

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

By Mr. McCONNELL:

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

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

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

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. MCCAIN (for himself, Mr. LEVIN, Mr. COHEN, Mr. WELLSTONE, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. KYL, Mr. McCONNELL, Mr. GRAMS, Mr. ABRAHAM, Mr. WARNER, Mr. HARKIN, Mr. BINGAMAN, and Mr. BAUCUS):

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

By Mr. PELL:

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

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE (for himself, Mr. PRYOR, Mr. ROTH, Mr. BAUCUS, Mr. PRESSLER, Mr. BREAUX, Mr. BOND, Mr. SIMPSON, Mr. GRASSLEY, Mr. HATCH, Mr. D'AMATO, Mr. MURKOWSKI, Mr. NICKLES, Mr. HELMS, Mr. WARNER, Mr. GREGG, Mr. BENNETT, Mr. LUGAR, Ms. SNOWE, Mr. ABRAHAM, Mr. BURNS, Mr. LOTT, Mr. ASHCROFT, Mr. COATS, Mr. INHOFE, Mrs. HUTCHISON, Mr. STEVENS, Mrs. KASSEBAUM, Mr. KERREY, Mr. COHEN, Mr. CAMPBELL, and Mr. COVERDELL):

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

##### THE AMERICAN FAMILY-OWNED BUSINESS ACT

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

I am proud that this bill was developed on a bipartisan basis, led on the Democratic side by my colleague from Arkansas, Senator PRYOR. We are joined by Senators ROTH, BAUCUS, PRESSLER, BREAUX, SIMPSON, BOND, D'AMATO, GRASSLEY, NICKLES, HELMS, WARNER, GREGG, BENNETT, LUGAR, SNOWE, ABRAHAM, BURNS, LOTT, ASHCROFT, COATS, INHOFE, HUTCHISON,

STEVENS, MURKOWSKI, KASSEBAUM, KERREY, COHEN, and HATCH.

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

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

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

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

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

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

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

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

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

Many of my colleagues have introduced bills to provide estate tax relief in various situations. These bills include important ideas, many of which are reflected in the American Family-Owned Business Act. As we begin the process of providing estate tax relief, we hope to work closely with the spon-

sors of these other bills, and to work toward common goals. We encourage those Senators who have sponsored their own bills to sign on to this one and work toward a single package of estate tax relief.

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

The bill requires heirs to participate in the family business. These participation rules are deliberately flexible and recognize that different family businesses need differing levels of participation by heirs. For example, the bill recognizes that owners of tree farms may participate at a level lower than that of owners of other businesses, since tree farming often does not require continuous attention as do other farming activities.

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

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

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

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

##### SECTION 1. SHORT TITLE.

This Act may be cited as the "The American Family-Owned Business Act".

##### SEC. 2. FAMILY-OWNED BUSINESS EXCLUSION.

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

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

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

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

"(2) the sum of—

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

"(B) 50 percent of the excess (if any) of the adjusted value of such interests over \$1,500,000.

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

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

"(2) the excess of—

"(A) the sum of—

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

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

"(II) are acquired by a qualified heir from, or passed to a qualified heir from, the decedent (within the meaning of section 2032A(e)(9)), plus

"(ii) the amount of the adjusted taxable gifts of such interests from the decedent to members of the decedent's family taken into account under subsection 2001(b)(1)(B), to the extent such interests are continuously held by such members between the date of the

gift and the date of the decedent's death, over

“(B) the amount included in the gross estate under section 2035,

exceeds 50 percent of the adjusted gross estate, and

“(3) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

“(A) such interests were owned by the decedent or a member of the decedent's family, and

“(B) there was material participation (within the meaning of section 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

“(c) ADJUSTED GROSS ESTATE.—For purposes of this section, the term ‘adjusted gross estate’ means the value of the gross estate (determined without regard to this section)—

“(1) reduced by any amount deductible under section 2053(a)(4), and

“(2) increased by the excess of—

“(A) the sum of—

“(i) the amount taken into account under subsection (b)(2)(B), plus

“(ii) the amount of other gifts from the decedent to the decedent's spouse (at the time of the gift) within 10 years of the date of the decedent's death, plus

“(iii) the amount of other gifts (not included under clause (i) or (ii)) from the decedent within 3 years of such date, over

“(B) the amount included in the gross estate under section 2035.

“(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—For purposes of this section, the adjusted value of any qualified family-owned business interest is the value of such interest for purposes of this chapter (determined without regard to this section), reduced by the excess of—

“(1) any amount deductible under section 2053(a)(4), over

“(2) the sum of—

“(A) any indebtedness on any qualified residence of the decedent the interest on which is deductible under section 163(h)(3), plus

“(B) any indebtedness to the extent the taxpayer establishes that the proceeds of such indebtedness were used for the payment of educational and medical expenses of the decedent, the decedent's spouse, or the decedent's dependents (within the meaning of section 152), plus

“(C) any indebtedness not described in subparagraph (A) or (B), to the extent such indebtedness does not exceed \$10,000.

“(e) QUALIFIED FAMILY-OWNED BUSINESS INTEREST.—

“(1) IN GENERAL.—For purposes of this section, the term ‘qualified family-owned business interest’ means—

“(A) an interest as a proprietor in a trade or business carried on as a proprietorship, or

“(B) an interest as a partner in a partnership, or stock in a corporation, carrying on a trade or business, if—

“(i) at least—

“(I) 50 percent of such partnership or corporation is owned (directly or indirectly) by the decedent or members of the decedent's family,

“(II) 70 percent of such partnership or corporation is so owned by 2 families (including the decedent's family), or

“(III) 90 percent of such partnership or corporation is so owned by 3 families (including the decedent's family), and

“(ii) at least 30 percent of such partnership or corporation is so owned by each family described in subclause (II) or (III) of clause (i).

“(2) LIMITATION.—Such term shall not include—

“(A) any interest in a trade or business the principal place of business of which is not located in the United States,

“(B) any interest in—

“(i) an entity which had, or

“(ii) an entity which is a member of a controlled group (as defined in section 267(f)(1)) which had,

readily tradable stock or debt on an established securities market or secondary market (as defined by the Secretary) within 3 years of the date of the decedent's death,

“(C) any interest in a trade or business not described in section 542(c)(2), if more than 35 percent of the adjusted ordinary gross income of such trade or business for the taxable year which includes the date of the decedent's death would qualify as personal holding company income (as defined in section 543(a)), and

“(D) that portion of an interest in a trade or business that is attributable to cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business.

“(3) OWNERSHIP RULES.—

“(A) INDIRECT OWNERSHIP.—For purposes of determining indirect ownership under paragraph (1), rules similar to the rules of paragraphs (2) and (3) of section 447(e) shall apply.

“(B) TIERED ENTITIES.—For purposes of this section, if—

“(i) a qualified family-owned business holds an interest in another trade or business, and

“(ii) such interest would be a qualified family-owned business interest if held directly by the family (or families) holding interests in the qualified family-owned business meeting the requirements of paragraph (1)(B),

then the value of the qualified family-owned business shall include the portion attributable to the interest in the other trade or business.

“(f) TAX TREATMENT OF FAILURE TO MATERIALLY PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTERESTS.—

“(1) IN GENERAL.—There is imposed an additional estate tax if, within 10 years after the date of the decedent's death and before the date of the qualified heir's death—

“(A) the qualified heir ceases to use for the qualified use (within the meaning of section 2032A(c)(6)(B)) the qualified family-owned business interest which was acquired (or passed) from the decedent, or

“(B) the qualified heir disposes of any portion of a qualified family-owned business interest (other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under section 170(h)).

“(2) ADDITIONAL ESTATE TAX.—The amount of the additional estate tax imposed by paragraph (1) shall be equal to—

“(A) the adjusted tax difference attributable to the qualified family-owned business interest (as determined under rules similar to the rules of section 2032A(c)(2)(B)), plus

“(B) interest on the amount determined under subparagraph (A) at the annual rate of 4 percent for the period beginning on the date the estate tax liability was due under this chapter and ending on the date such additional estate tax is due.

“(g) OTHER DEFINITIONS AND APPLICABLE RULES.—For purposes of this section—

“(1) QUALIFIED HEIR.—The term ‘qualified heir’—

“(A) has the meaning given to such term by section 2032A(e)(1), and

“(B) includes any active employee of the trade or business to which the qualified family-owned business interest relates if such

employee has been employed by such trade or business for a period of at least 10 years before the date of the decedent's death.

“(2) MEMBER OF THE FAMILY.—The term ‘member of the family’ has the meaning given to such term by section 2032A(e)(2).

“(3) APPLICABLE RULES.—Rules similar to the following rules shall apply:

“(A) Section 2032A(b)(4) (relating to decedents who are retired or disabled).

“(B) Section 2032A(b)(5) (relating to special rules for surviving spouses).

“(C) Section 2032A(c)(2)(D) (relating to partial dispositions).

“(D) Section 2032A(c)(3) (relating to only 1 additional tax imposed with respect to any 1 portion).

“(E) Section 2032A(c)(4) (relating to due date).

“(F) Section 2032A(c)(5) (relating to liability for tax; furnishing of bond).

“(G) Section 2032A(c)(7) (relating to no tax if use begins within 2 years; active management by eligible qualified heir treatment as material participation).

“(H) Section 2032A(e)(10) (relating to community property).

“(I) Section 2032A(e)(14) (relating to treatment of replacement property acquired in section 1031 or 1033 transactions).

“(J) Section 2032A(f) (relating to statute of limitations).

“(K) Section 6166(b)(3) (relating to farmhouses and certain other structures taken into account).

“(L) Subparagraphs (B), (C), and (D) of section 6166(g)(1) (relating to acceleration of payment).”

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 2033 the following new item:

“Sec. 2033A. Family-owned business exclusion.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1995.

#### SUPPORTERS OF AMERICAN FAMILY-OWNED BUSINESS ACT

Air Conditioning Contractors of America.  
Alliance of Independent Store Owners & Professionals.  
American Alliance of Family Businesses.  
American Association of Nurserymen.  
American Consulting Engineers Council.  
American Electrical Contractors Association.  
American Electrical Contractors Association.  
American Equipment Distributors.  
American Farm Bureau Federation.  
American Horse Council.  
American Road and Transportation Builders Association.  
American Sheep Industry Association.  
American Soybean Association.  
American Subcontractors Association.  
American Trucking Association.  
American Vintners Association.  
Associated Builders and Contractors.  
Associated Equipment Distributors.  
Associated General Contractors of America.  
Building Advertising Council.  
Building Service Contractors Associations International.  
Committee to Preserve the American Family Business.  
Communicating for Agriculture.  
Council of Fleet Specialists.  
Food Marketing Institute.  
Forest Industries Committee on Taxation.  
Independent Bankers Association of America.  
Independent Petroleum Association of America.

Machinery Dealers National Association.  
Marina Operators Association of America.  
Marine Retailers Association of America.  
National-American Wholesale Grocers' Assn./International Foodservice Distributors.

National Association for the Self-Employed.

National Association of RV Parks and Campgrounds.

National Association of Realtors.  
National Association of Retail Druggists.

National Association of State Departments of Agriculture.

National Association of Wheat Growers.  
National Automobile Dealers Association.

National Cattlemen's Association.  
National Corn Growers Association.

National Cotton Council.  
National Farmers Union.

National Federation of Independent Business.

National Food Brokers Association.  
National Home Furnishings Association.

National Lumber and Building Material Dealers Association.

National Milk Producers Federation.  
National Pork Producers Council.

National Restaurant Association.  
National Retail Federation.

National Roofing Contractors Association.  
National Stripper Well Association.

National Tire Dealers & Retreaders Association.

National Tooling & Machining Association.  
Printing Industries of America.

Promotional Products Association International.

Retail Bakers of America.  
Sageguard America's Family Enterprises.

Sheet Metal & Air Conditioning Contractors National Association.

Small Business Exporters Association.  
Small Business Legislative Council.

Society of American Florists.  
U.S. Business and Industrial Council.

U.S. Chamber of Commerce.  
Wine and Spirits Wholesalers of American.

World Floor Covering Association

Mr. ROTH. Mr. President, sometimes it appears that government has declared war on the family farm and small business. This is an irony, given the fact that these historic American institutions are the backbone of our economy. We all know the statistics—how since the early 1970's, small businesses have created two out of every three new jobs—how our family farms have helped turn America into the most productive agricultural provider in the world.

On previous occasions, I've come to the floor to detail how government, time and again, has tried to kill the goose that lays the golden egg. Not only are small businesses and our family farms feeling the crunch from Federal taxation and over-regulation, but they are getting hit on the local level, as well. When Congress increases regulations—when Congress hits small business men and women with tax increases—rarely are these regulations and increases considered in light of the State and local taxes these men and women are paying. Fortune magazine reports that the tax liability of small businesses is one of the fastest rising, especially through the increases of property taxes—taxes which have a profound impact on our farmers.

On top of this tremendous tax and regulatory load that small business

owners and family farmers must bear in life, the Federal Government even refuses to allow them peace in death. In fact, in many cases the way the tax code is written today, the death of a small business man or woman in a family-owned enterprise brings about what can only be considered a hostile takeover by the government.

Under current law, when the key member of a family-owned business dies, the Federal Government mandates an estate tax that can reach as high as 55 percent. Fifty-five percent, Mr. President. Think about that. It can make the Federal Government literally the majority owner of a business that a family has worked for years to build.

If a government takeover isn't bad enough, the families involved soon realize that Uncle Sam doesn't even want to keep the business. He's not interested in a partnership. He just wants his pound of flesh, even if it kills the enterprise. Time again, this has happened as wonderful, hard-working, risk-taking spouses and children—valiant souls who have often sacrificed for the family cause—are forced by old Uncle Sam to sell the company or farm just to pay the taxes.

