a founding member of the Bedford-Stuyvesant Political League;

Whereas in 1960, she established the Unity Democratic Club, which was instrumental in mobilizing black and Hispanic voters;

Whereas in 1964, Chisholm ran for a New York State Assembly seat and won;

Whereas in 1968, Chisholm became the first African-American woman elected to Congress, representing New York's Twelfth Congressional District;

Whereas as a member of Congress, Chisholm was an advocate for civil rights, women's rights, and the poor;

Whereas in 1969, Shirley Chisholm, along with other African-American members of Congress, founded the Congressional Black Caucus;

Whereas on January 25, 1972, Chisholm announced her candidacy for President and became the first African-American to be considered for the presidential nomination by a major national political party;

Whereas although Chisholm did not win the nomination at the 1972 Democratic National Convention in Miami, she received the votes of 151 delegates;

Whereas Shirley Chisholm served 7 terms in the House of Representatives before retiring from politics in 1982;

Whereas Shirley Chisholm was a dedicated member of Delta Sigma Theta Sorority and received the sorority's highest award, the Mary Church Terrell Award, in 1977 for her political activism and contributions to the Civil Rights Movement;

Whereas Shirley Chisholm was a model public servant and an example for African-American women, and her strength and perseverance serve as an inspiration for all people striving for change; and

Whereas on January 1, 2005, Shirley Chisholm died at the age of 80: Now, therefore, be it

Resolved, That the Senate—

(1) honors Shirley Chisholm for her service to the Nation, her work to improve the lives of women and minorities, her steadfast commitment to demonstrating the power of compassion, and her dedication to justice and equality; and

(2) expresses its deepest condolences to her family, friends, and supporters.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 55—RECOGNIZING THE CONTRIBUTIONS OF THE LATE ZHAO ZIYANG TO THE PEOPLE OF CHINA

Mr. GRAHAM (for himself, Mr. LUGAR, Mr. BIDEN, Mr. BROWNBACK, and Mr. DORGAN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 55

Whereas leading reformist and former Chinese Communist Party Secretary General, Zhao Ziyang, died under house arrest in China on January 17, 2005, at the age of 85;

Whereas Zhao implemented important agricultural, industrial, and economic reforms in China and rose to the prominent positions of premier and Secretary General within the Communist Party despite criticisms of his capitalist ideals;

Whereas, in the early summer of 1989, students gathered in Tiananmen Square to voice their support for democracy and to protest the Communist government that continues to deny them that democracy;

Whereas Secretary General Zhao advised against the use of military force to end the pro-democracy protests in Tiananmen Square;

Whereas, on May 19, 1989, in Tiananmen Square, Zhao warned the tens of thousands of students clamoring for democracy that the authorities were approaching and urged them to return to their homes; an action that illustrated his sympathy for their cause;

Whereas Zhao was consequently relieved of all leadership responsibilities following his actions in Tiananmen Square that summer and was placed under house arrest for the remaining years of his life;

Whereas the Government of China remained indecisive regarding a ceremony for Zhao for several days before allowing a relatively modest ceremony at the Babaoshan Revolutionary Cemetery in Beijing, where Zhao was cremated on January 29, 2005;

Whereas the Government of China's fear of civil unrest resulted in the prohibition of political dissidents and others from the funeral, and the thousands who were in attendance were surrounded in an intimidating environment without adequate time to mourn and grieve;

Whereas news of Zhao's death was announced only in a brief notice by the Communist government and was forbidden to be covered by the radio or national television, while eulogies were erased by censors from memorial websites;

Whereas, upon the announcement of Zhao's death, Chinese news agencies were certain to reference the ''serious mistake'' committed by Zhao at what they refer to as a political incident in 1989;

Whereas mourning the death of Zhao in the Hong Kong Legislative Council was deemed unconstitutional and lawmakers in Hong Kong were refused the opportunity to observe a moment of silence in honor of his life;

Whereas the death of Zhao has renewed the desire of certain Chinese people for a reassessment of the crackdown in 1989 in order to acknowledge the merit of pro-democracy student demonstrations and complaints of government corruption; and

Whereas Zhao will continue to serve as a symbol of the dreams and purpose of the 1989 Tiananmen Square demonstration, which survived the Tiananmen massacre but which have still not been realized for the people of China: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes that Zhao Ziyang made an important contribution to the people of China by providing assistance to the students in Tiananmen Square in 1989, and that through this contribution and his decisions to actively seek reform, Zhao remains a symbol of hope for reform and human rights for the people of China;

(2) expresses sympathy for Zhao's family and to the people of China who were unable to appropriately mourn his death or to celebrate his life;

(3) calls on the Government of China—

(A) to release all prisoners of conscience, including those persons still in prison as a result of their participation in the peaceful pro-democracy protests in Tiananmen Square in 1989; and

(B) to allow those people exiled on account of their activities to return to live in freedom in China; and

(4) stands with the people of China as they strive to improve their way of life and create a government that is truly democratic and respectful of international norms in the area of human rights.

SENATE RESOLUTION 57—DESIGNATING FEBRUARY 25, 2005, AS ''NATIONAL MPS AWARENESS DAY''

Mr. GRAHAM (for himself, Mr. SPECTER, Mr. BROWNBACK, Mr. KOHL, Mr. HATCH, Mr. FEINGOLD, Ms. CANTWELL, Mr. CHAMBLISS, Mrs. MURRAY, Mrs. DOLE, Mr. SANTORUM, and Mr. JEFFORDS) submitted the following resolution; which was considered and agreed to:

S. RES. 57

Whereas Mucopolysaccharidosis (''MPS'') and Mucolipidosis (''ML'') disorders are genetically determined lysosomal storage disorders that result in the body's inability to produce certain enzymes needed to breakdown complex carbohydrates;

Whereas these complex carbohydrates are then stored in virtually every cell in the body and progressively cause damage to these cells, adversely affecting an individual's body, including an individual's heart, respiratory system, bones, internal organs, and central nervous system;

Whereas the cellular damage caused by MPS often results in mental retardation, short stature, corneal damage, joint stiffness, loss of mobility, speech and hearing impairment, heart disease, hyperactivity, chronic respiratory problems, and most importantly, a drastically shortened life span;

Whereas the nature of the disorder is usually not apparent at birth;

Whereas without treatment, life expectancy of an individual afflicted with MPS is usually very early in life;

Whereas recent research developments have resulted in limited treatments for some MPS disorders;

Whereas promising advancements are underway in pursuit of treatments for additional MPS disorders;

Whereas despite newly developed remedies, the blood brain barrier continues to be a significant impediment to effectively treating the brain, thereby preventing the treatment of many of the symptoms of MPS;

Whereas treatments for MPS will be greatly enhanced with continued public funding;

Whereas the quality of life for individuals afflicted with MPS and the treatments available to them will be enhanced through the development of early detection techniques and early intervention;

Whereas treatments and research advancements for MPS are limited by a lack of awareness about MPS disorders;

Whereas the lack of awareness about MPS disorders extends to those within the medical community;

Whereas the damage that is caused by MPS makes it a model for many other degenerative genetic disorders;

Whereas the development of effective therapies and a potential cure for MPS disorders can be accomplished by increased awareness, research, data collection, and information distribution;

Whereas the Senate is an institution than can raise public awareness about MPS; and

Whereas the Senate is also an institution that can assist in encouraging and facilitating increased public and private sector research for early diagnosis and treatments of MPS disorders: Now, therefore, be it

Resolved, That the Senate—

(1) designates February 25, 2005, as ''National MPS Awareness Day''; and

(2) supports the goals and ideals of ''National MPS Awareness Day''.

SENATE RESOLUTION 56—DESIGNATING THE MONTH OF MARCH AS DEEP-VEIN THROMBOSIS AWARENESS MONTH, IN MEMORY OF JOURNALIST DAVID BLOOM

Mr. SPECTER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 56

Whereas deep-vein thrombosis is a condition that occurs when a blood clot forms in one of the large veins, which may result in a fatal pulmonary embolism;

Whereas deep-vein thrombosis is a serious but preventable medical condition;

Whereas deep-vein thrombosis occurs in approximately 2,000,000 Americans every year;

Whereas fatal pulmonary embolism causes more deaths each year than breast cancer and AIDS combined;

Wherease complications from deep-vein thrombosis take up to 200,000 American lives each year;

Whereas fatal pulmonary embolism may be the most common preventable cause of hospital death in the United States;

Whereas the risk factors for deep-vein thrombosis include cancer and certain heart or respiratory diseases;

Whereas pulmonary embolism is the leading cause of maternal death associated with childbirth;

Whereas, according to a survey conducted by the American Public Health Association, 74 percent of Americans are unaware of deep-vein thrombosis;

Whereas National Broadcasting Company correspondent David Bloom died of a fatal pulmonary embolism while covering the war in Iraq;

Whereas Melanie Bloom, widow of David Bloom, and more than 35 members of the Coalition to Prevent Deep-Vein Thrombosis are working to raise awareness of this silent killer; and

Whereas the establishment of March as Deep-Vein Thrombosis Awareness Month in honor of David Bloom would raise public awareness about this life-threatening but preventable condition: Now, therefore, be it

Resolved, That the Senate—

(1) designates the month of March as ''Deep-Vein Thrombosis Awareness Month'';

(2) honors the memory of David Bloom; and

(3) recognizes the importance of raising awareness of deep-vein thrombosis.

Mr. SPECTER. Mr. President, I have sought recognition today to submit a resolution to designate March 2005, as Deep Vein Thrombosis Awareness Month.

Deep vein thrombosis, DVT, affects more than two million Americans each year, according to the American Heart Association. DVT is a condition that occurs when a blood clot forms in one of the large veins, usually in the lower limbs. These blood clots can grow in size, break loose, travel through the bloodstream and obstruct a pulmonary artery, resulting in a pulmonary embolism, PE, a sudden blockage of an artery in the lung, which can cause sudden death. According to the American Heart Association, up to 2 million Americans are affected annually by DVT. Up to 200,000 people die as a result of PE, 98 percent of which are complications brought on by DVT.

Deep vein thrombosis may best be known for its effects on those who fly for long periods of time. Sitting for many hours without getting up and moving around makes blood flow in the legs slow down, increasing the tendency for blood to clump and form blood clots. However, this cause of DVT accounts for only a small percentage of the DVT cases in the United States. DVT can strike anyone, anywhere. Americans who have or have had cancer or certain heart or respiratory diseases may be at increased risk for DVT. Americans are also at risk if they are overweight, elderly, bed-ridden, or have had a stroke.

Unfortunately, 74 percent of Americans have little or no awareness of DVT, according to a national survey sponsored by the American Public Health Association. DVT and its complications also take a toll on our Nation's hospital systems, costing approximately $860 million annually.

Among DVT's many victims was NBC News correspondent David Bloom. In March and April 2003, David, only 39 years old, was embedded with the U.S. Army's 3rd Infantry Division covering the war in Iraq. On April 6, 2003, after being seated in a cramped Army vehicle for many hours, David was stricken with DVT. The blood clot had traveled to his lungs and proved fatal.

Like David Bloom, many of us may be at risk for DVT and not know it. Some risk factors include: acute medical illness such as cancer, certain heart or respiratory diseases, prior DVT, increasing age, obesity, major orthopedic surgery, pregnancy, restricted mobility and paralysis. DVT can be prevented through maintaining a healthy lifestyle, including a fitness program and a healthy diet. Further, during periods of prolonged immobility such as airplane travel, stretch your legs as often as possible.

As Chairman of the Labor, Health and Human Services, and Education Appropriations Subcommittee, I led the effort to double funding for the National Institutes of Health (NIH) over 5 years. Funding for the NIH has increased from $11.3 billion in fiscal year 1995 to $28.5 billion in fiscal year 2005. In 2004, the NIH, through the National Heart, Lung, and Blood Institute, provided $6.1 million for DVT and PE research. The NIH is also advancing research of this condition through a recently formed international partnership working to prevent and control blood clots, and improve therapies for conditions such as heart attacks, strokes, deep vein thrombosis and pulmonary embolisms.

Together with Melanie Bloom, widow of David Bloom, and the more than 35 leading health organizations in the Coalition to Prevent DVT, we are working to help raise awareness of this condition. To increase public awareness of this serious, yet preventable condition, I urge my colleagues to support this legislation to designate March 2005 as Deep Vein Thrombosis Awareness Month in honor of David Bloom's memory.

AMENDMENTS SUBMITTED AND PROPOSED

SA 13. Mr. ENZI proposed an amendment to the bill S. 306, to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

TEXT OF AMENDMENTS

SA. 13. Mr. ENZI proposed an amendment to the bill S. 306, to prohibit discrimination on the basis of genetic information with respect to health insurance and employment; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Genetic Information Nondiscrimination Act of 2005''.

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

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Deciphering the sequence of the human genome and other advances in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often before symptoms have begun. Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.

(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic ''defects'' such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to ''correct'' apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

(3) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information. This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African-Americans. Once again, State legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear. To alleviate some of this stigma, Congress in 1972 passed the National Sickle Cell Anemia Control Act, which withholds Federal funding from States unless sickle cell testing is voluntary.

(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of pre-employment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case *Norman-Bloodsaw v. Lawrence Berkeley Laboratory* (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 702(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b)) is amended—

(A) in paragraph (2)(A), by inserting before the semicolon the following: ''except as provided in paragraph (3)''; and

(B) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

(b) LIMITATIONS ON GENETIC TESTING.—Section 702 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182) is amended by adding at the end the following:

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 732(a).''.

(c) REMEDIES AND ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

''(n) ENFORCEMENT OF GENETIC NONDISCRIMINATION REQUIREMENTS.—

''(1) INJUNCTIVE RELIEF FOR IRREPARABLE HARM.—With respect to any violation of subsection (a)(1)(F), (b)(3), or (c) of section 702, a participant or beneficiary may seek relief under subsection 502(a)(1)(B) prior to the exhaustion of available administrative remedies under section 503 if it is demonstrated to the court, by a preponderance of the evidence, that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Any determinations that already have been made under section 503 in such case, or that are made in such case while an action under this paragraph is pending, shall be given due consideration by the court in any action under this subsection in such case.

''(2) EQUITABLE RELIEF FOR GENETIC NONDISCRIMINATION.—

''(A) REINSTATEMENT OF BENEFITS WHERE EQUITABLE RELIEF HAS BEEN AWARDED.—The recovery of benefits by a participant or beneficiary under a civil action under this section may include an administrative penalty under subparagraph (B) and the retroactive reinstatement of coverage under the plan involved to the date on which the participant or beneficiary was denied eligibility for coverage if—

''(i) the civil action was commenced under subsection (a)(1)(B); and

''(ii) the denial of coverage on which such civil action was based constitutes a violation of subsection (a)(1)(F), (b)(3), or (c) of section 702.

''(B) ADMINISTRATIVE PENALTY.—

''(i) IN GENERAL.—An administrator who fails to comply with the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702 with respect to a participant or beneficiary may, in an action commenced under subsection (a)(1)(B), be personally liable in the discretion of the court, for a penalty in the amount not more than $100 for each day in the noncompliance period.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of clause (i), the term 'noncompliance period' means the period—

''(I) beginning on the date that a failure described in clause (i) occurs; and

''(II) ending on the date that such failure is corrected.

''(iii) PAYMENT TO PARTICIPANT OR BENEFICIARY.—A penalty collected under this subparagraph shall be paid to the participant or beneficiary involved.

''(3) SECRETARIAL ENFORCEMENT AUTHORITY.—

''(A) GENERAL RULE.—The Secretary has the authority to impose a penalty on any failure of a group health plan to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702.

''(B) AMOUNT.—

''(i) IN GENERAL.—The amount of the penalty imposed by subparagraph (A) shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

''(I) beginning on the date such failure first occurs; and

''(II) ending on the date such failure is corrected.

''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

''(D) LIMITATIONS.—

''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

''(I) such failure was due to reasonable cause and not to willful neglect; and

''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

''(II) $500,000.

''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

(d) DEFINITIONS.—Section 733(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(d)) is amended by adding at the end the following:

''(5) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(6) GENETIC INFORMATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(7) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(8) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.''.

(e) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

(a) AMENDMENTS RELATING TO THE GROUP MARKET.—

(1) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(A) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

(B) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg–1(b)) is amended—

(i) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

(ii) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

(2) LIMITATIONS ON GENETIC TESTING.—Section 2702 of the Public Health Service Act (42 U.S.C. 300gg–1) is amended by adding at the end the following:

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 2721(a).''.

(3) REMEDIES AND ENFORCEMENT.—Section 2722(b) of the Public Health Service Act (42 U.S.C. 300gg–22)(b)) is amended by adding at the end the following:

''(3) ENFORCEMENT AUTHORITY RELATING TO GENETIC DISCRIMINATION.—

''(A) GENERAL RULE.—In the cases described in paragraph (1), notwithstanding the provisions of paragraph (2)(C), the following provisions shall apply with respect to an action under this subsection by the Secretary with respect to any failure of a health insurance issuer in connection with a group health plan, to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 2702.

''(B) AMOUNT.—

''(i) IN GENERAL.—The amount of the penalty imposed under this paragraph shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

''(I) beginning on the date such failure first occurs; and

''(II) ending on the date such failure is corrected.

''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

''(D) LIMITATIONS.—

''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

''(I) such failure was due to reasonable cause and not to willful neglect; and

''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

''(II) $500,000.

''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

(4) DEFINITIONS.—Section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg–91(d)) is amended by adding at the end the following:

''(15) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(16) GENETIC INFORMATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(17) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(18) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.''.

(b) AMENDMENT RELATING TO THE INDIVIDUAL MARKET.—

(1) IN GENERAL.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–51 et seq.) (relating to other requirements) is amended—

(A) by redesignating such subpart as subpart 2; and

(B) by adding at the end the following:

''SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION.

''(a) PROHIBITION ON GENETIC INFORMATION AS A CONDITION OF ELIGIBILITY.—A health insurance issuer offering health insurance coverage in the individual market may not establish rules for the eligibility (including continued eligibility) of any individual to enroll in individual health insurance coverage based on genetic information (including information about a request for or receipt of genetic services by an individual or family member of such individual).

''(b) PROHIBITION ON GENETIC INFORMATION IN SETTING PREMIUM RATES.—A health insurance issuer offering health insurance coverage in the individual market shall not adjust premium or contribution amounts for an individual on the basis of genetic information concerning the individual or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A health insurance issuer offering health insurance coverage in the individual market shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.''.

(2) REMEDIES AND ENFORCEMENT.—Section 2761(b) of the Public Health Service Act (42 U.S.C. 300gg–61)(b)) is amended to read as follows:

''(b) SECRETARIAL ENFORCEMENT AUTHORITY.—The Secretary shall have the same authority in relation to enforcement of the provisions of this part with respect to issuers of health insurance coverage in the individual market in a State as the Secretary has under section 2722(b)(2), and section 2722(b)(3) with respect to violations of genetic nondiscrimination provisions, in relation to the enforcement of the provisions of part A with respect to issuers of health insurance coverage in the small group market in the State.''.