If all this seems familiar, Mr. President, it is. It's familiar to anyone who's ever seen an old Vaudeville melodrama. If you can't pay the taxes, you lose the family farm. Well, Mr. President, all that changes with this legislation—legislation I have authored with Senators DOLE and PRYOR. And frankly, I don't mind playing the role of Dudley Dooright, along with these distinguished colleagues and a host of others who have cosponsored this legislation. In fact, I'm pleased to be a champion of small business, especially when I hear stories like those I shared in our press conference today.

These are stories about real people—about an elderly woman from Delaware who, upon her death, left her family farm to her five children. They wanted the farm. They wanted it to remain in the family. It was valued at over \$2 million. But in came Uncle Sam—just like in the melodrama—and demanded estate taxes of almost \$1 million. Now Mr. President, it's not hard to understand how a hard-working family can build a farm that's worth \$2 million, especially when you consider inflation. For good land and well-kept equipment, that's not an exorbitant amount of money.

But it's almost impossible to see how those who inherit the farm are able to keep it when they also inherit a million dollar tax liability.

In another case, an elderly couple from southern Delaware is currently struggling to plan their estate so it adequately provides for their handicapped daughter while it also allows their son to continue the family farming operation. Unfortunately, with a projected estate tax bill of over \$500,000, it is most likely that they also will have to sell their family farm just to appease Uncle Sam's insatiable appetite for taxes.

Mr. President, it's time for change. And the legislation I've authored—legislation to provide estate tax relief—is an important measure toward creating the change we need. The Family Business Estate Tax Relief Act—completely bipartisan legislation—will exempt from the estate tax a full \$1.5 million of the value of the deceased individual's interest in a family business. If the business or farm is worth more than \$1.5 million, our legislation cuts the additional tax rate in half.

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

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

By Mr. COHEN:

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

THE HEALTH CARE FRAUD AND ABUSE PREVENTION ACT OF 1995

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

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

closing the doors of these programs to fraud and abuse.

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

The bill that I am introducing today reflects this delicate balance. It is the product of many months of work by my staff on the Senate Special Committee on Aging to respond to comments by many experts in law enforcement, health care, and the health care provider community. The changes made to S. 245 by this legislation I am introducing today are both comprehensive in nature and extremely workable.

For example, this bill alters the extension of the Social Security Act anti-kickback statute and civil monetary penalties. Under this legislation, these penalties would be extended to cover all Federal Health Care Programs, not just Medicare and Medicaid.

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

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

I would like to thank all those individuals from law enforcement and the health care industry who have come forth with pragmatic and creative solutions to a growing and pernicious problem, and I ask unanimous consent that

a section-by-section analysis of the changes have been made to S. 245 and a copy of my legislation be included in the RECORD.

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

S. 1088

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

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

(a) **SHORT TITLE.**—This Act may be cited as the “Health Care Fraud and Abuse Prevention Act of 1995”.

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

Sec. 1. Short title; table of contents.

**TITLE I—FRAUD AND ABUSE CONTROL PROGRAM**

Sec. 101. Fraud and abuse control program.

Sec. 102. Application of certain health anti-fraud and abuse sanctions to all fraud and abuse against any Federal health program.

Sec. 103. Health care fraud and abuse guidance.

**TITLE II—REVISIONS TO CURRENT SANCTIONS FOR FRAUD AND ABUSE**

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

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

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

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

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

Sec. 206. Effective date.

**TITLE III—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS**

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

**TITLE IV—CIVIL MONETARY PENALTIES**

Sec. 401. Social Security Act civil monetary penalties.

**TITLE V—AMENDMENTS TO CRIMINAL LAW**

Sec. 501. Health care fraud.

Sec. 502. Forfeitures for Federal health care offenses.

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

Sec. 504. Grand jury disclosure.

Sec. 505. False Statements.

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

Sec. 507. Theft or embezzlement.

Sec. 508. Laundering of monetary instruments.

Sec. 509. Authorized investigative demand procedures.

**TITLE VI—STATE HEALTH CARE FRAUD CONTROL UNITS**

Sec. 601. State health care fraud control units.

**TITLE VII—MEDICARE BILLING ABUSE PREVENTION**

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

Sec. 702. Minimum software requirements.

Sec. 703. Disclosure.

Sec. 704. Review and modification of regulations.

Sec. 705. Definitions.

**TITLE I—FRAUD AND ABUSE CONTROL PROGRAM**

**SEC. 101. FRAUD AND ABUSE CONTROL PROGRAM.**

(a) **ESTABLISHMENT OF PROGRAM.**—

(1) **IN GENERAL.**—Not later than January 1, 1996, the Secretary of Health and Human Services (in this title referred to as the “Secretary”), acting through the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General shall establish a program—

(A) to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to the delivery of and payment for health care in the United States,

(B) to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States,

(C) to facilitate the enforcement of the provisions of sections 1128, 1128A, and 1128B of the Social Security Act (42 U.S.C. 1320a-7, 1320a-7a, and 1320a-7b) and other statutes applicable to health care fraud and abuse, and

(D) to provide for the modification and establishment of safe harbors and to issue interpretative rulings and special fraud alerts pursuant to section 103.

(2) **COORDINATION WITH HEALTH PLANS.**—In carrying out the program established under paragraph (1), the Secretary and the Attorney General shall consult with, and arrange for the sharing of data with representatives of health plans.

(3) **GUIDELINES.**—

(A) **IN GENERAL.**—The Secretary and the Attorney General shall issue guidelines to carry out the program under paragraph (1). The provisions of sections 553, 556, and 557 of title 5, United States Code, shall not apply in the issuance of such guidelines.

(B) **INFORMATION GUIDELINES.**—

(i) **IN GENERAL.**—Such guidelines shall include guidelines relating to the furnishing of information by health plans, providers, and others to enable the Secretary and the Attorney General to carry out the program (including coordination with health plans under paragraph (2)).

(ii) **CONFIDENTIALITY.**—Such guidelines shall include procedures to assure that such information is provided and utilized in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services and items.

(iii) **QUALIFIED IMMUNITY FOR PROVIDING INFORMATION.**—The provisions of section 1157(a) of the Social Security Act (42 U.S.C. 1320c-6(a)) (relating to limitation on liability) shall apply to a person providing information to the Secretary or the Attorney General in conjunction with their performance of duties under this section.

(4) **INVESTIGATORS AND OTHER PERSONNEL.**—In addition to any other amounts authorized to be appropriated to the Secretary, the Attorney General, the Director of the Federal Bureau of Investigation, and the Inspectors General of the Departments of Health and Human Services, Defense, Labor, and Veterans Affairs, of the Office of Personnel Management, and of the Railroad Retirement Board, for health care anti-fraud and abuse activities for a fiscal year, there are authorized to be appropriated additional amounts, from the Health Care Fraud and Abuse Control described in subsection (b) of this section, as may be necessary to enable the Secretary, the Attorney General, and such Inspectors General to conduct investigations

and audits of allegations of health care fraud and abuse and otherwise carry out the program established under paragraph (1) in a fiscal year.

(5) ENSURING ACCESS TO DOCUMENTATION.—The Inspector General of the Department of Health and Human Services is authorized to exercise such authority described in paragraphs (3) through (9) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) as necessary with respect to the activities under the fraud and abuse control program established under this subsection.

(6) AUTHORITY OF INSPECTOR GENERAL.—Nothing in this Act shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

(b) HEALTH CARE FRAUD AND ABUSE CONTROL.—

(1) ESTABLISHMENT.—

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

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

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

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

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

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

(i) Criminal fines imposed in cases involving a Federal health care offense (as defined in section 982(a)(6)(B) of title 18, United States Code).

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

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

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

(2) GENERAL USE OF FUNDS.—

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

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

(ii) investigations;

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

(iv) inspections and other evaluations; and

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

(B) FUNDS USED TO SUPPLEMENT AGENCY APPROPRIATIONS.—It is intended that disbursements made from the Health Care Fraud and Abuse Control to any Federal agency be used to increase and not supplant the recipient agency's appropriated operating budget.

(3) ADDITIONAL USE OF FUNDS BY INSPECTOR GENERAL.—

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

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

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

(5) ANNUAL REPORT.—The Secretary and the Attorney General shall submit jointly an annual report to Congress on the amount of revenue which is generated and disbursed by the Health Care Fraud and Abuse Control in each fiscal year.

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

(1) a policy of health insurance;

(2) a contract of a service benefit organization;

(3) a membership agreement with a health maintenance organization or other prepaid health plan; and

(4) an employee welfare benefit plan or a multiple employer welfare plan (as such terms are defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002)).

**SEC. 102. APPLICATION OF CERTAIN HEALTH ANTI-FRAUD AND ABUSE SANCTIONS TO FRAUD AND ABUSE AGAINST FEDERAL HEALTH PROGRAMS.**

(a) CRIMES.—

(1) SOCIAL SECURITY ACT.—Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b) is amended as follows:

(A) In the heading, by striking "MEDICARE OR STATE HEALTH CARE PROGRAMS" and inserting "FEDERAL HEALTH CARE PROGRAMS".

(B) In subsection (a)(1), by striking "a program under title XVIII or a State health care program (as defined in section 1128(h))" and inserting "a Federal health care program".

(C) In subsection (a)(5), by striking "a program under title XVIII or a State health care program" and inserting "a Federal health care program".

(D) In the second sentence of subsection (a)—

(i) by striking "a State plan approved under title XIX" and inserting "a Federal health care program", and

(ii) by striking "the State may at its option (notwithstanding any other provision of that title or of such plan)" and inserting "the administrator of such program may at its option (notwithstanding any other provision of such program)".

(E) In subsection (b), by striking "title XVIII or a State health care program" each place it appears and inserting "a Federal health care program".

(F) In subsection (c), by inserting "(as defined in section 1128(h))" after "a State health care program".

(G) By adding at the end the following new subsection:

"(f) For purposes of this section, the term 'Federal health care program' means—

"(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded, in whole or in part, by the United States Government; or

"(2) any State health care program, as defined in section 1128(h)."

(2) IDENTIFICATION OF COMMUNITY SERVICE OPPORTUNITIES.—Section 1128B of such Act (42 U.S.C. 1320a-7b) is further amended by adding at the end the following new subsection:

"(g) The Secretary may—

"(1) in consultation with State and local health care officials, identify opportunities for the satisfaction of community service obligations that a court may impose upon the conviction of an offense under this section, and

"(2) make information concerning such opportunities available to Federal and State law enforcement officers and State and local health care officials."

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

**SEC. 103. HEALTH CARE FRAUD AND ABUSE GUIDANCE.**

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

(1) IN GENERAL.—

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

(i) modifications to existing safe harbors issued pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. 1320a-7b note);

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

(iii) interpretive rulings to be issued pursuant to subsection (b); and

(iv) special fraud alerts to be issued pursuant to subsection (c).

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

(C) REPORT.—The Inspector General of the Department of Health and Human Services (in this section referred to as the "Inspector

General") shall, in an annual report to Congress or as part of the year-end semiannual report required by section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), describe the proposals received under clauses (i) and (ii) of subparagraph (A) and explain which proposals were included in the publication described in subparagraph (B), which proposals were not included in that publication, and the reasons for the rejection of the proposals that were not included.

(2) **CRITERIA FOR MODIFYING AND ESTABLISHING SAFE HARBORS.**—In modifying and establishing safe harbors under paragraph (1)(B), the Secretary may consider the extent to which providing a safe harbor for the specified payment practice may result in any of the following:

(A) An increase or decrease in access to health care services.

(B) An increase or decrease in the quality of health care services.

(C) An increase or decrease in patient freedom of choice among health care providers.

(D) An increase or decrease in competition among health care providers.

(E) An increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

(F) An increase or decrease in the cost to Federal health care programs (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f)).

(G) An increase or decrease in the potential overutilization of health care services.

(H) The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of—

(i) whether to order a health care item or service; or

(ii) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

(I) Any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in Federal health care programs (as so defined).

(b) **INTERPRETIVE RULINGS.**—

(1) **IN GENERAL.**—

(A) **REQUEST FOR INTERPRETIVE RULING.**—Any person may present, at any time, a request to the Inspector General for a statement of the Inspector General's current interpretation of the meaning of a specific aspect of the application of sections 1128A and 1128B of the Social Security Act (42 U.S.C. 1320a-7a and 1320a-7b) (in this section referred to as an "interpretive ruling").

(B) **ISSUANCE AND EFFECT OF INTERPRETIVE RULING.**—

(i) **IN GENERAL.**—If appropriate, the Inspector General shall in consultation with the Attorney General, issue an interpretive ruling not later than 90 days after receiving a request described in subparagraph (A). Interpretive rulings shall not have the force of law and shall be treated as an interpretive rule within the meaning of section 553(b) of title 5, United States Code. All interpretive rulings issued pursuant to this clause shall be published in the Federal Register or otherwise made available for public inspection.

(ii) **REASONS FOR DENIAL.**—If the Inspector General does not issue an interpretive ruling in response to a request described in subparagraph (A), the Inspector General shall notify the requesting party of such decision not later than 60 days after receiving such a request and shall identify the reasons for such decision.

(2) **CRITERIA FOR INTERPRETIVE RULINGS.**—

(A) **IN GENERAL.**—In determining whether to issue an interpretive ruling under paragraph (1)(B), the Inspector General may consider—

(i) whether and to what extent the request identifies an ambiguity within the language of the statute, the existing safe harbors, or previous interpretive rulings; and

(ii) whether the subject of the requested interpretive ruling can be adequately addressed by interpretation of the language of the statute, the existing safe harbor rules, or previous interpretive rulings, or whether the request would require a substantive ruling (as defined in section 552 of title 5, United States Code) not authorized under this subsection.