(c) ELIMINATION OF OPTION OF NON-FEDERAL GOVERNMENTAL PLANS TO BE EXCEPTED FROM REQUIREMENTS CONCERNING GENETIC INFORMATION.—Section 2721(b)(2) of the Public Health Service Act (42 U.S. C. 300gg–21(b)(2)) is amended—

(1) in subparagraph (A), by striking ''If the plan sponsor'' and inserting ''Except as provided in subparagraph (D), if the plan sponsor''; and

(2) by adding at the end the following:

''(D) ELECTION NOT APPLICABLE TO REQUIREMENTS CONCERNING GENETIC INFORMATION.—

The election described in subparagraph (A) shall not be available with respect to the provisions of subsections (a)(1)(F) and (c) of section 2702 and the provisions of section 2702(b) to the extent that such provisions apply to genetic information (or information about a request for or the receipt of genetic services by an individual or a family member of such individual).''.

(d) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor and the Secretary of Health and Human Services (as the case may be) shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply—

(A) with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after the date that is 18 months after the date of enactment of this title; and

(B) with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after the date that is 18 months after the date of enactment of this title.

SEC. 103. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SECURITY ACT RELATING TO MEDIGAP.

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—Section 1882(s)(2) of the Social Security Act (42 U.S.C. 1395ss(s)(2)) is amended by adding at the end the following:

''(E)(i) An issuer of a medicare supplemental policy shall not deny or condition the issuance or effectiveness of the policy, and shall not discriminate in the pricing of the policy (including the adjustment of premium rates) of an eligible individual on the basis of genetic information concerning the individual (or information about a request for, or the receipt of, genetic services by such individual or family member of such individual).

''(ii) For purposes of clause (i), the terms 'family member', 'genetic services', and 'genetic information' shall have the meanings given such terms in subsection (x).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to a policy for policy years beginning after the date that is 18 months after the date of enactment of this Act.

(b) LIMITATIONS ON GENETIC TESTING.—

(1) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following:

''(x) LIMITATIONS ON GENETIC TESTING.—

''(1) GENETIC TESTING.—

''(A) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—An issuer of a medicare supplemental policy shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

''(i) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(ii) limit the authority of a health care professional who is employed by or affiliated with an issuer of a medicare supplemental policy and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(iii) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(2) DEFINITIONS.—In this subsection:

''(A) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(i) the spouse of the individual;

''(ii) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; or

''(iii) any other individuals related by blood to the individual or to the spouse or child described in clause (i) or (ii).

''(B) GENETIC INFORMATION.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'genetic information' means information about—

''(I) an individual's genetic tests;

''(II) the genetic tests of family members of the individual; or

''(III) the occurrence of a disease or disorder in family members of the individual.

''(ii) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(C) GENETIC TEST.—

''(i) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(ii) EXCEPTIONS.—The term 'genetic test' does not mean—

''(I) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(II) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(D) GENETIC SERVICES.—The term 'genetic services' means—

''(i) a genetic test;

''(ii) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(iii) genetic education.

''(E) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term 'issuer of a medicare supplemental policy' includes a third-party administrator or other person acting for or on behalf of such issuer.''.

(2) CONFORMING AMENDMENT.—Section 1882(o) of the Social Security Act (42 U.S.C. 1395ss(o)) is amended by adding at the end the following:

''(4) The issuer of the medicare supplemental policy complies with subsection (s)(2)(E) and subsection (x).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to an issuer of a medicare supplemental policy for policy years beginning on or after the date that is 18 months after the date of enactment of this Act.

(c) TRANSITION PROVISIONS.—

(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due solely to failure to make such change until the date specified in paragraph (4).

(2) NAIC STANDARDS.—If, not later than June 30, 2006, the National Association of Insurance Commissioners (in this subsection referred to as the ''NAIC'') modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act (referred to in such section as the 1991 NAIC Model Regulation, as subsequently modified) to conform to the amendments made by this section, such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall, not later than October 1, 2006, make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate regulation for the purposes of such section.

(4) DATE SPECIFIED.—

(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

(ii) October 1, 2006.

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

(ii) having a legislature which is not scheduled to meet in 2006 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2006. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 105. PRIVACY AND CONFIDENTIALITY.

(a) APPLICABILITY.—Except as provided in subsection (d), the provisions of this section shall apply to group health plans, health insurance issuers (including issuers in connection with group health plans or individual health coverage), and issuers of medicare supplemental policies, without regard to—

(1) section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191a(a));

(2) section 2721(a) of the Public Health Service Act (42 U.S.C. 300gg–21(a)); and

(3) section 9831(a)(2) of the Internal Revenue Code of 1986.

(b) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.—

(1) IN GENERAL.—The regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) shall apply to the use or disclosure of genetic information.

(2) PROHIBITION ON UNDERWRITING AND PREMIUM RATING.—Notwithstanding paragraph (1), a group health plan, a health insurance issuer, or issuer of a medicare supplemental policy shall not use or disclose genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(c) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

(1) IN GENERAL.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a

receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(2) LIMITATION RELATING TO THE COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) concerning a participant, beneficiary, or enrollee prior to the enrollment, and in connection with such enrollment, of such individual under the plan, coverage, or policy.

(3) INCIDENTAL COLLECTION.—Where a group health plan, health insurance issuer, or issuer of a medicare supplemental policy obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning a participant, beneficiary, or enrollee, such request, requirement, or purchase shall not be considered a violation of this subsection if—

(A) such request, requirement, or purchase is not in violation of paragraph (1); and

(B) any genetic information (including information about a request for or receipt of genetic services) requested, required, or purchased is not used or disclosed in violation of subsection (b).

(d) APPLICATION OF CONFIDENTIALITY STANDARDS.—The provisions of subsections (b) and (c) shall not apply—

(1) to group health plans, health insurance issuers, or issuers of medicare supplemental policies that are not otherwise covered under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note); and

(2) to genetic information that is not considered to be individually-identifiable health information under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(e) ENFORCEMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy that violates a provision of this section shall be subject to the penalties described in sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d–5 and 1320d–6) in the same manner and to the same extent that such penalties apply to violations of part C of title XI of such Act.

(f) PREEMPTION.—

(1) IN GENERAL.—A provision or requirement under this section or a regulation promulgated under this section shall supersede any contrary provision of State law unless such provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under this section or such regulations. No penalty, remedy, or cause of action to enforce such a State law that is more stringent shall be preempted by this section.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to establish a penalty, remedy, or cause of action under State law if such penalty, remedy, or cause of action is not otherwise available under such State law.

(g) COORDINATION WITH PRIVACY REGULATIONS.—The Secretary shall implement and administer this section in a manner that is consistent with the implementation and administration by the Secretary of the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(h) DEFINITIONS.—In this section:

(1) GENETIC INFORMATION; GENETIC SERVICES.—The terms ''family member'', ''genetic information'', ''genetic services'', and ''genetic test'' have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), as amended by this Act.

(2) GROUP HEALTH PLAN; HEALTH INSURANCE ISSUER.—The terms ''group health plan'' and ''health insurance issuer'' include only those plans and issuers that are covered under the regulations described in subsection (d)(1).

(3) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term ''issuer of a medicare supplemental policy'' means an issuer described in section 1882 of the Social Security Act (42 insert 1395ss).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 106. ASSURING COORDINATION.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under this title (and the amendments made by this title) are administered so as to have the same effect at all times; and

(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.

(b) AUTHORITY OF THE SECRETARY.—The Secretary of Health and Human Services has the sole authority to promulgate regulations to implement section 104.

SEC. 107. REGULATIONS; EFFECTIVE DATE.

(a) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury shall issue final regulations in an accessible format to carry out this title.

(b) EFFECTIVE DATE.—Except as provided in section 103, the amendments made by this title shall take effect on the date that is 18 months after the date of enactment of this Act.

TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

SEC. 201. DEFINITIONS.

In this title:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission as created by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(2) EMPLOYEE; EMPLOYER; EMPLOYMENT AGENCY; LABOR ORGANIZATION; MEMBER.—

(A) IN GENERAL.—The term ''employee'' means—

(i) an employee (including an applicant), as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

(ii) a State employee (including an applicant) described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(iii) a covered employee (including an applicant), as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301);

(iv) a covered employee (including an applicant), as defined in section 411(c) of title 3, United States Code; or

(v) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies.

(B) EMPLOYER.—The term ''employer'' means—

(i) an employer (as defined in section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b));

(ii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(iv) an employing office, as defined in section 411(c) of title 3, United States Code; or

(v) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

(C) EMPLOYMENT AGENCY; LABOR ORGANIZATION.—The terms ''employment agency'' and ''labor organization'' have the meanings given the terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(D) MEMBER.—The term ''member'', with respect to a labor organization, includes an applicant for membership in a labor organization.

(3) FAMILY MEMBER.—The term ''family member'' means with respect to an individual—

(A) the spouse of the individual;

(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

(4) GENETIC INFORMATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''genetic information'' means information about—

(i) an individual's genetic tests;

(ii) the genetic tests of family members of the individual; or

(iii) the occurrence of a disease or disorder in family members of the individual.

(B) EXCEPTIONS.—The term ''genetic information'' shall not include information about the sex or age of an individual.

(5) GENETIC MONITORING.—The term ''genetic monitoring'' means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

(6) GENETIC SERVICES.—The term ''genetic services'' means—

(A) a genetic test;

(B) genetic counseling (such as obtaining, interpreting or assessing genetic information); or

(C) genetic education.

(7) GENETIC TEST.—

(A) IN GENERAL.—The term ''genetic test'' means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(B) EXCEPTION.—The term ''genetic test'' does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

SEC. 202. EMPLOYER PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee); or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee).

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee (or information about a request for the receipt of genetic services by such employee or a family member of such employee) except—

(1) where an employer inadvertently requests or requires family medical history of the employee or family member of the employee;

(2) where—

(A) health or genetic services are offered by the employer, including such services offered as part of a bona fide wellness program;

(B) the employee provides prior, knowing, voluntary, and written authorization;

(C) only the employee (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees;

(3) where an employer requests or requires family medical history from the employee to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where an employer purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employer provides written notice of the genetic monitoring to the employee;

(B)(i) the employee provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the employee is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 203. EMPLOYMENT AGENCY PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency—

(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual);

(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

(1) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

(A) health or genetic services are offered by the employment agency, including such services offered as part of a bona fide wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

(3) where an employment agency requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employment agency provides written notice of the genetic monitoring to the individual;

(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employment agency, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 204. LABOR ORGANIZATION PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member);

(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any member, in any way that would deprive or tend to deprive any member of employment opportunities, or otherwise adversely affect the status of the member as an employee, because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member); or

(3) to cause or attempt to cause an employer to discriminate against a member in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member (or information about a request for the receipt of genetic services by such member or a family member of such member) except—

(1) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

(2) where—

(A) health or genetic services are offered by the labor organization, including such services offered as part of a bona fide wellness program;

(B) the member provides prior, knowing, voluntary, and written authorization;

(C) only the member (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the labor organization except in aggregate terms that do not disclose the identity of specific members;

(3) where a labor organization requests or requires family medical history from the members to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the labor organization provides written notice of the genetic monitoring to the member;

(B)(i) the member provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the member is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the labor organization, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific members;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 205. TRAINING PROGRAMS.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs—

(1) to discriminate against any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or a family member of such individual) in admission to, or employment in, any program established to provide apprenticeship or other training or retraining;

(2) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or receipt of genetic services by such individual or family member of such individual); or

(3) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a) to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

(1) where the employer, labor organization, or joint labor-management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

(A) health or genetic services are offered by the employer, labor organization, or joint labor-management committee, including such services offered as part of a bona fide wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services;

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

(3) where the employer, labor organization, or joint labor-management committee requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where the employer, labor organization, or joint labor-management committee purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employer, labor organization, or joint labor-management committee provides written notice of the genetic monitoring to the individual;

(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

(a) TREATMENT OF INFORMATION AS PART OF CONFIDENTIAL MEDICAL RECORD.—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member), such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member.

(b) LIMITATION ON DISCLOSURE.—An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member) except—

(1) to the employee (or family member if the family member is receiving the genetic services) or member of a labor organization at the request of the employee or member of such organization;

(2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;

(3) in response to an order of a court, except that—

(A) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

(B) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-management committee shall provide the employee or member with adequate notice to challenge the court order;

(4) to government officials who are investigating compliance with this title if the information is relevant to the investigation; or

(5) to the extent that such disclosure is made in connection with the employee's compliance with the certification provisions of section 103 of the Family and Medical

Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws.

SEC. 207. REMEDIES AND ENFORCEMENT.

(a) EMPLOYEES COVERED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 705, 706, 707, 709, 710, and 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 et seq.) to the Commission, the Attorney General, or any person, alleging a violation of title VII of that Act (42 U.S.C. 2000e et seq.) shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(i), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(b) EMPLOYEES COVERED BY GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b, 2000e–16c) to the Commission, or any person, alleging a violation of section 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1)) shall be the powers, remedies, and procedures this title provides to the Commission, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(ii), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(c) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be the powers, remedies, and procedures this title provides to that Board, or any person, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iii), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(4) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleging a practice described in paragraph (1), title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleging a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

(d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE 3, UNITED STATES CODE.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Commission, the Merit Systems Protection Board, or any person, alleging a violation of section 411(a)(1) of that title, shall be the powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iv), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(e) EMPLOYEES COVERED BY SECTION 717 OF THE CIVIL RIGHTS ACT OF 1964.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee or applicant described in section 201(2)(A)(v), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(f) DEFINITION.—In this section, the term ''Commission'' means the Equal Employment Opportunity Commission.

SEC. 208. DISPARATE IMPACT.

(a) GENERAL RULE.—Notwithstanding any other provision of this Act, ''disparate impact'', as that term is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–d(k)), on the basis of genetic information does not establish a cause of action under this Act.

(b) COMMISSION.—On the date that is 6 years after the date of enactment of this Act, there shall be established a commission, to be known as the Genetic Nondiscrimination Study Commission (referred to in this section as the ''Commission'') to review the developing science of genetics and to make recommendations to Congress regarding whether to provide a disparate impact cause of action under this Act.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 8 members, of which—

(A) 1 member shall be appointed by the Majority Leader of the Senate;

(B) 1 member shall be appointed by the Minority Leader of the Senate;

(C) 1 member shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate;

(D) 1 member shall be appointed by the ranking minority member of the Committee on Health, Education, Labor, and Pensions of the Senate;

(E) 1 member shall be appointed by the Speaker of the House of Representatives;

(F) 1 member shall be appointed by the Minority Leader of the House of Representatives;

(G) 1 member shall be appointed by the Chairman of the Committee on Education and the Workforce of the House of Representatives; and

(H) 1 member shall be appointed by the ranking minority member of the Committee on Education and the Workforce of the House of Representatives.

(2) COMPENSATION AND EXPENSES.—The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(d) ADMINISTRATIVE PROVISIONS.—

(1) LOCATION.—The Commission shall be located in a facility maintained by the Equal Employment Opportunity Commission.

(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(3) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(4) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the objectives of this section, except that, to the extent possible,

the Commission shall use existing data and research.

(5) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) REPORT.—Not later than 1 year after all of the members are appointed to the Commission under subsection (c)(1), the Commission shall submit to Congress a report that summarizes the findings of the Commission and makes such recommendations for legislation as are consistent with this Act.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Equal Employment Opportunity Commission such sums as may be necessary to carry out this section.

SEC. 209. CONSTRUCTION.

Nothing in this title shall be construed to—

(1) limit the rights or protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(2)(A) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this title; or

(B) establish a violation under this title for an employer, employment agency, labor organization, or joint labor-management committee of a provision of the amendments made by title I;

(3) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this title;

(4) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains;

(5) limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

(6) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

(7) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC INFORMATION.

An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of this title based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

SEC. 211. REGULATIONS.

Not later than 1 year after the date of enactment of this title, the Commission shall issue final regulations in an accessible format to carry out this title.

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title (except for section 208).

SEC. 213. EFFECTIVE DATE.

This title takes effect on the date that is 18 months after the date of enactment of this Act.

TITLE III—MISCELLANEOUS PROVISION

SEC. 301. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provisions to any person or circumstance shall not be affected thereby.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, February 16, 2005, at 10 a.m., to conduct an oversight hearing on the semi-annual monetary policy report of the Federal Reserve.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Wednesday, February 16 at 11:30 a.m., to consider pending calendar business.

Agenda

Agenda Item 1: S. 48—A bill to reauthorize appropriations for the New Jersey Coastal Heritage Trail Route, and for other purposes.

Agenda Item 2: S. 52—A bill to direct the Secretary of the Interior to convey a parcel of real property to Beaver County, Utah.

Agenda Item 3: S. 54—A bill to amend the National Trails System Act to require the Secretary of the Interior to update the feasibility and suitability studies of four national historic trails, and for other purposes.

Agenda Item 4: S. 55—A bill to adjust the boundary of Rocky Mountain National Park in the State of Colorado.

Agenda Item 5: S. 56—A bill to establish the Rio Grande Natural Area in the State of Colorado, and for other purposes.

Agenda Item 6: S. 57—A bill to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000.

Agenda Item 7: S. 97—A bill to provide for the sale of bentonite in Big Horn County, Wyoming.

Agenda Item 8: S. 99—A bill to authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming.

Agenda Item 9: S. 101—A bill to convey to the town of Frannie, Wyoming, certain land withdrawn by the Commission of Reclamation.

Agenda Item 10: S. 128—A bill to designate certain public land in Humboldt, Del Norte, Mendocino, Lake, and Napa Counties in the State of California as wilderness, to designate certain segments of the Black Butte River in Mendocino County, California as a wild or scenic river, and for other purposes.

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

Agenda Item 11: S. 136—A bill to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist certain local school districts in the State of California in providing education services for students attending schools located within Yosemite National Park, and to authorize the Secretary of the Interior to adjust the boundaries of the Golden Gate National Recreation Area.

Agenda Item 12: S. 152—A bill to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, and for other purposes.

Agenda Item 13: S. 161—A bill to provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership.

Agenda Item 14: S. 164—A bill to provide for the acquisition of certain property in Washington County, Utah.

Agenda Item 15: S. 182—A bill to provide for the establishment of the Uintah Research and Curatorial Center for Dinosaur National Monument in the States of Colorado and Utah, and for other purposes.

Agenda Item 16: S. 272—A bill to designate certain National Forest System land in the Commonwealth of Puerto Rico as components of the National Wilderness Preservation System.