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

(c) **SPECIAL FRAUD ALERTS.**—

(1) **IN GENERAL.**—

(A) **REQUEST FOR SPECIAL FRAUD ALERTS.**—Any person may present, at any time, a request to the Inspector General for a notice which informs the public of practices which the Inspector General considers to be suspect or of particular concern under section 1128B(b) of the Social Security Act (42 U.S.C. 1320a-7b(b)) (in this subsection referred to as a "special fraud alert").

(B) **ISSUANCE AND PUBLICATION OF SPECIAL FRAUD ALERTS.**—Upon receipt of a request described in subparagraph (A), the Inspector General shall investigate the subject matter of the request to determine whether a special fraud alert should be issued. If appropriate, the Inspector General shall issue a special fraud alert in response to the request. All special fraud alerts issued pursuant to this subparagraph shall be published in the Federal Register.

(2) **CRITERIA FOR SPECIAL FRAUD ALERTS.**—In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider—

(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2); and

(B) the volume and frequency of the conduct that would be identified in the special fraud alert.

## TITLE II—REVISIONS TO CURRENT SANCTIONS FOR FRAUD AND ABUSE

### SEC. 201. MANDATORY EXCLUSION FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS.

(a) **INDIVIDUAL CONVICTED OF FELONY RELATING TO HEALTH CARE FRAUD.**—

(1) **IN GENERAL.**—Section 1128(a) of the Social Security Act (42 U.S.C. 1320a-7(a)) is amended by adding at the end the following new paragraph:

"(3) **FELONY CONVICTION RELATING TO HEALTH CARE FRAUD.**—Any individual or entity that has been convicted after the date of the enactment of the Health Care Fraud and Abuse Prevention Act of 1995, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct."

(2) **CONFORMING AMENDMENT.**—Paragraph (1) of section 1128(b) of such Act (42 U.S.C. 1320a-7(b)) is amended to read as follows:

"(1) **CONVICTION RELATING TO FRAUD.**—Any individual or entity that has been convicted after the date of the enactment of the Health Care Fraud and Abuse Prevention Act of 1995, under Federal or State law—

"(A) of a criminal offense consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

"(i) in connection with the delivery of a health care item or service, or

"(ii) with respect to any act or omission in a health care program (other than those specifically described in subsection (a)(1)) operated by or financed in whole or in part by any Federal, State, or local government agency; or

"(B) of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any Federal, State, or local government agency."

(b) **INDIVIDUAL CONVICTED OF FELONY RELATING TO CONTROLLED SUBSTANCE.**—

(1) **IN GENERAL.**—Section 1128(a) of the Social Security Act (42 U.S.C. 1320a-7(a)), as amended by subsection (a), is amended by adding at the end the following new paragraph:

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

(2) **CONFORMING AMENDMENT.**—Section 1128(b)(3) of such Act (42 U.S.C. 1320a-7(b)(3)) is amended—

(A) in the heading, by striking "CONVICTION" and inserting "MISDEMEANOR CONVICTION"; and

(B) by striking "criminal offense" and inserting "criminal offense consisting of a misdemeanor".

### SEC. 202. ESTABLISHMENT OF MINIMUM PERIOD OF EXCLUSION FOR CERTAIN INDIVIDUALS AND ENTITIES SUBJECT TO PERMISSIVE EXCLUSION FROM MEDICARE AND STATE HEALTH CARE PROGRAMS.

Section 1128(c)(3) of the Social Security Act (42 U.S.C. 1320a-7(c)(3)) is amended by adding at the end the following new subparagraphs:

"(D) In the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b), the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

"(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5), the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

"(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B), the period of the exclusion shall be not less than 1 year."

### SEC. 203. PERMISSIVE EXCLUSION OF INDIVIDUALS WITH OWNERSHIP OR CONTROL INTEREST IN SANCTIONED ENTITIES.

Section 1128(b) of the Social Security Act (42 U.S.C. 1320a-7(b)) is amended by adding at the end the following new paragraph:

"(15) **INDIVIDUALS CONTROLLING A SANCTIONED ENTITY.**—Any individual who has a direct or indirect ownership or control interest of 5 percent or more, or an ownership or control interest (as defined in section 1124(a)(3))



in, or who is an officer or managing employee (as defined in section 1126(b)) of, an entity—

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

“(B) that has been excluded from participation under a program under title XVIII or under a State health care program.”

**SEC. 204. SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.**

(a) MINIMUM PERIOD OF EXCLUSION FOR PRACTITIONERS AND PERSONS FAILING TO MEET STATUTORY OBLIGATIONS.—

(1) IN GENERAL.—The second sentence of section 1156(b)(1) of the Social Security Act (42 U.S.C. 1320c-5(b)(1)) is amended by striking “may prescribe” and inserting “may prescribe, except that such period may not be less than 1 year”.

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

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

(1) in the second sentence, by striking “and determines” and all that follows through “such obligations.”; and

(2) by striking the third sentence.

**SEC. 205. INTERMEDIATE SANCTIONS FOR MEDICARE HEALTH MAINTENANCE ORGANIZATIONS.**

(a) APPLICATION OF INTERMEDIATE SANCTIONS FOR ANY PROGRAM VIOLATIONS.—

(1) IN GENERAL.—Section 1876(i)(1) of the Social Security Act (42 U.S.C. 1395mm(i)(1)) is amended by striking “the Secretary may terminate” and all that follows and inserting “in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—

“(A) has failed substantially to carry out the contract;

“(B) is carrying out the contract in a manner substantially inconsistent with the efficient and effective administration of this section; or

“(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f).”

(2) OTHER INTERMEDIATE SANCTIONS FOR MISCELLANEOUS PROGRAM VIOLATIONS.—Section 1876(i)(6) of such Act (42 U.S.C. 1395mm(i)(6)) is amended by adding at the end the following new subparagraph:

“(C) In the case of an eligible organization for which the Secretary makes a determination under paragraph (1) the basis of which is not described in subparagraph (A), the Secretary may apply the following intermediate sanctions:

“(i) Civil money penalties of not more than \$25,000 for each determination under paragraph (1) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization’s contract.

“(ii) Civil money penalties of not more than \$10,000 for each week beginning after the initiation of procedures by the Secretary under paragraph (9) during which the deficiency that is the basis of a determination under paragraph (1) exists.

“(iii) Suspension of enrollment of individuals under this section after the date the

Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.”

(3) PROCEDURES FOR IMPOSING SANCTIONS.—Section 1876(i) of such Act (42 U.S.C. 1395mm(i)) is amended by adding at the end the following new paragraph:

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

“(A) the Secretary first provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary’s determination under paragraph (1) and the organization fails to develop or implement such a plan;

“(B) in deciding whether to impose sanctions, the Secretary considers aggravating factors such as whether an entity has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to their attention;

“(C) there are no unreasonable or unnecessary delays between the finding of a deficiency and the imposition of sanctions; and

“(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.”

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

(b) AGREEMENTS WITH PEER REVIEW ORGANIZATIONS.—

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

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

(3) REPORT BY GAO.—

(A) STUDY.—The Comptroller General of the United States shall conduct a study of the costs incurred by eligible organizations with risk-sharing contracts under section 1876(b) of such Act of complying with the requirement of entering into a written agreement with an entity providing peer review services with respect to services provided by the organization, together with an analysis of how information generated by such entities is used by the Secretary to assess the quality of services provided by such eligible organizations.

(B) REPORT TO CONGRESS.—Not later than July 1, 1998, the Comptroller General shall submit a report to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance and the Special Committee on Aging of the Senate on the study conducted under subparagraph (A).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contract years beginning on or after January 1, 1996.

**SEC. 206. EFFECTIVE DATE.**

The amendments made by this part shall take effect January 1, 1996.

**TITLE III—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS**

**SEC. 301. ESTABLISHMENT OF THE HEALTH CARE FRAUD AND ABUSE DATA COLLECTION PROGRAM.**

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

(b) REPORTING OF INFORMATION.—

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

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

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

(B) The name (if known) of any health care entity with which a health care provider, supplier, or practitioner is affiliated or associated.

(C) The nature of the final adverse action and whether such action is on appeal.

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

(3) CONFIDENTIALITY.—In determining what information is required, the Secretary shall include procedures to assure that the privacy of individuals receiving health care services is appropriately protected.

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

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

(c) DISCLOSURE AND CORRECTION OF INFORMATION.—

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

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

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

(2) CORRECTIONS.—Each Government agency and health plan shall report corrections of information already reported about any final adverse action taken against a health care provider, supplier, or practitioner, in such form and manner that the Secretary prescribes by regulation.

(d) ACCESS TO REPORTED INFORMATION.—

(1) AVAILABILITY.—The information in this database shall be available to Federal and State government agencies and health plans pursuant to procedures that the Secretary shall provide by regulation.

(2) FEES FOR DISCLOSURE.—The Secretary may establish or approve reasonable fees for

the disclosure of information in this database (other than with respect to requests by Federal agencies). The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary or, in the Secretary's discretion to the agency designated under this section to cover such costs.

(e) PROTECTION FROM LIABILITY FOR REPORTING.—No person or entity, including the agency designated by the Secretary in subsection (b)(5) shall be held liable in any civil action with respect to any report made as required by this section, without knowledge of the falsity of the information contained in the report.

(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

(1)(A) The term "final adverse action" includes:

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

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

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

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

(II) any other loss of license of the provider, supplier, or practitioner, by operation of law, or

(III) any other negative action or finding by such Federal or State agency that is publicly available information.

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

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

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

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

(3) The term "health care provider" means a provider of services as defined in section 1861(u) of the Social Security Act, and any entity, including a health maintenance organization, group medical practice, or any other entity listed by the Secretary in regulation, that provides health care services.

(4) The term "supplier" means a supplier of health care items and services described in section 1819(a) and (b), and section 1861 of the Social Security Act.

(5) The term "Government agency" shall include:

(A) The Department of Justice.

(B) The Department of Health and Human Services.

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

(D) State law enforcement agencies.

(E) State Medicaid fraud and abuse units.

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

(6) The term "health plan" has the meaning given such term by section 101(c).

(7) For purposes of paragraph (2), the existence of a conviction shall be determined

under paragraph (4) of section 1128(j) of the Social Security Act.

(g) CONFORMING AMENDMENT.—Section 1921(d) of the Social Security Act is amended by inserting "and section 301 of the Health Care Fraud and Abuse Prevention Act of 1995" after "section 422 of the Health Care Quality Improvement Act of 1986".

#### TITLE IV—CIVIL MONETARY PENALTIES

##### SEC. 401. SOCIAL SECURITY ACT CIVIL MONETARY PENALTIES.

(a) GENERAL CIVIL MONETARY PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) is amended as follows:

(1) In the third sentence of subsection (a), by striking "programs under title XVIII" and inserting "Federal health care programs (as defined in section 1128(f)(1))".

(2) In subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by inserting after paragraph (2) the following new paragraph:

"(3) With respect to amounts recovered arising out of a claim under a Federal health care program (as defined in section 1128B(f)), the portion of such amounts as is determined to have been paid by the program shall be repaid to the program, and the portion of such amounts attributable to the amounts recovered under this section by reason of the amendments made by the Health Care Fraud and Abuse Prevention Act of 1995 (as estimated by the Secretary) shall be deposited into the Health Care Fraud and Abuse Control established under section 101(b) of such Act."

(3) In subsection (i)—

(A) in paragraph (2), by striking "title V, XVIII, XIX, or XX of this Act" and inserting "a Federal health care program (as defined in section 1128B(f))",

(B) in paragraph (4), by striking "a health insurance or medical services program under title XVIII or XIX of this Act" and inserting "a Federal health care program (as so defined)", and

(C) in paragraph (5), by striking "title V, XVIII, XIX, or XX" and inserting "a Federal health care program (as so defined)".

(4) By adding at the end the following new subsection:

"(m)(1) For purposes of this section, with respect to a Federal health care program not contained in this Act, references to the Secretary in this section shall be deemed to be references to the Secretary or Administrator of the department or agency with jurisdiction over such program and references to the Inspector General of the Department of Health and Human Services in this section shall be deemed to be references to the Inspector General of the applicable department or agency.

"(2)(A) The Secretary and Administrator of the departments and agencies referred to in paragraph (1) may include in any action pursuant to this section, claims within the jurisdiction of other Federal departments or agencies as long as the following conditions are satisfied:

"(i) The case involves primarily claims submitted to the Federal health care programs of the department or agency initiating the action.

"(ii) The Secretary or Administrator of the department or agency initiating the action gives notice and an opportunity to participate in the investigation to the Inspector General of the department or agency with primary jurisdiction over the Federal health care programs to which the claims were submitted.

"(B) If the conditions specified in subparagraph (A) are fulfilled, the Inspector General of the department or agency initiating the action is authorized to exercise all powers

granted under the Inspector General Act of 1978 with respect to the claims submitted to the other departments or agencies to the same manner and extent as provided in that Act with respect to claims submitted to such departments or agencies."

(b) EXCLUDED INDIVIDUAL RETAINING OWNERSHIP OR CONTROL INTEREST IN PARTICIPATING ENTITY.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a-7a(a)) is amended—

(1) by striking "or" at the end of paragraph (1)(D);

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

(3) by striking the semicolon at the end of paragraph (3) and inserting "or"; and

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

"(4) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under title XVIII or a State health care program in accordance with this subsection or under section 1128 and who, at the time of a violation of this subsection, retains a direct or indirect ownership or control interest of 5 percent or more, or an ownership or control interest (as defined in section 1124(a)(3)) in, or who is an officer or managing employee (as defined in section 1126(b)) of, an entity that is participating in a program under title XVIII or a State health care program;"

(c) MODIFICATIONS OF AMOUNTS OF PENALTIES AND ASSESSMENTS.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a-7a(a)), as amended by subsection (b), is amended in the matter following paragraph (4)—

(1) by striking "\$2,000" and inserting "\$10,000";

(2) by inserting "in cases under paragraph (4), \$10,000 for each day the prohibited relationship occurs" after "false or misleading information was given"; and

(3) by striking "twice the amount" and inserting "3 times the amount".