Agenda Item 17: S. 276—A bill to revise the boundary of the Wind Cave National Park in the State of South Dakota.

Agenda Item 18: S. 301—A bill to authorize the Secretary of the Interior to provide assistance in implementing cultural heritage, conservation, and recreational activities in the Connecticut River watershed of the States of New Hampshire and Vermont. In addition, the Committee may turn to any other measures that are ready for consideration.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, February 16, 2005, at 9:30 a.m., to conduct a hearing regarding S. 131, Clear Skies Act 2005 and S. 125 to designate the United States courthouse at 501 I Street in Sacramento, CA as the ''Robert T. Matsui United States Courthouse''.

The hearing will be held in SD 406.

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

COMMITTEE ON FINANCE

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, February 16, 2005, at 10 a.m., to hear testimony on the President's budget proposals.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, February 16, 2004, at 10 a.m., to hold a meeting on the foreign affairs budget.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to hold a hearing during the session of the Senate on Wednesday, February 16, 2005, at 10 a.m., in SD–430.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, February 16, 2005, at 10 a.m., for a hearing titled ''Transforming Government for the 21st Century.''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, February 16, 2005, at 9:30 a.m., in room 485 of the Russell Senate Office Building to conduct an oversight hearing on the President's fiscal year 2006 budget request for Indian programs.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DEWINE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 16, 2005, at 10 a.m., to hold an open hearing.

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

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND PROPERTY RIGHTS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Subcommittee on the Constitution, Civil Rights and Property Rights be authorized to meet to conduct a hearing on ''Obscenity Prosecution and the Constitution'' on Wednesday, February 16, 2005, at 3 p.m., in SD226.

Witness List

Mr. Robert Destro, J.D., Professor of Law, Catholic University of America, Columbus School of Law, Washington, DC; Mr. William Wagner, J.D., Associate Professor of Law, the Thomas M. Cooley Law School, Lansing, MI; and Mr. Frederick Schauer, J.D., Frank Stanton Professor of the First Amendment, John F. Kennedy School of Government, Harvard University, Cambridge, MA.

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

PRIVILEGE OF THE FLOOR

Mr. HARKIN. Mr. President, I ask consent that Stephanie Strasko of my staff be granted floor privileges for the duration of today's session.

FOREIGN TRAVEL FINANCIAL REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following reports for standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Eric Steiner:									
United States	Dollar				7,628.49				7,628.49
Thailand	Dollar		1,624.00						1,624.00
Laos	Dollar		172.00						172.00
Vietnam	Dollar		1,183.00						1,183.00
Hong Kong	Dollar		379.00						379.00
Jonathan Rhodes:									
United States	Dollar				7,448.25				7,448.25
Thailand	Dollar		1,624.00						1,624.00
Laos	Dollar		172.00						172.00
Vietnam	Dollar		1,183.00						1,183.00
Hong Kong	Dollar		379.00						379.00
Total			6,716.00		15,076.74				21,792.74

THAD COCHRAN,
Chairman, Committee on Agriculture, Nutrition, and Forestry, Jan. 11, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Carol Cribbs:									
United Kingdom	Pound		814.00				100.00		914.00
Italy	Euro		764.00				100.00		864.00
Poland	Zloty		283.00				50.00		333.00
Ireland	Euro		277.00				50.00		327.00
United States	Dollar				6,225.37				6,225.37
Rebecca Davies:									
United Kingdom	Pound		814.00				100.00		914.00
Italy	Euro		764.00				100.00		864.00
Poland	Zloty		283.00				50.00		333.00
Ireland	Euro		277.00				50.00		327.00
United States	Dollar				6,225.37				6,225.37
Thomas Hawkins:									
Israel	Dollar		725.00						725.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jordan	Dollar		254.00						254.00
Lebanon	Dollar		729.00						729.00
United States	Dollar				5,997.74				5,997.74
Jordan	Dinar				146.96				146.96
Paul Grove:									
Israel	Dollar		725.00						725.00
Jordan	Dollar		254.00						254.00
Lebanon	Dollar		729.00						729.00
United States	Dollar				5,997.74				5,997.74
Jordan	Dinar				146.96				146.96
Brian Wilson:									
Germany	Euro		1,040.00						1,040.00
Italy	Euro		1,014.00						1,014.00
United States	Dollar				6,209.46				6,209.46
Brian Potts:									
Germany	Euro		1,040.00						1,040.00
Italy	Euro		1,014.00						1,014.00
United States	Dollar				6,209.46				6,209.46
Sid Ashworth:									
Kuwait	Dollar		888.00						888.00
Qatar	Dollar		554.00				8.00		562.00
Total			13,242.00		37,159.06		608.00		51,009,06

TED STEVENS,
Chairman, Committee on Appropriations, Jan. 3, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754, COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Jack Reed:									
Kuwait	Dollar		781.00						781.00
Elizabeth King:									
Kuwait	Dollar		742.00						742.00
Iraq	Dollar		15.00						15.00
Senator James M. Talent:									
United States	Dollar				6,715.34				6,715.34
Qatar	Dollar		303.50						303.50
Kuwait	Dollar		571.00						571.00
Israel	Dollar		534.50						534.50
Lindsey R. Neas:									
United States	Dollar				6,715.34				6,715.34
Qatar	Dollar		298.00						298.00
Kuwait	Dollar		571.00						571.00
Israel	Dollar		470.50						470.50
Maren R. Leed:									
United States	Dollar				8,020.00				8,020.00
Japan	Yen		1,796.53						1,796.53
Thomas J. MacKenzie:									
United States	Dollar				8,108.71				8,108.71
Japan	Yen		833.31						833.31
Michael J. McCord:									
United States	Dollar				6,283.00				6,283.00
Japan	Yen		786.00						786.00
Joseph T. Sixeas:									
United States	Dollar				3,974.77		54.10		4,028.87
Japan	Yen		1,301.00						1,301.00
Richard F. Walsh:									
United States	Dollar				6,109.92				6,109.92
Germany	Dollar		357.00						357.00
Diana G. Tabler:									
United States	Dollar				5,591.92				5,591.92
Germany	Dollar		398.05						398.05
Gerald J. Leeling:									
United States	Dollar				5,591.92				5,591.92
Germany	Dollar		421.55						421.55
Senator James M. Inhofe:									
United States	Dollar				6,437.50				6,437.50
Nigeria	Dollar		145.00						145.00
Ghana	Dollar		194.00						194.00
Mark Powers:									
United States	Dollar				6,437.50				6,437.50
Nigeria	Dollar		145.00						145.00
Ghana	Dollar		194.00						194.00
Senator John McCain:									
United States	Dollar				5,425.96				5,425.96
United Kingdom	Pound		542.00						542.00
Ireland	Euro		301.54				494.46		796.00
Senator Lindsey Graham:									
United States	Dollar				6,567.50				6,567.50
Ireland	Euro		437.40				190.60		628.00
Mark Salter:									
United States	Dollar				5,425.96				5,425.96
United Kingdom	Pound		185.00						185.00
Ireland	Euro		881.00						881.00
Richard H. Fontaine, Jr.:									
United States	Dollar				5,425.96				5,425.96
United Kingdom	Pound		185.00						185.00
Ireland	Euro		881.00						881.00
Senator Saxby Chambliss:									
Kuwait	Dollar		688.00						688.00
Pakistan	Dollar		213.00				50.00		263.00
Germany	Dollar		319.00				50.00		369.00
Clyde Taylor:									
Kuwait	Dollar		688.00						688.00
Pakistan	Dollar		213.00				50.00		263.00
Germany	Dollar		319.00				50.00		369.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754, COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Krister Holladay:									
Kuwait	Dollar		688.00						688.00
Pakistan	Dollar		213.00				50.00		263.00
Germany	Dollar		319.00				50.00		369.00
Senator Ben Nelson:									
Kuwait	Dollar		688.00						688.00
Pakistan	Dollar		213.00				50.00		263.00
Germany	Dollar		319.00				50.00		369.00
Eric Pierce:									
Kuwait	Dollar		688.00						688.00
Pakistan	Dollar		213.00				50.00		263.00
Germany	Dollar		319.00				50.00		369.00
Evelyn Farkas:									
United States	Dollar				4,698.27				4,698.27
Colombia	Dollar		520.02						520.02
Ecuador	Dollar		43.00						43.00
Paraguay	Dollar		105.70						105.70
Brazil	Dollar		114.00						114.00
Fred Downey:									
United States	Dollar				5,896.50				5,896.50
Israel	Dollar		1,001.00						1,001.00
Mark Jones:									
United States	Dollar				5,557.50				5,557.50
Israel	Dollar		681.78						681.78
Senator Joseph I. Lieberman:									
United States	Dollar				1,419.50				1,419.50
Israel	Dollar		1,580.00						1,580.00
Senator John Warner:									
Kuwait	Dollar		688.00						688.00
Belgium	Euro		395.45						395.45
United Kingdom	Pound		135.00						135.00
Senator John Cornyn:									
Kuwait	Dollar		688.00						688.00
Belgium	Euro		395.45						395.45
United Kingdom	Pound		135.00						135.00
Senator Evan Bayh:									
Kuwait	Dollar		430.00						430.00
Judith A. Ansley:									
Kuwait	Dollar		543.00						543.00
Belgium	Euro		564.00						564.00
United Kingdom	Pound		135.00						135.00
Daniel J. Cox:									
Kuwait	Dollar		538.00						538.00
Belgium	Euro		779.00						779.00
United Kingdom	Pound		135.00						135.00
Total			29,977.28		110,403.07		1,239.16		141,619.51

JOHN WARNER,
Chairman, Committee on Armed Services, Feb. 7, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard Shelby:									
United Kingdom	Pound		1,643.00						1,643.00
France	Euro		884.00						884.00
Austria	Euro		610.00						610.00
Czech Republic	Crown		612.00						612.00
Germany	Euro		1,506.00						1,506.00
Kathleen L. Casey:									
United Kingdom	Pound		1,643.00						1,643.00
France	Euro		884.00						884.00
Austria	Euro		610.00						610.00
Czech Republic	Crown		612.00						612.00
Germany	Euro		1,506.00						1,506.00
Total			10,510.00						10,510.00

RICHARD SHELBY,
Chairman, Committee on Banking, Housing, and Urban Affairs,
Jan. 24, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Floyd DesChamps:									
China	Yuan		1,105.00						1,105.00
United States	Dollar				1,424.37				1,424.37
Argentina	Peso		1,490.00						1,490.00
United States	Dollar				972.00				972.00
Dabney Hegg:									
Panama	Balboa		389.00						389.00
United States	Dollar				496.00				496.00
John Richards:									
Argentina	Peso		1,831.00						1,831.00
United States	Dollar				972.00				972.00
Amit Ronen:									
Argentina	Peso		1,190.00						1,190.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				995.00				995.00
Total			6,005.00		4,859.37				10,864.37

TED STEVENS,
Chairman, Committee on Commerce, Science, and Transportation,
Jan 10, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES COMMITTEE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Peter B. Lyons:									
Japan	Yen		546.19		482.57				1,028.76
China	Yuan		628.18						628.18
United States	Dollar				7,804.80				7,804.80
Robert M. Simon:									
France	Euro		824.00						824.00
United States	Dollar				6,069.05				6,069.05
Jonathan Black:									
Argentina	Peso		1,980.00						1,980.00
United States	Dollar				4,782.00				4,782.00
John Peschke:									
Argentina	Peso		1,108.82						1,108.82
United States	Dollar				4,782.00				4,782.00
Total			5,087.19		23,920.42				29,007.61

PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, Jan. 7, 2004.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Shannon Heyck-Williams:									
United States	Dollar				5,677.84		370.00		6,047.84
Slovenia	Euro		814.00						814.00
Total			814.00		5,677.84		370.00		6,861.84

JAMES M. INHOFE,
Chairman, Committee on Environment and Public Works, Feb. 3, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
William Boyd:									
United States	Dollar				6,892.54				6,892.54
Kenya	Shilling		1,770.00						1,770.00
United States	Dollar				4,574.12				4,574.12
Czech Republic	Koruna		1,424.00						1,424.00
Edward Michaels:									
United States	Dollar				6,027.02				6,027.02
Switzerland	Franc		2,598.00						2,598.00
United States	Dollar				4,357.26				4,357.26
Czech Republic	Koruna		2,136.00						2,136.00
Frank Fannon:									
United States	Dollar				6,027.02				6,027.02
Switzerland	Franc		2,598.00						2,598.00
Chris Miller:									
United States	Dollar				6,107.41				6,107.41
Czech Republic	Koruna		2,136.00						2,136.00
Switzerland	Franc		2,328.00						2,328.00
United States	Dollar				6,633.00				6,633.00
Argentina	Peso		1,540.00						1,540.00
Mary Anne Dolbeare:									
United States	Dollar				5,998.61				5,998.61
Switzerland	Franc		1,577.00						1,577.00
Michael Catanzaro:									
United States	Dollar				4,782.00				4,782.00
Argentina	Peso		1,540.00						1,540.00
Staci Stevenson:									
United States	Dollar				972.00				972.00
Argentina	Peso		1,232.00						1,232.00
Brian Mormino:									
United States	Dollar				4,957.00				4,957.00
Argentina	Peso		1,540.00						1,540.00
Alison Taylor:									
United States	Dollar				6,633.00				6,633.00
Argentina	Peso		1,540.00						1,540.00
Andrew Wheeler:									
United States	Dollar				4,782.00				4,782.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Argentina	Peso		1,540.00						1,540.00
John Shanahan:									
United States	Dollar				8,484.00				8,484.00
Argentina	Peso		1,540.00						1,540.00
Shawn Whitman:									
Argentina	Peso		1,320.00						1,320.00
Total					28,359.00		77,226.98		105,585.98

JAMES M. INHOFE,
Chairman, Committee on Environment and Public Works, Feb. 3, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE FOR TRAVEL FROM OCT. 1, 2004 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Max Baucus:									
New Zealand	Dollar		833.00						833.00
Australia	Dollar		301.00						301.00
United States	Dollar				13,153.82				13,153.82
Cuba	Dollar		350.00						350.00
United States	Dollar				3,534.40				3,534.40
Mexico	Dollar				355.74				355.74
Shara Aranoff:									
New Zealand	Dollar		384.99						384.99
Australia	Dollar		689.45						689.45
United States	Dollar				9,616.46				9,616.46
William Dauster:									
New Zealand	Dollar		587.46						587.46
Australia	Dollar		301.00						301.00
United States	Dollar				8,360.82				8,360.82
James Foley:									
New Zealand	Dollar		1,099.00						1,099.00
Australia	Dollar		918.00						918.00
United States	Dollar				8,238.73				8,238.73
John Gilliland:									
New Zealand	Dollar		918.00						918.00
Australia	Dollar		1,505.00						1,505.00
United States	Dollar				7,731.82				7,731.82
Timothy Punke:									
New Zealand	Dollar		812.00						812.00
Australia	Dollar		900.00						900.00
Timothy Punke:									
United States	Dollar				7,681.82				7,681.82
Elizabeth Fowler:									
Cuba	Dollar		500.00						500.00
United States	Dollar				1,145.00				1,145.00
Mexico	Dollar				291.00				291.00
Anya Landau:									
Cuba	Dollar		1,000.00						1,000.00
United States	Dollar				2,048.40				2,048.40
Mexico	Dollar				291.00				291.00
Brian Pomper:									
Cuba	Dollar		350.00						350.00
United States	Dollar				1,393.40				1,393.40
Mexico	Dollar				355.00				355.00
Sara Roberts:									
United States	Dollar				2,063.40				2,063.40
Mexico	Dollar				291.00				291.00
Cuba	Dollar		1,000.00						1,000.00
Total			12,448.90		66,551.81				79,000.71

CHUCK GRASSLEY,
Chairman, Committee on Finance, Feb. 2, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Joseph R. Biden, Jr.:									
Israel	Shekel		289.00						289.00
Jordan	Dinar		254.00				272.76		526.76
Egypt	Pound		197.00						197.00
Senator Sam Brownback:									
Kenya	Shilling		268.00						268.00
Uganda	Shilling		287.69		1,250.00				1,537.69
United States	Dollar				8,605.13				8,605.13
Senator Lincoln Chafee:									
Israel	Shekel		215.00						215.00
Jordan	Dinar		137.00				272.76		409.76
Bahrain	Dinar		75.00						75.00
Egypt	Pound		115.00						115.00
Senator Christopher Dodd:									
Nicaragua	Cordoba		452.00						452.00
Dominican Republic	Peso		556.00						556.00
United States	Dollar				1,231.75				1,231.75
Senator Michael Enzi:									
Italy	Euro		2,333.00						2,333.00
United States	Dollar				3,347.86				3,347.86

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Chuck Hagel:									
Israel	Shekel		289.00						289.00
Jordan	Dinar		254.00				272.76		526.76
Bahrain	Dinar		192.00						192.00
Egypt	Pound		217.00						217.00
Senator Chuck Hagel:									
France	Euro		1,386.00				1,827.75		3,258.75
United Kingdom	Pound		914.00						914.00
United States	Dollar				6,530.22				6,530.22
Senator Richard Lugar:									
Ukraine	Hryvnia		750.00						750.00
Germany	Euro		450.00						450.00
United States	Dollar				5,561.49				5,561.49
Antony Blinken:									
Israel	Shekel		289.00						289.00
Jordan	Dinar		254.00				272.76		526.76
Egypt	Pound		197.00						197.00
Deborah Brayton:									
Israel	Shekel		289.00						289.00
Jordan	Dinar		192.00				272.76		464.76
Bahrain	Dinar		192.00						192.00
Egypt	Pound		217.00						217.00
Andrew Fisher:									
Ukraine	Hryvnia		750.00						750.00
Germany	Euro		100.00						100.00
United States	Dollar				5,561.49				5,561.49
Jennifer French:									
Kenya	Shilling		390.00						390.00
Uganda	Shilling		287.69		1,250.00				1,537.69
United States	Dollar				8,304.13				8,304.13
Heather Flynn:									
Ethiopia	Birr		1,510.00						1,510.00
Kenya	Shilling		1,971.00						1,971.00
United States	Dollar				8,182.00				8,182.00
Michael Haltzel:									
Germany	Euro		1,413.00						1,413.00
United States	Dollar				6,570.99				6,570.99
Frank Jannuzi:									
South Korea	Won		1,023.00						1,023.00
Japan	Yen		1,632.00						1,632.00
United States	Dollar				6,132.12				6,132.12
Lou Ann Linehan:									
Argentina	Peso		1,848.00						1,848.00
United States	Dollar				972.00				972.00
Katherine McGuire:									
Italy	Euro		1,599.00						1,599.00
United States	Dollar				5,316.23				5,316.23
Carl Meacham:									
Mexico	Peso		576.00						576.00
Guatemala	Quetzal		464.00						464.00
United States	Dollar				2,740.42				2,740.42
Carl Meacham:									
Canada	Dollar		792.00						792.00
United States	Dollar				812.82				812.82
Thomas Moore:									
France	Euro		1,620.00						1,620.00
United States	Dollar				5,999.60				5,999.60
Kenneth Myers, Jr.:									
Ukraine	Hryvnia		750.00						750.00
Germany	Euro		450.00						450.00
United States	Dollar				5,561.49				5,561.49
Kenneth Myers, III:									
Russia	Ruble		1,500.00		350.00				1,850.00
United States	Dollar				7,927.30				7,927.30
Kenneth Myers, III:									
Ukraine	Hryvnia		750.00						750.00
Germany	Euro		450.00						450.00
United States	Dollar				5,561.49				5,561.49
Janice O'Connell:									
Nicaragua	Cordoba		452.00						452.00
Dominican Republic	Peso		556.00						556.00
United States	Dollar				1,231.75				1,231.75
Andrew Parasiliti:									
Israel	Shekel		289.00						289.100
Jordan	Dinar		254.00				272.76		526.76
Bahrain	Dinar		192.00						192.00
Egypt	Pound		217.00						217.00
Kim Savit:									
Kuwait	Dinar		1,539.43						1,539.43
Jordan	Dinar		1,539.42						1,539.42
United States	Dollar				7,103.70				7,103.70
Manisha Singh:									
Thailand	Baht		815.00						815.00
India	Rupee		1,542.48						1,542.48
United States	Dollar				6,839.00				6,839.00
Puneet Talwar:									
Israel	Shekel		289.00						289.00
Jordan	Dinar		254.00				272.76		526.76
Egypt	Pound		197.00						197.00
Paul Unger:									
Germany	Euro		676.32						676.32
Poland	Zloty		553.54						553.54
Italy	Euro		923.61						923.61
United States	Dollar				6,254.56				6,254.56
Total			41,426.18		119,197.54		3,782.07		164,405.79