(d) CLAIM FOR ITEM OR SERVICE BASED ON INCORRECT CODING OR MEDICALLY UNNECESSARY SERVICES.—Section 1128A(a)(1) of the Social Security Act (42 U.S.C. 1320a-7a(a)(1)) is amended—

(1) in subparagraph (A) by striking "claimed," and inserting "claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or has reason to know will result in a greater payment to the person than the code the person knows or has reason to know is applicable to the item or service actually provided,";

(2) in subparagraph (C), by striking "or" at the end;

(3) in subparagraph (D), by striking "or" and inserting "or"; and

(4) by inserting after subparagraph (D) the following new subparagraph:

"(E) is for a medical or other item or service that a person knows or has reason to know is not medically necessary; or".

(e) PERMITTING SECRETARY TO IMPOSE CIVIL MONETARY PENALTY.—Section 1128A(b) of the Social Security Act (42 U.S.C. 1320a-7a(a)) is amended by adding the following new paragraph:

"(3) Any person (including any organization, agency, or other entity, but excluding a beneficiary as defined in subsection (i)(5)) who the Secretary determines has violated section 1128B(b) of this title shall be subject to a civil monetary penalty of not more than \$10,000 for each such violation. In addition, such person shall be subject to an assessment of not more than twice the total amount of the remuneration offered, paid, solicited, or received in violation of section 1128B(b). The total amount of remuneration



subject to an assessment shall be calculated without regard to whether some portion thereof also may have been intended to serve a purpose other than one proscribed by section 1128B(b)."

(f) **SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.**—Section 1156(b)(3) of the Social Security Act (42 U.S.C. 1320c-5(b)(3)) is amended by striking "the actual or estimated cost" and inserting "up to \$10,000 for each instance".

(g) **PROCEDURAL PROVISIONS.**—Section 1876(i)(6) of the Social Security Act (42 U.S.C. 1395mm(i)(6)) is further amended by adding at the end the following new subparagraph:

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

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

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

(A) by striking "or" at the end of paragraph (1)(D);

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

(C) by striking the semicolon at the end of paragraph (3) and inserting " or"; and

(D) by inserting after paragraph (3) the following new paragraph:

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

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

"(6) The term 'remuneration' includes the waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value. The term 'remuneration' does not include—

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

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

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

"(iii) the person—

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

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

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

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

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

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

#### TITLE V—AMENDMENTS TO CRIMINAL LAW

##### SEC. 501. HEALTH CARE FRAUD.

(a) **IN GENERAL.**—

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

###### "§ 1347. Health care fraud

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

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

"(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health plan, or person in connection with the delivery of or payment for health care benefits, items, or services;

shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365(g)(3) of this title), such person may be imprisoned for any term of years.

"(b) For purposes of this section, the term 'health plan' has the same meaning given such term in section 101(c) of the Health Care Fraud and Abuse Prevention Act of 1995."

(2) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1347. Health care fraud."

(b) **CRIMINAL FINES DEPOSITED IN THE HEALTH CARE FRAUD AND ABUSE CONTROL.**—The Secretary of the Treasury shall deposit into the Health Care Fraud and Abuse Control established under section 101(b) an amount equal to the criminal fines imposed under section 1347 of title 18, United States Code (relating to health care fraud).

##### SEC. 502. FORFEITURES FOR FEDERAL HEALTH CARE OFFENSES.

(a) **IN GENERAL.**—Section 982(a) of title 18, United States Code, is amended by adding after paragraph (5) the following new paragraph:

"(6)(A) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from proceeds traceable to the commission of the offense.

"(B) For purposes of this paragraph, the term 'Federal health care offense' means a violation of, or a criminal conspiracy to violate—

"(i) section 1347 of this title;

"(ii) section 1128B of the Social Security Act;

"(iii) sections 287, 371, 664, 666, 1001, 1027, 1341, 1343, 1920, or 1954 of this title if the violation or conspiracy relates to health care fraud; and

"(iv) section 501 or 511 of the Employee Retirement Income Security Act of 1974, if the violation or conspiracy relates to health care fraud."

(b) **PROPERTY FORFEITED DEPOSITED IN HEALTH CARE FRAUD AND ABUSE CONTROL.**—The Secretary of the Treasury shall deposit into the Health Care Fraud and Abuse Control established under section 101(b) an amount equal to amounts resulting from forfeiture of property by reason of a Federal health care offense pursuant to section 982(a)(6) of title 18, United States Code.

##### SEC. 503. INJUNCTIVE RELIEF RELATING TO FEDERAL HEALTH CARE OFFENSES.

(a) **IN GENERAL.**—Section 1345(a)(1) of title 18, United States Code, is amended—

(1) by striking "or" at the end of subparagraph (A);

(2) by inserting "or" at the end of subparagraph (B); and

(3) by adding at the end the following new subparagraph:

"(C) committing or about to commit a Federal health care offense (as defined in section 982(a)(6)(B) of this title);"

(b) **FREEZING OF ASSETS.**—Section 1345(a)(2) of title 18, United States Code, is amended by inserting "or a Federal health care offense (as defined in section 982(a)(6)(B))" after "title)".

##### SEC. 504. GRAND JURY DISCLOSURE.

Section 3322 of title 18, United States Code, is amended—

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

(2) by inserting after subsection (b) the following new subsection:

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

"(1) received in the course of duty as an attorney for the Government; or

"(2) disclosed under rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure;

may disclose that information to an attorney for the Government to use in any investigation or civil proceeding relating to health care fraud."

##### SEC. 505. FALSE STATEMENTS.

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

###### "§ 1033. False statements relating to health care matters

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

"(b) For purposes of this section, the term 'health plan' has the same meaning given such term in section 101(c) of the Health Care Fraud and Abuse Prevention Act of 1995."

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 47 of title 18, United States Code, in amended by adding at the end the following:

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

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

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

###### "§ 1518. Obstruction of Criminal Investigations of Federal Health Care Offenses.

"(a) **IN GENERAL.**—Whoever willfully prevents, obstructs, misleads, delays or attempts to prevent, obstruct, mislead, or delay the communication of information or records relating to a Federal health care offense to a criminal investigator shall be fined under this title or imprisoned not more than 5 years, or both.

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

"(c) **CRIMINAL INVESTIGATOR.**—As used in this section the term 'criminal investigator'

means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations for prosecutions for violations of health care offenses.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following:

“1518. Obstruction of Criminal Investigations of Federal Health Care Offenses.”

**SEC. 507. THEFT OR EMBEZZLEMENT.**

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

**“§ 669. Theft or Embezzlement in Connection with Health Care.**

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

“(b) HEALTH PLAN.—As used in this section the term ‘health plan’ has the same meaning given such term in section 101(c) of the Health Care Fraud and Abuse Prevention Act of 1995.”

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

“669. Theft or Embezzlement in Connection with Health Care.”

**SEC. 508. LAUNDERING OF MONETARY INSTRUMENTS.**

Section 1956(c)(7) of title 18, United States Code, is amended by adding at the end the following new subparagraph:

“(F) Any act or activity constituting an offense involving a Federal health care offense as that term is defined in section 982(a)(6)(B) of this title.”

**SEC. 509. AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.**

(a) IN GENERAL.—Chapter 233 of title 18, United States Code, is amended by adding after section 3485 the following new section:

**“§ 3486. Authorized Investigative Demand Procedures**

“(a) AUTHORIZATION.—

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

“(2) Investigative demands utilizing an administrative subpoena are authorized for any

investigation with respect to any act or activity constituting or involving health care fraud, including a scheme or artifice—

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

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

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

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

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

“(e) USE IN ACTION AGAINST INDIVIDUALS.—

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

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

“(3) Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

“(f) HEALTH PLAN.—As used in this section the term ‘health plan’ has the same meaning given such term in section 101(c) of the Health Care Fraud and Abuse Prevention Act of 1995.”

(b) CLERICAL AMENDMENT.—The table of sections for chapter 223 of title 18, United States Code, is amended by inserting after the item relating to section 3405 the following new item:

**“§ 3486. Authorized investigative demand procedures”.**

(c) CONFORMING AMENDMENT.—Section 1510(b)(3)(B) of title 18, United States Code, is amended by inserting “or a Department of Justice subpoena (issued under section 3486),” after “subpoena”.

**TITLE VI—STATE HEALTH CARE FRAUD CONTROL UNITS**

**SEC. 601. STATE HEALTH CARE FRAUD CONTROL UNITS.**

(a) EXTENSION OF CONCURRENT AUTHORITY TO INVESTIGATE AND PROSECUTE FRAUD IN OTHER FEDERAL PROGRAMS.—Paragraph (3) of section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q)) is amended—

(1) by inserting “(A)” after “in connection with”; and

(2) by striking “title.” and inserting “title; and (B) upon the approval of the relevant Federal agency, any aspect of the provision of health care services and activities of providers of such services under any Federal health care program (as defined in section 1128B(F)(1)).”

(b) EXTENSION OF AUTHORITY TO INVESTIGATE AND PROSECUTE PATIENT ABUSE IN NON-MEDICAID BOARD AND CARE FACILITIES.—Paragraph (4) of section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q)) is amended to read as follows:

“(4)(A) The entity has—

“(i) procedures for reviewing complaints of abuse or neglect of patients in health care facilities which receive payments under the State plan under this title;

“(ii) at the option of the entity, procedures for reviewing complaints of abuse or neglect of patients residing in board and care facilities; and

“(iii) where appropriate, procedures for acting upon such complaints under the criminal laws of the State or for referring such complaints to other State agencies for action.

“(B) For purposes of this paragraph, the term ‘board and care facility’ means a residential setting which receives payment from or on behalf of two or more unrelated adults who reside in such facility, and for whom one or both of the following is provided:

“(i) Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.

“(ii) Personal care services that assist residents with the activities of daily living, including personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.”

**TITLE VII—MEDICARE BILLING ABUSE PREVENTION**

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

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

(b) SUPPLEMENTATION.—Any ADPE acquired in accordance with subsection (a)

shall be used as a supplement to any other ADPE used in claims processing by medicare carriers.

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

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

#### **SEC. 702. MINIMUM SOFTWARE REQUIREMENTS.**

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

- (1) The ADPE shall be a commercial item.
- (2) The ADPE shall surpass the capability of ADPE used in the processing of medicare part B claims for identification of code manipulation on the day before the date of the enactment of this Act.
- (3) The ADPE shall be capable of being modified to—

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

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

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

#### **SEC. 703. DISCLOSURE.**

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

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

- (1) release of such information is in the public interest; and
- (2) the information to be released is not protected from disclosure under section 552(b) of title 5, United States Code.

#### **SEC. 704. REVIEW AND MODIFICATION OF REGULATIONS.**

Not later than 30 days after the date of the enactment of this Act, the Secretary shall order a review of existing regulations, guidelines, and other guidance governing medicare payment policies and billing code abuse to determine if revision of or addition to those regulations, guidelines, or guidance is necessary to maximize the benefits to the Federal Government of the use of ADPE acquired pursuant to section 701.

#### **SEC. 705. DEFINITIONS.**

For purposes of this title—

(1) The term “automatic data processing equipment” (ADPE) has the same meaning as in section 111(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2)).

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

(3) The term “commercial item” has the same meaning as in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

(4) The term “medicare part B” means the supplementary medical insurance program authorized under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j–1395w–4).

(5) The term “medicare carrier” means an entity that has a contract with the Health Care Financing Administration to determine and make medicare payments for medicare

part B benefits payable on a charge basis and to perform other related functions.

(6) The term “payment policies” means regulations and other rules that govern billing code abuses such as unbundling, global service violations, double billing, and unnecessary use of assistants at surgery.

(7) The term “Secretary” means the Secretary of Health and Human Services.

#### **SECTION-BY-SECTION OF CHANGES TO S. 245**

**Fraud and Abuse Control Program:** The All-payer Fraud and Abuse Control Program is now called the Fraud and Abuse Control Program as extensions of certain Social Security Act provisions will be extended to federal programs only.

The HHS Secretary and the Attorney General will be able to establish the coordinated anti-fraud and abuse control program by guidelines rather than by regulation.

The section relating to the disclosure of ownership information is deleted as the Inspector General already has standards relating to the disclosure of this information.

Technical corrections were made to the section on ensuring access to documentation.

**Health Care Fraud and Abuse Control:** The provision is clarified so that funds that are dedicated to anti-fraud activities must go through the appropriations process so that there is proper congressional oversight.

**Anti-Kickback Statute:** The Social Security Act Anti-Kickback statute is extended to all federal health care programs (it currently applies only to the Medicare and Medicaid program). The statute would not be extended to private health care plans.

**Health Care Fraud and Abuse Guidance:** In order to give better guidance to the health care industry, the Inspector General is required to issue interpretive rulings within 90 days of the date of request. If the Inspector General does not issue an interpretive ruling, it shall notify the requestor within sixty days of the request and give the reasons for denial. Clarifies that a “substantive ruling” is defined as it appears in the Administrative Procedure Act.

Deletes the requirement that, in order to issue a special fraud alert, the Inspector General shall consult the Attorney General.

**Reporting of Fraudulent Activities under Medicare:** Deletes the requirement that the HHS Secretary establish a program through which Medicare beneficiaries may report fraud to the Secretary, since such a program has been established.

**Mandatory Exclusion from Participation in Medicare and Medicaid:** Clarifies that mandatory exclusion from participation in Medicare and Medicaid is limited to those individuals convicted of a felony relating to health care fraud. A permissive exclusion is created for those convicted of other types of government fraud.