DICK LUGAR,
Chairman, Committee on Foreign Relations, Jan. 28, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Susan Collins:									
United States	Dollar				8,236.89				8,236.89
South Africa	Rand		36.20						36.20
Senator Richard Durbin:									
United States	Dollar				10,230.00				10,230.00
South Africa	Rand		111.50						111.50
Jane Alonso:									
United States	Dollar				8,236.89				8,236.89
South Africa	Rand		195.33						195.33
Shannon Smith:									
United States	Dollar				8,331.55				8,331.55
South Africa	Rand		89.50						89.50
Dan Berkovitz:									
United States	Dollar				1,020.05		32.13		1,052.18
Switzerland	Franc		1,300.00						1,300.00
Mark Greenblatt:									
United States	Dollar				997.04				997.04
Switzerland	Franc		1,300.00						1,300.00
Steven Groves:									
United States	Dollar				1,039.10				1,039.10
Switzerland	Franc		1,193.99						1,193.99
Zachary Schram:									
United States	Dollar				1,039.10				1,039.10
Switzerland	Franc		1,023.99						1,023.99
Raymond Shepherd:									
United States	Dollar				752.87				752.87
United Kingdom	Pound		914.00						914.00
Netherlands	Euro		417.00						417.00
France	Euro		1,356.00						1,356.00
Laura Stuber:									
United States	Dollar				813.87				813.87
United Kingdom	Pound		914.00						914.00
Netherlands	Euro		417.00						417.00
France	Euro		1,316.00						1,316.00
Total			10,584.51		40,697.36		32.13		51,314.00

SUSAN COLLINS,
Chairman, Committee on Governmental Affairs, Jan. 31, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Mike DeWine:									
	Dollar		294.00						294.00
	Dollar				1,376.68				1,376.68
John Livingston:									
	Dollar		294.00						294.00
	Dollar				1,358.50				1,358.50
Barbara Schenck:									
	Dollar		294.00						294.00
	Dollar				1,588.53				1,588.53
Ann O'Donnell:									
	Dollar		294.00						294.00
	Dollar				1,358.50				1,358.50
Laura Parker:									
	Dollar		294.00						294.00
	Dollar				13,558.50				13,558.50
Kristine Poptanich:									
	Dollar		294.00						294.00
	Dollar				1,358.50				1,358.50
Senator Dianne Feinstein:									
	Dollar		952.00						952.00
Peter Cleveland:									
	Dollar		952.00						952.00
Senator Mike DeWine:									
	Dollar		292.00						292.00
Kristine Poptanich:									
	Dollar		352.00						352.00
Ann O'Connell:									
	Dollar		352.00						352.00
Abby Kral:									
	Dollar		252.00						252.00
Total.			4,916.00		20,599.21				25,515.21

PAT ROBERTS,
Chairman, Select Committee on Intelligence, Jan. 11, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL FRIST FOR TRAVEL FROM JULY 31 TO AUG. 13, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bill Frist:									
United States	Dollar				11,017.50				11,017.50
Chad	Franc		828.00						828.00
Kenya	Shilling		547.00						547.00
Mark Esper:									
United States	Dollar				10,870.58				10,870.58

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL FRIST FOR TRAVEL FROM JULY 31 TO AUG. 13, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Chad	Franc		778.00						778.00
Kenya	Shilling		522.00						522.00
Andy Olson:									
United States	Dollar				10,197.26				10,197.26
Chad	Franc		774.00						774.00
Kenya	Shilling		493.00						493.00
Nick Smith:									
United States	Dollar				10,197.26				10,197.26
Chad	Franc		828.00						828.00
Kenya	Shilling		547.00						547.00
Delegation Expenses:									
Chad	Franc						419.55		419.55
Kenya	Shilling						1,254.57		1,254.57
Total			5,317.00		42,282.60		1,674.12		49,273.72

BILL FRIST,
Majority Leader, Dec. 16, 2004.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), OFFICE OF THE VICE PRESIDENT FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Brenda Becker:									
Turkey	Lira		234.00						234.00
Greece	Euro		391.84						391.84
Germany	Euro		352.85						352.85
Luxembourg	Euro		363.09						363.09
Italy	Euro		288.81						288.81
Total			1,630.59						1,630.59

DICK CHENEY,
Vice President, Feb. 4, 2005.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination on the calendar: No. 13, Robert Zoellick, which was reported today by the Foreign Relations Committee. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

Mr. REID. Reserving the right to object, I want the record spread with my satisfaction with Condoleezza Rice selecting this man to be her deputy. He has a tremendously strong resume where he has worked, and he has done a good job. It would have been easy for the Secretary of State to pick somebody, in my opinion, who was more ideological and not as pragmatic as Robert Zoellick, but I think this selection she made is outstanding. I applaud and commend the Secretary of State for selecting this individual.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF STATE

Robert B. Zoellick, of Virginia, to be Deputy Secretary of State.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

MEASURES READ THE FIRST TIME—S. 397 AND S. 403

Mr. FRIST. Mr. President, I understand there are two bills at the desk. I ask for their first reading en bloc.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 397) to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

A bill (S. 403) to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

Mr. FRIST. I now ask for their second reading and, in order to place the bills on the calendar under the provisions of rule XIV, I object to my own request, all en bloc.

The PRESIDING OFFICER. Objection is heard.

The bills will be read for the second time on the next legislative day.

DESIGNATING FEBRUARY 25, 2005, AS NATIONAL MPS AWARENESS DAY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 57, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 57) designating February 25, 2005, as National MPS Awareness Day.

There being no objection, the Senate proceeded to consider the resolution.

Mr. GRAHAM. Mr. President, I rise today to introduce a resolution recognizing February 25 as ''National MPS Day.'' This resolution enjoys strong bipartisan support in the Senate. I am also pleased that a similar resolution is being introduced this week in the House of Representatives.

MPS, or Mucopolysaccharidosis, is a devastating disease that affects thousands of families in this country. Most often diagnosed in young children, MPS patients lack certain enzymes to break down complex carbohydrates in their bodies. These complex carbohydrates then are stored throughout the patient's body, causing many of the body's' systems to malfunction and, sadly, makes it difficult for these children to live long enough to reach adolescence.

It is a parent's role to make sacrifices for their child; yet, for the parents of a child diagnosed with MPS, the sacrifices are exceptional. I have had the opportunity to meet with a number of parents of MPS children. These parents exhibit amazing hope, love, grace and humor that can often mask the many trials they undergo in caring for

their children. My staff and I are constantly impressed at their ability to advance their cause while also selflessly caring for their children.

The current president of the National MPS Society, Sissi Langford, is a South Carolinian. She and her husband have two children with MPS, Joe and Maggie. Sissi has been a passionate advocate for her children and all those who suffer from MPS. She has worked with my office for the past two years and has proved herself time and again to be knowledgeable, compassionate and committed to helping those who have been diagnosed with MPS. She worked with others in the National MPS Society to help include language in the latest reauthorization of the Individual with Disabilities Education Act (IDEA) to help address the needs of children who have been diagnosed with degenerative diseases. She has met with the National Institutes of Health and other top health policy makers to ensure that diseases in the same class as MPS are given adequate and necessary research attention. I commend Sissi and others like her, for their tireless work on behalf of MPS.

It is my hope that this resolution will help advance the recognition of MPS, and therefore the attention given in the research realm. I am also hopeful that the Senate will pass this resolution marking February 25 National MPS Day.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 57) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 57

Whereas Mucopolysaccharidosis (''MPS'') and Mucolipidosis (''ML'') disorders are genetically determined lysosomal storage disorders that result in the body's inability to produce certain enzymes needed to breakdown complex carbohydrates;

Whereas these complex carbohydrates are then stored in virtually every cell in the body and progressively cause damage to these cells, adversely affecting an individual's body, including an individual's heart, respiratory system, bones, internal organs, and central nervous system;

Whereas the cellular damage caused by MPS often results in mental retardation, short stature, corneal damage, joint stiffness, loss of mobility, speech and hearing impairment, heart disease, hyperactivity, chronic respiratory problems, and most importantly, a drastically shortened life span;

Whereas the nature of the disorder is usually not apparent at birth;

Whereas without treatment, life expectancy of an individual afflicted with MPS is usually very early in life;

Whereas recent research developments have resulted in limited treatments for some MPS disorders;

Whereas promising advancements are underway in pursuit of treatments for additional MPS disorders;

Whereas despite newly developed remedies, the blood brain barrier continues to be a significant impediment to effectively treating the brain, thereby preventing the treatment of many of the symptoms of MPS;

Whereas treatments for MPS will be greatly enhanced with continued public funding;

Whereas the quality of life for individuals afflicted with MPS and the treatments available to them will be enhanced through the development of early detection techniques and early intervention;

Whereas treatments and research advancements for MPS are limited by a lack of awareness about MPS disorders;

Whereas the lack of awareness about MPS disorders extends to those within the medical community;

Whereas the damage that is caused by MPS makes it a model for many other degenerative genetic disorders;

Whereas the development of effective therapies and a potential cure for MPS disorders can be accomplished by increased awareness, research, data collection, and information distribution;

Whereas the Senate is an institution than can raise public awareness about MPS; and

Whereas the Senate is also an institution that can assist in encouraging and facilitating increased public and private sector research for early diagnosis and treatments of MPS disorders: Now, therefore, be it

Resolved, That the Senate—

(1) designates February 25, 2005, as ''National MPS Awareness Day''; and

(2) supports the goals and ideals of ''National MPS Awareness Day''.

PAYING TRIBUTE TO JOHN HUME

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be discharged from further consideration of S. Res. 54 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 54) paying tribute to John Hume.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD, with no intervening action or debate.

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

The resolution (S. Res. 54) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 54

Whereas John Hume is one of the greatest advocates of peace and non-violence of our time;

Whereas throughout the long and difficult years of civil strife and turmoil, John Hume has dedicated his life to achieving a peaceful, just, and lasting settlement of the conflict in Northern Ireland;

Whereas throughout the turbulent years in Northern Ireland, John Hume never lost faith in the belief that violence and terrorism are wrong, that a negotiated settlement is the only realistic hope for peace, and that ancient antagonisms cannot be settled by bombs and bullets;

Whereas John Hume deserves enormous credit for the peace process in Northern Ireland, which led to the 1998 Good Friday Agreement;

Whereas John Hume's enduring vision of reconciliation, based on equal respect and recognition for both the Protestant and Catholic traditions in Northern Ireland, has served as an inspiration to those seeking peaceful resolution of conflicts in many other parts of the world;

Whereas John Hume has worked consistently for the rights of the members of his community, beginning with the launching of a credit union to provide assistance to the minority community to purchase housing;

Whereas John Hume's commitment was to effective programs and peaceful works, at a time when others in his community increasingly urged or acquiesced to bombs and bullets;

Whereas John Hume's ideas and eloquence lit a candle in the darkness of the violence in Northern Ireland, kindled an increasing sense of hope in the minority community, and created new possibilities for understanding between the opposing sides of the conflict;

Whereas John Hume's community activity and involvement led directly to his long and distinguished political career;

Whereas John Hume brought together a broad coalition of leaders who advocated non-violence and together they founded the Social Democratic and Labour Party in 1970, which has been at the forefront of years of significant efforts to achieve peace in Northern Ireland;

Whereas John Hume was the first to emphasize the necessity of establishing an ongoing Anglo-Irish framework as the cornerstone for institutionalizing the process of reconciliation to heal the divisions within Northern Ireland, between North and South in Ireland, and between Great Britain and Ireland;

Whereas in 1983, largely as a result of the efforts of John Hume, the principal political parties in Ireland and the Social Democratic and Labour Party in Northern Ireland established the far-reaching New Ireland Forum;

Whereas the New Ireland Forum developed alternatives for progress and prepared the report that laid the groundwork for an unprecedented new dialogue on Northern Ireland between Britain and Ireland, culminating in November 1985 with the signing of the historic Anglo-Irish Agreement by Prime Minister Margaret Thatcher of the United Kingdom and Taoiseach Garret FitzGerald of Ireland;

Whereas John Hume conducted talks with Gerry Adams, the leader of Sinn Fein, before the Irish Republican Army agreed to a cease-fire, showing great courage by taking significant personal and political risks to achieve a lasting peace;

Whereas those talks, together with the December 1993 Joint Declaration by the British and Irish Governments, led to the August 1994 cease-fire by the Irish Republican Army and the October 1994 cease-fire by the Loyalist paramilitaries and ultimately to the Good Friday Agreement in 1998;

Whereas John Hume served as the Deputy Leader of the Social Democratic and Labour Party in Northern Ireland until 1979, and its leader from 1979 to 2001;

Whereas John Hume's political career has also included serving as a member of the Northern Ireland Assembly, the European Parliament, and the British House of Commons;

Whereas in his many visits to the United States, John Hume has been a consistent

ambassador for peace, urging the cause of reconciliation and educating Congress and the country about the issues in Northern Ireland;

Whereas John Hume is well respected in the United States and has had an important influence on United States policy and on the American dimension of the Northern Ireland question;

Whereas John Hume is a courageous leader of exceptional achievement and was honored for his leadership in the cause of peace in Northern Ireland with the Nobel Peace Prize in 1998, along with the leader of the Ulster Unionist Party, David Trimble;

Whereas respect for John Hume was the single most important influence in the development of the Friends of Ireland in the United States Congress and in convincing leaders of the Irish-American community throughout the United States to oppose political, financial, or other support for the violence in Northern Ireland; and

Whereas John Hume is retiring this year after a long and brilliant career dedicated to the people of Northern Ireland and to the cause of peace: Now, therefore, be it

Resolved, That the Senate—

(1) pays tribute to John Hume for his lifetime commitment to promoting reconciliation and achieving a lasting peace in Northern Ireland; and

(2) calls on all the parties in Northern Ireland to redouble their effort to restore the trust that is necessary to fully implement the Good Friday Agreement and to achieve stable democratic institutions, peace, and justice in Northern Ireland.

ORDERS FOR THURSDAY, FEBRUARY 17, 2005

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business, it adjourn until 10 a.m. on February 17. I further ask that following the prayer and pledge the morning hour be deemed to have expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to a period of morning business until 12 noon, with the first 30 minutes under the control of the Democratic leader or his designee and the second 30 minutes under the control of the majority leader or his designee, and the remaining time be equally divided between the two leaders or their designees.

I further ask that at 3 p.m. the Senate resume reconsideration of S. 306, Genetic Nondiscrimination Act, and immediately proceed to the vote on passage, with no intervening action or debate.

Mr. REID. Mr. President, reserving the right to object, if the distinguished majority leader would allow me to direct a question to him through the Chair. I have received a number of calls dealing with an antilynching bill, primarily from Senator LANDRIEU. I wonder if the leader has any indication of whether we can take this matter up sometime in the near future.

Mr. FRIST. Mr. President, the antilynching bill has been referred to the Judiciary Committee, which has not yet considered that bill. I believe there is another bill by Senator ALEXANDER also yet to be considered at the committee level. Over the course of tomorrow, we can discuss how we might handle both of those. Typically, it would be through the regular order, since it has been referred to the Judiciary Committee. Over the course of the morning, I will be happy to have discussions with Senators LANDRIEU and ALEXANDER, as I did yesterday, on the matter. They are both important issues. Both are issues that are a little separate but address the same large issue. I look forward to being able to address those. Not going through regular order would require a unanimous consent on behalf of this body. We can discuss that with the leadership over the course of the morning.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow, the Senate will be in morning business throughout the morning. At 3 o'clock tomorrow afternoon, the Senate will vote on the Genetic Nondiscrimination Act. We had a number of Senators speak on that today. We had issues that had to be worked out between the committees. There are two committees in the Senate and they were successfully addressed. Thus, we will vote on this important bill tomorrow.

This bill protects Americans from having their genetic information used against them by potential employers, or by their employer, or to be used in a discriminatory fashion by insurance companies, for example. A number of people have been very involved before the Senate over the last 7 years on this bill. I just mentioned Senators SNOWE, ENZI, KENNEDY, and a number of others. Tomorrow, there will be others who wish to discuss the bill, and we encourage them to do so while we are in morning business or later tomorrow afternoon. We will vote on the bill at 3 o'clock tomorrow.

It is my hope that the Senate will also act on the State high-risk health insurance pools bill and the committee funding resolution. We will continue to work with Members on both sides of the aisle in order to clear these items for floor consideration tomorrow.

As a reminder to our colleagues, on Friday morning, Senator BURR will carry out a long-held Senate tradition by reading George Washington's Farewell Address.

Again, I thank all Members for their assistance on the genetic nondiscrimination bill.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:21 p.m., adjourned until Thursday, February 17, 2005, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate: Wednesday, February 16, 2005.

DEPARTMENT OF STATE

ROBERT B. ZOELLICK, OF VIRGINIA, TO BE DEPUTY SECRETARY OF STATE.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.