**Permissive Exclusion of Individuals with Ownership or Control Interest in Sanctioned Entities:** Clarifies that permissive exclusion of individuals with controlling interest in sanctioned entities be limited to those who are either officers of, or managing employees of, the entity and deletes references to those individuals who might sit on the board of directors or who might be an agent of the entity. Deletes the exclusion authority for those convicted of a civil monetary penalty (but retains the conviction and exclusion requirements).

**Intermediate Sanctions for Medicare HMO's:** Sets up a requirement that, before the application of intermediate sanctions (civil monetary penalty of up to \$10,000 per week) on a Medicare HMO for program violations, the HHS Secretary must determine that the HMO has failed to comply with a

corrective action plan within a reasonable amount of time. Also states that the Secretary may impose intermediate sanctions on a Medicare HMO if it is carrying out a contract in a manner that is substantially inconsistent with the efficient and effective administration of the underlying section.

**Health Care Fraud and Abuse Data Collection Program:** Requires that final adverse actions that are reported to the fraud and abuse data collection program indicate whether such action is on appeal. Also requires that malpractice decisions not be included in the data collection program and that an identifying number be included along with the names of health care providers, suppliers, or practitioners who are the subject of final adverse actions and who are included in the data collection program. Also exempts federal agencies from paying fees for disclosure of such information.

**Civil Monetary Penalties:** The Social Security Act civil monetary penalty provisions are extended to all federal health care programs (it currently applies to only the Medicare and Medicaid programs). Civil monetary penalties would not be extended to all private health care plans.

**Excluded Individual Retaining Ownership Or Control Interest in Participating Entity:** Deletes “director, agent” and retains “officer or managing employee.”

**Claim for Item or Service Based on Incorrect Coding or Medically Unnecessary Services:** The imposition of a civil monetary penalty for upcoding requires a pattern or practice of presenting claims. It also changes the civil monetary penalty standard in the case of upcoding from “knows or should know” to “knows or has reason to know” that such action would result in a greater payment. The standard for the imposition of a civil monetary penalty for medically unnecessary services was changed to “knows or has reason to know” as well.

**Prohibition Against Offering Inducements to Individuals Enrolled Under Programs or Plans:** The term “remuneration” does not include differentials in coinsurance and deductible amounts as long as the differentials have been disclosed in writing to all third party payors, beneficiaries and providers. The differentials will meet the standards as defined in regulations which the Secretary must promulgate within 180 days. Remuneration also does not include incentives given to individuals to promote the delivery of preventive care as determined by the Secretary within 180 days.

**Health Care Fraud Statute:** The “Willful” standard was added to the knowledge standard of the Title 18 health care fraud statute. In addition, if violations of the new health care fraud statute result in serious bodily injury, the violator may be subject to as much as a life imprisonment sentence.

**Forfeitures for Federal Health Care Offenses:** The forfeiture provision no longer allows the forfeiture of property that is used in the commission of a health care fraud offense but calls for the forfeiture of property that constitutes or is derived (directly or indirectly) from the proceeds traceable to the commission of the offense. Fraud in the federal workmen's compensation program was also added to the list of federal health care offenses.

**False Statements:** Technical corrections were made to the false statement section so that a “health plan” is defined.

**Voluntary Disclosure:** The requirement to establish a voluntary disclosure program is deleted since a similar program was recently created.

**Theft or Embezzlement in Connection with Health Care:** Technical corrections were made to the theft or embezzlement section so that “health plan” is defined.

Authorized Investigative Demand Procedures: This section gives authority to the Attorney General or a designee to utilize an administrative subpoena for investigations with respect to health care fraud. The Inspectors General currently have this authority and this section gives the Attorney General or a designee similar authority.

State Health Care Fraud Control Units: The State Medicaid Control Unit authorization language has been changed so that those units will have concurrent authority to investigate and prosecute health care fraud in other Federal programs at the approval of the relevant federal agency. Their authority to investigate and prosecute patient abuse also has been extended into non-Medicaid "board and care" facilities.

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

By Mr. LEAHY:

S. 1089. A bill to amend the Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990 to prevent and control the infestation of Lake Champlain by zebra mussels, and for other purposes; to the Committee on Environment and Public Works.

THE LAKE CHAMPLAIN ZEBRA MUSSEL CONTROL ACT

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

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

In 1993 the mussel was discovered in the South Lake near Orwell, VT by a young boy who had learned how to identify the zebra mussel by a wallet-sized identification card distributed by the Lake Champlain Basin Program. During the summer of 1994, the zebra mussel larvae reached a density of about 1,500 to 3,000 per cubic meter. This year, less than 3 years from the mussels' introduction, the Rutland Herald reported that zebra mussel larvae densities have been found throughout the lake at about 60,000 to 109,000 per cubic meter with some concentrations as high as 134,000 per cubic meter—almost as high as the worst sites in the Great Lakes.

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

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

Once in a water intake line, zebra mussels can colonize any part of the system from the mouth of the intake in the lake or river to the distribution pipes within the residence. Impacts of this colonization include loss of pumping efficiency, obstruction of foot valves, putrefactive decay of mussel flesh, production of obnoxious-tasting and foul-smelling methane gas, and increased corrosion of steel, iron, and copper pipes.

Another potential threat to Vermont is the zebra mussel's impact on Vermont's fish stocking program. These mussels, reproducing at staggering rates, can close off hatchery piping and are threatening the State's multi-million-dollar sport fishing economy. In fact, Vermont's largest hatchery in Grand Isle, a \$16 million facility, is risking total shut down if it loses its ongoing battle with the zebra mussel. When zebra mussels infest beaches, summer swimmers are forced to wear sneakers or sandals to avoid getting cut from the sharp shells. We can only speculate what the impact will be on submerged shipwrecks, real estate, summer cottages, and the tourism industry.

Finally, the zebra mussels have arrived without their natural competitors and are spreading through the lake ecosystem unchecked. As colonies develop throughout freshwater bodies, they could displace all seven native mussel species in the Lake Champlain Basin, including the endangered black sandshell mussel. Scientists say all species are at risk because zebra mussels are known to colonize right on the backs of native mussels and choke them off from food and fresh water. Zebra mussels could throw entire aquatic ecosystems out of balance by disrupting the food chain, changing water chemistry, and altering physical habitat.

Mr. President, 6 months ago I came to the Senate floor during the debate on the unfunded mandates bill to warn people of the real unfunded mandates that our States face—zebra mussels is one of them. While most of my colleagues supported S. 1 in an attempt to ease financial burdens by relaxing national standards and undermine Federal regulations, I pointed out that without national standards, States face the financial burdens of water pollution from upstream and out-of-State polluters, forest decay from acid rain, and flooding from wetland loss. Today,

my State faces one of the financial burdens that could have been controlled with stricter national standards. I have already mentioned the \$16 million hatchery and the water systems for one-quarter of my State. My State of Vermont faces a problem with no known cure and the costs could be astronomical. I hope that those who supported S. 1 to reduce State costs by limiting Federal standards recognize soon that their effort may have had the exact opposite effect.

My Lake Champlain Zebra Mussel Control Act would do five things to address the present threat and prevent further spreading of zebra mussels throughout the country.

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

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

The legislation also allows States to work cooperatively on watershed approaches to the prevention and treatment of zebra mussels. If my State of Vermont devoted millions of dollars in time and resources to fight the mussel and our neighbors on Lake Champlain did nothing, the effort would be futile. Section 4 of my bill emphasizes that sometimes the watershed-based efforts like those of the Lake Champlain Basin Program are the best approaches to complex environmental problems.

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

Finally, my legislation reauthorizes the Aquatic Nuisance Species Control Act, Public Law 101-646, and extends the appropriations authority through the year 2000. To address the current need to find control solutions, my bill

doubles the current appropriation of the Army Corps of Engineers to \$4 million. It is crucial that the Army Corps has adequate funding to pursue zebra mussel control technology. Since the Army Corps has used its full authority in recent years, doubling the authorization will assure they have access to the proper resources to do a thorough job.

There is one further issue that my bill does not address, but represents an important piece of the fight to stop the introduction of new exotic and harmful species. The lamprey and the zebra mussels were both imported through the ballast tanks of international shippers. In recent years, the ruffe, a small fish, was introduced the same way and while it is not yet in Lake Champlain, its population is expanding in the Great Lakes. My colleagues Senator GLENN, the original author of the Aquatic Nuisance Species Act, and Senator SARBANES will introduce a bill that addresses the loopholes in current ballast water controls that allow shippers to unleash these devastating and costly pests into our State waters. I hope to make America's fresh water resources completely off limits for expensive and damaging exotic pests. I look forward to working with Senators GLENN and SARBANES to address all of these issues comprehensively.

Mr. President, I present this bill with the hope that the Senate will act on it in a timely manner. Every minute that we delay allows the zebra mussels to multiply exponentially and risks the physical and economic health of Vermont. To turn our backs on this problem of national significance only guarantees that it gets much worse. Just ask my colleagues who knew little or nothing about zebra mussels as recently as a few years ago, and are now plagued by their existence.●

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

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

THE ELECTRONIC FREEDOM OF INFORMATION IMPROVEMENT ACT OF 1995

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

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

The emerging national information infrastructure [NII] will consist of interconnected computer networks and databases that can put vast amounts of

information at users' fingertips. Such an information infrastructure will give the public easy access to the immense volumes of information generated and held by the Government. Individual Federal agencies are already contributing to the development of the NII by using technology to make Government information more easily accessible to our citizens. For example, the Internet Multicasting Service [IMS] now posts massive Government data archives, including the Securities and Exchange Commission EDGAR database, and the U.S. Patent and Trademark Office database on the Internet free of charge. Similarly, FedWorld, a bulletin board available on the Internet, provides a gateway to more than 60 Federal agencies.

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

Some agencies are taking important steps in this direction. For example, the Department of Energy compiled a database of photographs and texts describing federally-sponsored tests of radiation on human beings and put made that database available on the World Wide Web. Now, instead of responding to multiple requests for the same documents on Government human irradiation experiments, DOE has efficiently used technology to make this material affirmatively available to interested citizens. This bill would require all Federal agencies to make records that are the subject of multiple FOIA requests available electronically.

The bill would also require all Federal agencies to use technology to make Government more accessible and accountable to its citizens by requiring an assessment of how new computer systems will enhance agency FOIA operations to avoid erecting barriers that impede public access.

Federal agencies are increasingly dependent on computers to generate, store and retrieve records electronically. This bill would ensure that these electronic records are available, in a timely manner, to requesters on the same basis as paper records. Specifically, the bill would clarify that FOIA covers all agency information in any format and would require agencies to release records in requested formats when possible.

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

We have recognized that Government must take advantage of the benefits of

new technologies to provide easier and broader dissemination of information. In 1993, we passed a law requiring that people have online access to important Government publications, such as the Federal Register, the CONGRESSIONAL RECORD and other documents put out by the Government Printing Office. Earlier this year, House Speaker NEWT GINGRICH unveiled "Thomas," an electronic archive available on the Internet that contains bills and congressional speeches. In his National Performance Review, the Vice-President has described his vision of the electronic Government of the future, where information technology will enable people to have access to public information and services when and where they want them.

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

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

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

These delays are intolerable. This is not the level of customer service the American people deserve from their public servants. The American taxpayer has paid for the collection and maintenance of this information and should get prompt access to it upon request. That is what the law requires and that is the standard of service Government agencies should meet. Long delays in access can mean no access at all.

The bill addresses the delay problem in several ways: first, the bill doubles the 10 day statutory time limit to 20 days to give agencies a more realistic time period for responding to FOIA requests. Second, the bill encourages agencies to implement a two-track processing system for simple and complex requests. Third, the bill provides for expedited access to requestors who demonstrate a compelling need for a speedy response. Finally, the bill gives agencies an incentive to comply with statutory time limits by allowing agencies in compliance to retain half of their fees, instead of submitting those fees to the general treasury as is currently the case. The fees the agencies can keep will be directed back to the agency FOIA operation to provide an incentive and resources to make these operations better and more efficient.

I look forward to working constructively with the administration and people in the FOIA community to keep FOIA up-to-date with new technologies and to ensure FOIA is an effective tool for open Government.

Mr. President, I ask unanimous consent that the bill, a section-by-section analysis, and a letter of support from 23 organizations representing a substantial portion of the FOIA requestor community, be inserted in the RECORD.

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

S. 1090

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Electronic Freedom of Information Improvement Act of 1995".

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—The Congress finds that—

(1) the purpose of the Freedom of Information Act is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies (subject to statutory exemptions) for any public or private purpose;

(2) since the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means through which any person can learn how the Federal Government operates;

(3) the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government;

(4) the Freedom of Information Act has led to the identification of unsafe consumer products harmful drugs, and serious health hazards;

(5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and

(6) Government agencies should use new technology to enhance public access to agency records and information.

(b) PURPOSES.—The purposes of this Act are to—

(1) foster democracy by ensuring public access to agency records and information;

(2) improve public access to agency records and information;

(3) ensure agency compliance with statutory time limits; and

(4) maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government.

**SEC. 3. PUBLIC INFORMATION AVAILABILITY.**

Section 552(a)(1) of title 5, United States Code, is amended—

(1) in the matter before subparagraph (A) by inserting "by computer telecommunications, or if computer telecommunications means are not available, by other electronic means," after "Federal Register";

(2) by striking out "and" at the end of subparagraph (D);

(3) by redesignating subparagraph (E) as subparagraph (F); and

(4) by inserting after subparagraph (D) the following new subparagraph:

"(E) a complete list of all statutes that the agency head or general counsel relies upon to authorize the agency to withhold information under subsection (b)(3) of this section, together with a specific description of the scope of the information covered; and".

**SEC. 4. MATERIALS MADE AVAILABLE IN ELECTRONIC FORMAT AND INDEX OF RECORDS MADE AVAILABLE TO THE PUBLIC**

Section 552(a)(2) of title 5, United States Code, is amended—

(1) in the matter before subparagraph (A) by inserting ", including, within 1 year after the date of the enactment of the Electronic Freedom of Information Improvement Act of 1995, by computer telecommunications, or if computer telecommunications means are not available, by other electronic means," after "copying";

(2) in subparagraph (B) by striking out "and" after the semicolon;

(3) in subparagraph (C) by inserting "and" after the semicolon;

(4) by adding after subparagraph (C) the following new subparagraphs:

"(D) an index of all major information systems containing agency records regardless of form or format unless such an index is provided as otherwise required by law;

"(E) a description of any new major information system with a statement of how such system shall enhance agency operations under this section;

"(F) an index of all records which are made available to any person under paragraph (3) of this subsection; and

"(G) copies of all records, regardless of form or format, which because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records under paragraph (3) of this subsection;";

(5) in the second sentence by striking out "or staff manual or instruction" and inserting in lieu thereof "staff manual, instruction, or index or copies of records, which are made available under paragraph (3) of this subsection"; and

(6) in the third sentence by inserting "and the extent of such deletion shall be indicated on the portion of the record which is made available or published at the place in the record where such deletion was made" after "explained fully in writing".

**SEC. 5. HONORING FORMAT REQUESTS.**

Section 552(a)(3) of title 5, United States Code, is amended by—

(1) inserting "(A)" after "(3)";

(2) striking out "(A) reasonably" and inserting in lieu thereof "(i) reasonably";

(3) striking out "(B)" and inserting in lieu thereof "(ii)"; and

(4) adding at the end thereof the following new subparagraphs:

"(B) An agency shall, as requested by any person, provide records in any form or format in which such records are maintained by that agency.

"(C) An agency shall make reasonable efforts to search for records in electronic form or format and provide records in the form or format requested by any person, including in an electronic form or format, even where such records are not usually maintained but are available in such form or format."

**SEC. 6. DELAYS.**

(a) FEES.—Section 552(a)(4)(A) of title 5, United States Code, is amended by adding at the end thereof the following new clause:

"(viii) If at an agency's request, the Comptroller General determines that the agency annually has either provided responsible documents or denied requests in substantial compliance with the requirements of paragraph (6)(A), one-half of the fees collected under this section shall be credited to the collecting agency and expended to offset the costs of complying with this section through staff development and acquisition of additional request processing resources. The remaining fees collected under this section shall be remitted to the Treasury as general funds or miscellaneous receipts."

(b) PAYMENT OF THE EXPENSES OF THE PERSON MAKING A REQUEST.—Section 552(a)(4)(E) of title 5, United States Code, is amended by adding at the end thereof the following: "The court may assess against the United States all out-of-pocket expenses incurred by the person making a request, and reasonable attorney fees incurred in the administrative process, in any case in which the agency has failed to comply with the time limit provisions of paragraph (6) of this subsection. In determining whether to award such fees and expenses, a court should consider whether an agency's failure to comply with statutory time limits was not warranted and demonstrated bad faith or was otherwise unreasonable in the context of the circumstances of the particular request."

(c) DEMONSTRATION OF CIRCUMSTANCES FOR DELAY.—Section 552(a)(4)(E) of title 5, United States Code, is further amended—

(1) by inserting "(i)" after "(E)"; and

(2) by adding at the end thereof the following new clause:

"(ii) Any agency not in compliance with the time limits set forth in this subsection shall demonstrate to a court that the delay is warranted under the circumstances set forth under paragraph (6) (B) or (C) of this subsection."

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

(e) AGENCY BACKLOGS.—Section 552(a)(6)(C) of title 5, United States Code, is amended by inserting after the second sentence the following: "As used in this subparagraph, the term 'exceptional circumstances' means circumstances that are unforeseen and shall not include delays that result from a predictable workload, including any ongoing agency backlog, in the ordinary course of processing requests for records."

(f) NOTIFICATION OF DENIAL.—The last sentence of section 552(a)(6)(C) of title 5, United States Code, is amended to read: "Any notification of any full or partial denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request and the total number of denied records and pages considered by the agency to have been responsive to the request."

(g) MULTITRACK FIFO PROCESSING AND EXPEDITED ACCESS.—Section 552(a)(6) of title 5, United States Code, is amended by adding at the end thereof the following new subparagraphs:

"(D)(i) Each agency shall adopt a first-in, first-out (hereafter in this subparagraph referred to as FIFO) processing policy in determining the order in which requests are processed. The agency may establish separate processing tracks for simple and complex requests using FIFO processing within each track.

"(ii) For purposes of such a multitrack system—

"(I) a simple request shall be a request requiring 10 days or less to make a determination on whether to comply with such a request; and

"(II) a complex request shall be a request requiring more than 10 days to make a determination on whether to comply with such a request.

"(iii) A multitrack system shall not negate a claim of due diligence under subparagraph (C), if FIFO processing within each track is maintained and the agency can show that it has reasonably allocated resources to handle the processing for each track.

"(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing that upon receipt of a request for expedited access to records



and a showing by the person making such request of a compelling need for expedited access to records, the agency shall determine within 5 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such a request, whether to comply with such request. No more than one day after making such determination the agency shall notify the person making a request for expedited access of such determination, the reasons therefor, and of the right to appeal to the head of the agency. A request for records to which the agency has granted expedited access shall be processed as soon as practicable. A request for records to which the agency has denied expedited access shall be processed within the time limits under paragraph (6) of this subsection.

“(ii) A person whose request for expedited access has not been decided within 5 days of its receipt by the agency or has been denied shall be required to exhaust administrative remedies. A request for expedited access which has not been decided may be appealed to the head of the agency within 7 days (excepting Saturdays, Sundays, and legal public holidays) after its receipt by the agency. A request for expedited access that has been denied by the agency may be appealed to the head of the agency within 2 days (excepting Saturdays, Sundays, and legal public holidays) after the person making such request receives notice of the agency’s denial. If an agency head has denied, affirmed a denial, or failed to respond to a timely appeal of a request for expedited access, a court which would have jurisdiction of an action under paragraph (4)(B) of this subsection may, upon complaint, require the agency to show cause why the request for expedited access should not be granted, except that such review shall be limited to the record before the agency.

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

“(I) threaten an individual’s life or safety;

“(II) result in the loss of substantial due process rights and the information sought is not otherwise available in a timely fashion; or

“(III) affect public assessment of the nature and propriety of actual or alleged governmental actions that are the subject of widespread, contemporaneous media coverage.”

#### SEC. 7. COMPUTER REDACTION.

Section 552(b) of title 5, United States Code, is amended by inserting before the period in the sentence following paragraph (9) the following: “, and the extent of such deletion shall be indicated on the released portion of the record at the place in the record where such deletion was made”.

#### SEC. 8. DEFINITIONS.

Section 552(f) of title 5, United States Code, is amended to read as follows:

“(f) For purposes of this section—

“(1) the term ‘agency’ as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

“(2) the term ‘record’ means all books, papers, maps, photographs, machine-readable materials, or other information or documentary materials, regardless of physical form or characteristics; and

“(3) the term ‘search’ means a manual or automated review of agency records that is conducted for the purpose of locating those records which are responsive to a request under subsection (a)(3)(A) of this section.”.

### ELECTRONIC FOIA IMPROVEMENT ACT OF 1995 SUMMARY

#### SECTION 1. SHORT TITLE

The Act may be cited as the Electronic Freedom of Information Improvement Act of 1995.

#### SECTION 2. FINDINGS AND PURPOSES

This section clarifies that Congress enacted the FOIA to require Federal agencies to make records available to the public through public inspection and upon the request of any person for any public or private use. This section also acknowledges the increase in the government’s use of computers and specifies that agencies should use new technology to enhance public access to government information.

The purposes of this bill are to improve public access to government information and records, and to reduce the delays in agencies’ responses to requests for records under the Freedom of Information Act.

#### SECTION 3. PUBLIC INFORMATION AVAILABILITY

This section requires agencies to publish a complete list of statutes that the agency relies upon to withhold information under subsection (b)(3) of the Act. Exemption (b)(3) covers information that is specifically exempted from disclosure by other statutes. These exemptions currently appear in non-FOIA bills and decrease information available to the public without review by the Judiciary Committee. In order to prevent ill-considered exemptions to the access mandate of the FOIA, this section would place specific limitations on an agency’s ability to rely on the authority of (b)(3) exemption statutes when they have not passed through prescribed legislative channels and have not been previously brought to public attention through publication in the Federal Register.

The Office of Management and Budget has directed agencies to use electronic media and formats, including public networks, to make government information more easily accessible and useful to the public. (OMB Circular A-130, Revised, July 1994). To effectuate this goal, section 3 of the bill requires that information, such as agency regulations, which under the FOIA must be published in the Federal Register, should be accessible by computer telecommunications. The Government Printing Office Electronic Information Access Enhancement Act of 1993 (“GPO Act”), Pub. Law 103-40, already requires that the Federal Register and certain other congressional publications, be made available online. If an agency cannot make these materials available online, then the information should be made available in some other electronic form, such as CD-ROM or on disc.

#### SECTION 4. MATERIALS MADE AVAILABLE IN ELECTRONIC FORMAT AND INDEX OF RECORDS MADE AVAILABLE TO THE PUBLIC

The first part of this section would require that materials, such as agency opinions and policy statements, which an agency must “make available for public inspection and copying” pursuant to paragraph (a)(2) of Section 552, be made available electronically, as well as in hard copy. If an agency cannot make these materials available online, then the information should be made available in some other electronic form, such as CD-ROM or on disc. The bill would thus treat (a)(2) materials in the same manner as it treats (a)(1) materials, which under the GPO Act are required, via the Federal Register, to be made available online.

The second part of this section would require agencies to publish in the Federal Register an index of all major information systems containing agency records and a description of any new major information system with a statement of how it will enhance agency FOIA operations.

The third part of this section would require that an index of any records released as the result of “requests” for records pursuant to paragraph (a)(3) of Section 552 must be made available for public inspection and copying under paragraph (a)(2). This would assist requesters in determining which records have been the subject of prior FOIA requests. Since requests for records provided in response to prior requests are more readily identified by the agency without the need for new searches, this index will assist agencies in complying with the FOIA time limits.

Under the fourth part of this section, copies of records disclosed in response to FOIA requests that the agency determines have been or will likely be the subject of additional requests, must be made available for public inspection and copying in basically the same manner as the materials required to be made available under paragraph (a)(2). As a practical matter, this would mean that copies of records released in response to FOIA requests on a popular topic, such as the assassinations of public figures, would subsequently be treated as (a)(2) materials, which are made available for public inspection and copying. This would reduce the number of multiple FOIA requests for the same records requiring separate agency responses.

The fifth part of this section would make clear that to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes the index and copies of records released in response to FOIA requests, as required under the third and fourth parts of section 4 of this bill.

The final part of this section would, consistent with the “Computer Redaction” requirement in Section 7 of the bill, require that any deletions made in electronic records be indicated at the place where such deletion was made.

#### SECTION 5. HONORING FORMAT REQUESTS

This section would require agencies to assist requesters by providing information in the form requested, if the agency has the information available in that form. In other words, requests for the electronic format of records, which are usually not maintained or stored in electronic form, should be honored when the records nevertheless exist and are available in the requested electronic form.

This section would overrule *Dismukes v. Department of the Interior*, 603 F. Supp. 760, 763 (D.D.C. 1984), which held that an agency “has no obligation under the FOIA to accommodate plaintiff’s preference [but] need only provide responsive, nonexempt information in a reasonably accessible form.”

#### SECTION 6. DELAYS

Fees.—In an effort to decrease the delays experienced by FOIA requesters, the bill would authorize agencies to retain one-half of the fees they collect if the agency complies with the statutory time limits for responding to requests. The fee retention provisions of the bill would reward agencies that meet the statutory time limits and should diminish the burdens on agencies with particularly heavy FOIA workloads. It will be very important to structure the compliance criteria so that the reward system operates effectively and without favoring any class of requesters over other classes.

Payment of the Expenses of the Person Making A Request.—The current statute allows for the award of attorneys’ fees and

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

**Demonstration of Circumstances for Delay.**—The bill would require agencies not in compliance with the time limits to demonstrate "that the delay is warranted under the circumstances." The bill would clarify the only circumstances that excuse compliance with the time limits are those unusual or exceptional circumstances set forth in paragraphs 6(B) and (C) of Section 552(a).

**Expansion of Agency Response Time.**—The bill would expand the time limit for an agency to respond to a request for records under FOIA from ten days to twenty days. Attorney General Janet Reno has acknowledged the inability of most federal agencies to comply with the ten-day rule as "as a serious problem" stemming principally from "too few resources in the face of too heavy a workload." A doubling of the time limit will assist federal agencies in reducing their backlogs.

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

Routine backlogs of requests for records under the FOIA should not give agencies an automatic excuse to ignore the time limits, since this provides a disincentive for agencies to clear up those backlogs. This section of the bill would clarify the holding in *Open America* by specifying that routine agency backlogs do not constitute exceptional circumstances for purposes of the Act.

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

**Expedited Access.**—The bill would authorize expedited access to requesters who demonstrate a "compelling need" for a speedy response. The agency would be required to make a determination whether or not to grant the request for expedited access within five days. The requester would bear the burden of showing, under penalty of perjury, that expedition is appropriate and would be required to satisfy strict time limits to obtain administrative and judicial review of an agency's denial of such a request. The bill would permit only limited judicial review based on the same record before the agency.

A "compelling need" warranting expedited access would be demonstrated by showing that failure to obtain the records within an

expedited timeframe would: (I) threaten a person's life or safety; (II) result in the loss of substantial due process rights and the information sought is not otherwise available in a timely fashion; or (III) affect public assessment of the nature and propriety of actual or alleged governmental actions that are the subject of widespread, contemporaneous media coverage.

#### SECTION 7. COMPUTER REDACTION

The ability to redact information on the computer changes the complexion of released documents. At times, determining whether one sentence or 30 pages have been withheld by the agency is impossible. The bill would require agencies to indicate deletions of the released portion of the record at the place where such deletion was made.

#### SECTION 8. DEFINITIONS

The bill would add definitions of "record" and "search" to the statute to address electronically stored information. The current FOIA statute does not define either term. The definition of "record" in the bill is an expanded version of the definition in the Federal Records Act, 44 U.S.C. 3301. There is little disagreement that the FOIA covers all government records, regardless of the form in which they are stored by the agency. The Department of Justice agrees that computer database records are agency records subject to the FOIA. See "Department of Justice Report on 'Electronic Record' Issues Under the Freedom of Information Act," S. Hrg. 102-1098, 102d Cong., 2d Sess. 33 (1992).

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

JULY 27, 1995.

Hon. PATRICK J. LEAHY and HANK BROWN,  
*U.S. Senate, Washington, DC.*

DEAR SENATORS LEAHY AND BROWN: The organizations listed below, representing a substantial portion of the Freedom of Information Act requestor community, wish to express their strong support for the "Electronic Freedom of Information Improvement Act of 1995."

The Freedom of Information Act (FOIA) is a critical tool of our democracy which allows Americans to learn about their government and hold the government accountable for its actions. This legislation ensures that the public will be able to access agency records maintained in electronic form, and also takes steps to alleviate endemic delays in proceeding FOIA requests.

This legislation is needed to address new issues related to increased use of computers by federal agencies. It clarifies that the FOIA covers agency information in any form, including electronic form, and requires agencies to provide records in a requested form if the records are maintained in that form. The legislation also increases on-line access to government information, including agency regulations, opinions, and policy statements, as well as FOIA-related records that are the subject of repeated requests. This increased on-line accessibility of FOIA-releasable material is a critical step in using technology to make government more accessible and responsible to its citizens.

The "Electronic Freedom of Information Act" also will reduce agency delays in responding to FOIA requests. In recognition of the difficulty faced by some agencies in complying with FOIA time limits, the bill increases agency response time from 10 to 20 days, and allows agencies to retain half of the fees if they comply with statutory time limits. The legislation encourages agencies to implement two-track processing systems for simple and complex requests to assist in the reduction of backlogs, and establishes expedited access for requestors who demonstrate a compelling need for a speedy response.

By keeping the Freedom of Information Act up to date with new technologies and improving the administrative process, this legislation will help ensure that the Act remains an instrument for open and responsive government. We hope that this legislation, which last year passed the Judiciary Committee unanimously and the Senate by voice vote, will be enacted into law.

American Civil Liberties Union, American Library Association, American Society of Newspaper Editors, Association of American Publishers, Center for Democracy and Technology, Center for National Security Studies, Electronic Privacy Information Center, Federation of American Scientists, Fund for Constitutional Government, Government Accountability Project, Information Trust, and Lawyers Committee for Human Rights.

National Newspaper Association, National Security Archive, Newspaper Association of America, OMB Watch, People for the American Way Action Fund, Public Citizen, Radio-Television News Directors Association, Society of Professional Journalists, Taxpayer Assets Project, Unison Institute, and Whistleblowers Alliance, Inc.●

By Mr. CRAIG (for himself and Mr. CONRAD):

S. 1091. A bill to finance and implement a program of research, promotion, market development, and industry and consumer information to enhance demand for and increase the profitability of canola and rapeseed products in the United States, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

#### THE CANOLA AND RAPESEED RESEARCH PROMOTION AND CONSUMER INFORMATION ACT

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

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

Currently, a number of established State and national organizations exist

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

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

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

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

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

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

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

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

SECTION-BY-SECTION ANALYSIS

Section 1: Short Title; Table of Contents.

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

Section 2: Findings and Declaration of Policy.

Canola and Rapeseed products are important components of the human diet.

There are several state and national organizations whose primary goal is to promote canola and rapeseed research, consumer in-

formation, and industry information which is valuable to the new and existing markets. The cooperative development, financing, and implementation of a coordinated national program is vital to this market.

Section 3: Definitions.

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

Section 4: Issuance and Amendment of Orders.

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

Section 5: Required Terms in Orders.

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

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

Section 6: Assessments.

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

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

Section 7: Referenda.

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

Section 8: Petition and Review.

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

Section 9: Enforcement.

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

Section 10: Investigations and Power to Subpoena.

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

Section 11: Suspension or Termination of an Order.

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

Section 12: Regulations.

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

Section 13: Authorizations and Appropriations.

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

By Mr. MCCONNELL:

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

THE 1995 FREE BURMA ACT

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

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

Two weeks ago, I announced that I would refrain from introducing sanctions legislation in the interests of determining just how serious the SLORC was about change in Burma. I indicated that I would monitor the situation and determine if progress was made in four areas before introducing sanctions. Let me review those conditions.

First, Suu Kyi has called for dialog with the SLORC to negotiate the peaceful transfer of power. In her first public statement she took note of the fact that a majority of the people in Burma voted for democracy and a market economy in 1990. In fact her National League for Democracy carried 392 seats in Parliament. A dialog to set Burma on the road to economic and political recovery should be immediately and without preconditions.

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

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

Finally, SLORC's intention to move toward national reconciliation could be demonstrated by ceasing attacks on ethnic minorities along the Thai border. Over the past year, SLORC has engaged in negotiations to reach ceasefire agreements with many of the ethnic groups—agreements which explicitly call upon the withdrawal of SLORC forces from various regions. In December, SLORC broke off talks and launched attacks against the Karen. Nearly 80,000 refugees fled across the border. Over the past several weeks several thousand SLORC troops have moved into the Kayah state and launched attacks against Karenni camps. News accounts report that 20,000 refugees have fled.

On Monday, this week, I asked Assistant Secretary of State for Asian Affairs, Winston Lord, Assistant Secretary for Narcotics, Robert Gelbard, to provide the administration's assessment of progress in meeting these conditions. I also asked a Burmese student, Omar Khin, and representatives from Asia Watch and the AFL-CIO to testify.

Although everyone agreed that Suu Kyi's release was an important development and that she was being afforded the opportunity to meet with her supporters, every witness expressed disappointment that that was all that has happened.

The war against ethnic groups continue. Political repression and human rights violations continue. In fact, just this week, Asia Watch released an extensive report detailing how the situation has deteriorated.

The Red Cross still plans to shut down operations because of SLORC's refusal to grant access to political prisoners. And, perhaps most importantly, no negotiations have been initiated by SLORC to implement the 1990 elections. In fact, no efforts have been made to set a date for dialog to begin.

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

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

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

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

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

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

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

Suu Kyi has issued a statement of remarkable good will toward a regime that illegally held her in detention for 6 years. She has demonstrated courage and determination, stating immediately after her release that her detention has not changed her basic goals to advance peace and freedom in Burma.

I think it is important that we respect and promote that agenda. Keeping the pressure on SLORC will assure that her release is translated from a symbolic gesture to real progress.

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

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

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

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

Many students ran into nearby streets and some jumped into the lake. Others were beaten and kicked by police then dragged into the trucks. I was separated from my friends and ran into one of the houses in front of the lake. The residents let me and a few others in, locking their gate. From there, I watched the terrifying scene. My heart was pounding with fear. My sarong was torn apart. I was holding a pencil sharpener to defend myself if I were caught. Some troops tried to climb over the gate to catch us but a Japanese diplomat next door let us climb down into his residence and hid us in his house. It was night before I could finally get back home.

From that time there was a determination to fight for justice in our country. During the next few months students organized quietly. More and more people recognized the need for change in the country and joined this movement which led to the nationwide pro-democracy uprising of August 8, 1988, known as 8-8-88.

Tens of thousands of people, including monks and children, took to the streets that day, calling for democracy and human rights. I marched along with my colleagues and witnessed the horror of our own military shooting innocent people. One of the students marching next to me was shot to death.

During those months of struggle in 1988, hundreds of students were arrested, universities and colleges were closed. Thousands of students, like myself, were forced to flee the country.

I believe that democracy and human rights will truly come to Burma one day, but the

help of the international community is critical in bringing about that change. Pressure brought to bear by the international community was instrumental in freeing Daw Aung San Suu Kyi and such pressure must continue until democracy is restored. The legislation planned by Senator McConnell calling for economic sanctions on the military regime is the type of initiative which will sustain such pressure.

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

NATIONAL COALITION GOVERNMENT  
OF THE UNION OF BURMA,  
OFFICE OF THE PRIME MINISTER,  
Washington, DC, March 29, 1995.

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

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

The imposition of sanctions should never be taken lightly. Any measure designed to constrict the economy of a country will cause some degree of hardship to the people. However, I believe, and the democratic forces working to liberate our country believe, that foreign investment serves to strengthen the outlaw State Law and Restoration Council (SLORC). It is providing SLORC with the means to finance a massive army and intelligence service whose only job is to crush internal dissent. SLORC controls all foreign investment into Burma and channels contracts to the military and its party officials. Unlike other countries, investment will not serve to create a middle class of entrepreneurs, only reinforce allegiance to a regime that has murdered tens of thousands of people whose crime was the desire for democracy and to live in a free society. SLORC is in desperate need of foreign currency. Cutting off access to US funds will be a severe blow to SLORC.

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

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

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

With my highest consideration,  
Yours sincerely,

SEIN WIN,  
Prime Minister.

THE GOVERNMENT OF KARENNI,  
OFFICE OF THE PRIME MINISTER,  
June 9, 1995.

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

DEAR SENATOR MCCONNELL: The Government and people of Karenni are happy to learn that you have prepared to legislate sanction against SLORC in the U.S. Congress.

We give all our support to your efforts and we thank the Senators and Congressmen who sponsored this legislation to impose economic sanctions on Burma.

Meanwhile, the Karenni National Progressive Party (KNPP) has entered a cease fire "understanding" with SLORC. This is done on convenience because we are pressured by intimidation from SLORC.

KNPP wants peace and progress. For this reason it has been fighting the war against SLORC and the Burmese Governments preceded it. With the cease-fire in place, the KNPP hopes to be able to achieve progress. That was why it has agreed to a cease-fire with SLORC. But contrary to expectation, no progress is possible because the SLORC has reneged on its agreement with KNPP. It has, in the name of existing Burmese laws and regulations, put all kinds of obstacles in the way. Although the KNPP has reminded SLORC of the agreement reached between it and KNPP, the SLORC simply turns a deaf ear to the reminders. On the other hand it continues collecting porter fees—60 kyats per household—in some townships monthly. It is believed that the porter fees collected will be used in areas where cease-fire has not been reached or signed.

KNPP is of the opinion that only when there is a nation-wide cease-fire between SLORC and all armed groups fighting it, will the people be free from being made to contribute porter fees, to serve as porters and to contribute forced labour.

We, therefore, request the international organizations, like the UN or democratic countries, like the United States to put pressure on SLORC so that a nation-wide cease-fire in Burma can take place.

The hard-learned fact we now experienced as mentioned above is that the SLORC will continue its formally bullish practice over all the cease-fire signatories.

We find our national security is still precarious and there is no sign of democratic return in Karenni and also all over Burma itself. For this belief, we send a memorandum to sub-committee of House Foreign Affairs Committee, in which we seek U.S. protection and aids. A copy of this memorandum is sent to you by airmail postal service.

We wish you success in this efforts of yours.

May God bless you and your sponsorial comrades.

Your sincerely,

AUNG THAN LAY,  
Prime Minister, Government of Karenni.

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

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

YOUR EXCELLENCY: Information of your efforts at imposing economic and trade sanctions on Burma under the brutal regime known as the State Law and Order Restoration Council (SLORC) is very encouraging to us. Current situation shows that, only by international economic and diplomatic pressure can liberate Burma from the atrocious control of the ruling military junta.

It appears that the world business community is now mesmerized by SLORC's promises of the proverbial pot of gold at the end

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

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

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

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

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

Yours truly,

NAI SHWE KYIN,  
President.

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

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

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

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

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

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

Most sincerely yours,

LA RAW MARAN, PH.D.  
Executive Director.

AMERICAN FEDERATION OF LABOR  
AND CONGRESS AND INDUSTRIAL  
ORGANIZATION,

Washington, DC, February 6, 1995.

Hon. WARREN CHRISTOPHER,  
Secretary of State, U.S. Department of State,  
Washington, DC

DEAR MR. SECRETARY: I write to you to express my strong concerns about the continuing egregious behavior of the State Law and Order Restoration Council (SLORC) regime of Burma. Directly contradicting its claims that it seeks peace and national reconciliation, SLORC sent the Burmese army to viciously attack, capture and sack Manerplaw, the headquarters of the Karen people and key base area for many groups, including the Federation of Trade Unions Burma (FTUB), seeking to restore democracy in Burma.

We believe that the blatant, unprovoked attack on Manerplaw is a major setback for the cause of democracy in Burma and merits a strong response from the U.S. Government. In the "two visions" policy laid out by Deputy Assistant Secretary Hubbard during his visit to Rangoon, the U.S. indicated that, if progress by SLORC on issues of democracy and human rights was not forthcoming, the U.S. would renew its campaign to isolate the regime. In line with this policy, now is the time for the U.S. to show, by actions, that it is serious.

Accordingly, we urge the U.S. Government to implement a full trade and investment embargo against Burma. Since most U.S. investment enters Burma through joint ventures with SLORC government agencies or entities wholly controlled by the regime, implementing sanctions would have a direct impact on the ability of the SLORC to repress its people and conduct war on groups opposed to this illegitimate government. The withdrawal of the Commercial Officer from the U.S. Embassy in Rangoon would further underscore this message. We also renew our call for the U.S. Government to exert pressure to block development and aid projects of international institutions that benefit the SLORC.

Sincerely,

LANE KIRKLAND,  
President.

DEMOCRATIC BURMESE STUDENTS  
ORGANIZATION (USA),  
Rockville, MD, July 7, 1995.

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

DEAR SENATOR MCCONNELL: I write this letter on behalf of the Democratic Burmese Students Organization. We are students in exile from Burma who were witnesses to the 1988 massacre of peaceful demonstrators by the Burmese regime. We, the Burmese students, are now living throughout the United States. We are writing in support of your efforts to draft legislation imposing economic and trade measures against the military regime in Burma.

In view of the lack of freedom and democracy and the persistent refusal on the part of the current SLORC regime to honor the national mandate given in 1990 elections, we commend any measures that the U.S. Congress takes to help the emergence of a legitimate government, which is democratic and responsive to the basic needs of its people.

We believe that your proposed legislation will set a progressive direction for U.S. policy that promotes democracy in Burma. It will also send a clear signal to the SLORC that the U.S. insists on commitment for the immediate release of all political prisoners including democratic leader Daw Aung San Suu Kyi and the implementation of the full democratic process. We believe that renewed action by the U.S. Congress to increase pressure on Burma will bear critical influence on

the SLORC. We shall, therefore, support any of your measures to this effect.

Sincerely yours,

SHWE SIN HTUN,  
*Representative, DRSO (East Coast).*

[From the Desk of Betty Williams]

JULY 6, 1995.

Senator MITCH MCCONNELL,  
*Russell Office Building,  
Washington, DC.*

DEAR SENATOR MCCONNELL: I wish to take this opportunity to offer my support to the initiative you are preparing to undertake on behalf of my sister laureate Aung San Suu Kyi and the people of Burma. It has been brought to my attention that you intend to introduce legislation on July 11, 1995 which will ban all U.S. foreign investment in Burma.

On June 26, 1995, while commemorating the 50th Anniversary of the United Nations, Bishop Desmond Tutu, Lech Walesa, Oscar Arias Sanchez and myself presented a letter to the United Nations which included the signatures of seven other Laureates asking for the release of Daw Suu. The letter stated, "She has endured six long years of solitary detention without trial at the hands of the military regime. There is no sign at all of her release. We resolutely oppose political oppression disguised as criminal detention." Bishop Tutu, in a statement to a forum at the UN Anniversary called for sanctions to be imposed on Burma.

This legislative initiative is long overdue and will play a critical role in bringing about a transfer of power to the democratically elected 1990 representatives, allowing them to take their rightful (and legitimate) seats in parliament.

I offer congratulations for implementing this endeavor and hope that your colleagues in the Senate will join you in this worthy effort which I hope will lead to a political dialogue and settlement of the Burma conflict and, most importantly, democracy in Burma.

Most sincerely,

BETTY WILLIAMS,  
*Nobel Laureate 1976.*

UNITED FRONT FOR DEMOCRACY &  
HUMAN RIGHTS IN BURMA,  
*North Potomac, MD, July 25, 1995.*  
Hon. MITCH MCCONNELL,  
*U.S. Senator, Washington, DC.*

DEAR MR. SENATOR: The United Front for Democracy and Human Rights in Burma and its affiliated organizations in the United States, Canada, Europe and Asia want to heartily commend you for the hearing on the Trade and Investment Sanction bill held on July 24, 1995.

On behalf of these organizations, I was present at the hearing and wish to express our views regarding the various statements made there. While we thank Assistant Secretary Winston Lord and Assistant Secretary Gelbard for their perspectives and their views on the counternarcotics issue and your sanction bill, our organizations disagree with their approach. We heartily endorse the views expressed in the opening statement made by you and the statements made by Khin Ohnmar and the representatives of Human Rights Watch/ASIA and the AFL-CIO as well as the statement submitted by Prime Minister Dr. Sein Win of the NCGUB.

Our organizations, after very careful consideration of the present situation and after hearing the various views at the hearing as well as those of individuals and other organizations closely observing the developments in Burma, feel very strongly that the only language the SLORC, one of the most repressive and regressive regimes in the world, would understand is the comprehensive trade

and sanctions legislation against Burma that you propose to introduce. We also believe that this is the right time for the introduction as Daw Aung San Suu Kyi herself has acknowledge publicly as quoted by you, "We are nowhere near democracy. I have been released, that is all. The situation has not changed in any other way." Most prudent Burma observers including Ambassador Lord are of the opinion that the reason for Suu Kyi's release was not out of good intention or desire to change to democracy and national reconciliation in Burma, but due to international pressure including your proposed bill as well as the forthcoming ASEAN meeting in Brunei.

Enclosed herewith also is the statement made by the United Front on the release of Daw Aung San Suu Kyi.

Yours sincerely,

U BA THAUNG,  
*Chairman.*•

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

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

THE RELIGIOUS FREEDOM RESTORATION ACT OF 1993 AMENDMENT ACT OF 1995

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

Mr. President, the bill that I just introduced is a prison reform bill that is designed to close a gaping hole in the current law that allows prison inmates to file frivolous lawsuits at will.

This legislation is necessary, and it is overdue. It addresses and remedies a specific ailment plaguing an otherwise solid piece of legislation that passed this body in the last Congress. I am referring to the Religious Freedom Restoration Act. More specifically, I am referring to the application of this law as it relates to prison inmates.

When the Senate passed RFRA, it sought to provide the legal protections supporting the right to freely exercise one's religious belief. This legislation was a well-intentioned goal which this Senator supported.

The concern I raised when we considered this legislation was the abuse that I knew would take place of these new rights by prison inmates. In fact, I offered an amendment that would have exempted inmates from coverage of this legislation. Unfortunately, my amendment was narrowly defeated.

As the saying goes, Mr. President, you reap what you sow. And because the sponsors of this legislation sought to extend this coverage to prison inmates, our courts are now being flooded with inmate lawsuits alleging discrimination under this act. And the lawsuits are filed often for the most spurious of reasons. I said then, and I say now, that providing inmates with all those rights and privileges would be a recipe for disaster, and I was right.

(Mr. CRAIG assumed the chair.)

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

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

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

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

In this hand I have the some of the Nevada lawsuits; only some of them. Because you see prison litigation in Nevada takes up 40 percent of the court's time—40 percent of the litigation in our Federal courts in Nevada are a result of prisoner lawsuits.

Is that what this is all about? Have we become so concerned with prisoner rights that we have forgotten the rights of society? Remember, these people are in jail because they have been convicted of felonies. They are not there because we are trying to check to find out if they are good or bad. They are felons. And we are spending 40 percent of the court's time on this trash.

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

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

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

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

We have one who changes his name. This man is in Florida. He keeps changing his name, and he sues the prison because they do not give him his mail in his right name.

We have, out of Florida, another case. There, an inmate alleges his rights were denied when he was not allowed to see Moslem visitors at a time that he wanted them, not when everybody else visits those that are confined. He wanted a time convenient to him. So he filed a lawsuit.



One wanted to perform the rite of washing—his definition of washing; a religious ceremony.

Another inmate filed a lawsuit because his hat was confiscated.

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

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

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

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

Again, Mr. President, I kind of wish I was making this up. I mean, can you imagine. These are real lawsuits that our Attorneys General and others are defending on a daily basis taking tremendous amounts of time when they should be involved in other important matters.

We have case after case of this nonsense. I said it would happen and I intend to continue to fight to end this problem.

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

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

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

The consequences of these new prisoner rights are many, and an overburdened judiciary is forced to allocate its scarce resources to considering and processing these frivolous lawsuits. Our Nation's attorneys general are being forced to defend inmate lawsuits rather than prosecute criminals. And as usual, who is picking up the tab? The taxpayers are paying for the libraries that are better than I had when I practiced law. Why not? They get anything they want. All they have to do is ask for it.

The American taxpayer, to the delight of these inmates, is left holding the tab on all of these legal expenses. And the time and cost is only going to continue to escalate unless we exempt inmates from the coverage of RFRA.

At some point we are going to have to answer the question of whether crimes are being left unprosecuted because the States' defense of prisoner lawsuits is the right thing to do.

I repeat, have we become more concerned about the rights of the criminals than we have the rights of society? I asked the attorney general of Nevada, Frankie Sue Del Papa, to keep me apprised of these RFRA-related lawsuits they are defending. That was quite a task. Just to send me copies of the garbage that is being filed has taken a significant amount of time of her staff.

I have told you about some of the cases around the country. Those in Nevada are no different. They are just as ridiculous: A lawsuit filed because religious freedom rights have been denied—because they were not able to check to see if there was pig fat, hog fat in the toothpaste. They wanted scientific tests run on this to find out if there were pork products in the toothpaste.

They wanted meat inspections to find out if the meat was properly cared for before it was given to the prisoners. This is, of course, on a religious basis.

They confiscated a necklace that was bulky and large; they thought it could cause problems to the rest of the prison populace. Not according to this man's religion. According to his claim, the jewelry would become defiled if another person touched it.

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

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

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

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

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

Remember, 7 percent of the criminals commit over 75 percent of the violent crime in this country. So our job is to get rid of the 7 percent. But what are

we doing? We are trying to determine if the right pork products are in toothpaste. I believe that these criminals who are convicted felons have forfeited not all their rights but some of their rights by committing these acts against society. Rather than providing them taxpayer-funded law libraries and better gyms, which most people in America do not have the opportunity to see let alone join, and they file these lawsuits creating more work, rather than spending the money on defending these frivolous lawsuits, I would prefer hiring more personnel so they could watch them in chain gangs.

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

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

So I am going to push hard for this legislation. Our judges ought to be spending more time hearing meritorious cases and our attorneys general should be spending more time prosecuting criminals, not defending frivolous lawsuits brought by them.

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

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

S. 1093

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

**SECTION 1. APPLICATION TO INCARCERATED INDIVIDUALS.**

The Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) is amended—

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

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

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

**“SEC. 5. APPLICATION TO INCARCERATED INDIVIDUALS.**

“Notwithstanding any other provision of this Act, nothing in this Act or any amendment made by this Act shall be construed to affect, interpret, or in any way address that portion of the First Amendment regarding laws prohibiting the free exercise of religion,

with respect to any individual who is incarcerated in a Federal, State, or local correctional, detention, or penal facility (including any correctional, detention, or penal facility that is operated by a private entity under a contract with a government).”.

#### ADDITIONAL COSPONSORS

S. 44

At the request of Mr. REID, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 44, a bill to amend title 4 of the United States Code to limit State taxation of certain pension income.

S. 304

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

S. 864

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 864, a bill to amend title XVIII of the Social Security Act to provide for increased Medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 1028

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

S. 1052

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

#### SENATE RESOLUTION 146

At the request of Mr. JOHNSTON, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of Senate Resolution 146, a resolution designating the week beginning November 19, 1995, and the week beginning on November 24, 1996, as “National Family Week,” and for other purposes.

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

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

S. CON. RES. 22

Whereas there was international concern expressed at the Rio Conference of 1992 about conservation of the seas;

Whereas 1998 has been declared the “International Year of the Ocean” by the United Nations in an effort to alert the world to the need for improving the physical and cultural assets offered by the world’s oceans;

Whereas the theme of Expo '98 is “The Oceans, a Heritage for the Future”;

Whereas Expo '98 has a fundamental aim of alerting political, economic, and public opinion to the growing importance of the world’s oceans;

Whereas Portugal has established a vast network of relationships through ocean exploration;

Whereas Portugal’s history is rich with examples of the courage and exploits of Portuguese explorers;

Whereas Portugal and the United States have a relationship based on mutual respect, and a sharing of interests and ideals, particularly the deeply held commitment to democratic values;

Whereas today over 2,000,000 Americans can trace their ancestry to Portugal; and

Whereas the United States and Portugal agreed in the 1995 Agreement on Cooperation and Defense that in 1998 the 2 countries would consider and develop appropriate means of commemorating the upcoming quinquennial anniversary of the historic voyage of discovery by Vasco da Gama: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That the United States should fully participate in Expo '98 in Lisbon, Portugal, and encourage the private sector to support this worthwhile undertaking.

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

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

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

As a longtime friend of Portugal, I am pleased to support United States participation in Expo '98. The theme of the exposition, “The Oceans, A Heritage for the Future,” is particularly fitting as we mark the 500th anniversary of Vasco Da Gama’s discovery of the sea route to India. Portugal, of course, has a great history of sea exploration, and in fact, helped to create important trade links between the peoples of Europe, the Americas, Africa, and Asia. Lisbon, the capital of Portugal since

the 12th century, is a vibrant cultural and economic center, and its location on the Atlantic makes it a fine choice for an expo focused on the sea.

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

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

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

#### SENATE RESOLUTION 158—TO PROVIDE FOR SENATE GIFT REFORM

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

S. RES. 158

*Resolved,*

#### SECTION 1. AMENDMENTS TO SENATE RULES.

Rule XXXV of the Standing Rules of the Senate is amended to read as follows:

“1. (a)(1) No Member, officer, or employee of the Senate shall knowingly accept a gift except as provided in this rule.

“(2) A Member, officer, or employee may accept a gift (other than cash or cash equivalent) which the Member, officer, or employee reasonably and in good faith believes to have a value of less than \$50, and a cumulative value from one source during a calendar year of less than \$100. No gift with a value below \$10 shall count toward the \$100 annual limit. No formal recordkeeping is required by this paragraph, but a Member, officer, or employee shall make a good faith effort to comply with this paragraph.

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

“(2)(A) A gift to a family member of a Member, officer, or employee, or a gift to any other individual based on that individual’s relationship with the Member, officer,