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 Elizabeth J. Mirabile, of Virginia  
 Robert A. Montgomery, of Virginia  
 John S. Moore, of Maryland  
 Michael K. Morris, of Virginia  
 Gerald Nau, of Virginia  
 Phillip Roderick Nelson, of Virginia  
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 Joyce Ann Park, of Virginia  
 Benjamin Perez, Jr., of Virginia  
 Patricia Ellen Perrin, of California  
 Lynne G. Platt, of the District of Columbia  
 Michael F. Podratsky, of Virginia  
 Teresa St. Cin Podratsky, of Virginia  
 Jennifer Austrian Post, of Virginia  
 Timothy Joel Pounds, of Virginia  
 David Matthew Purl, of Alaska  
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 Judith D. Russ, of Maryland  
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 Mary Drake Scholl, of Oklahoma  
 Robert Kenneth Scott, of Maryland  
 Eric A. Shimp, of Iowa  
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 Fredric W. Stern, of California  
 Robin D. Stern, of California  
 Nan Forsyth Stewart, of Oregon  
 Thomas P. Teifke, of Virginia  
 Carolyn E. Tholan, of Virginia  
 Donn-Allan G. Titus, of Florida  
 Lynne M. Tracy, of Georgia  
 John C. Vance, of Montana  
 Kurt Frederick van der Walde, of Virginia  
 Elizabeth Walsh, of Virginia  
 William James Weissman, of California  
 Mark Lawrence Wenig, of Alaska  
 Edward A. White, of Georgia  
 Burke Alan Wiest, of Virginia  
 Anita D. Wilson, of Virginia  
 Scott R. Wright, of Virginia  
 Jeffrey A. Wuchenich, of the District of Columbia

The following-named Career Members of the Senior Foreign Service of the United States Information Agency for promotion in the Senior Foreign Service to the classes indicated:

Career Members of the Senior Foreign Service of the United States of America, Class of Minister—Counselor:  
 John Thomas Burns, of Florida  
 Carl D. Howard, of Maryland  
 Thomas Neil Hull III, of New Hampshire  
 William Henry Maurer, Jr., of Virginia  
 Robert E. McCarthy, of Virginia  
 Marjorie Ann Ransom, of the District of Columbia  
 Stanley N. Schrager, of Virginia

The following-named Career Members of the Foreign Service of the United States Information Agency for promotion into the Senior Foreign Service as indicated:

Career Members of the Senior Foreign Service of the United States of America, Class of Counselor:  
 Michael Hugh Anderson, of Minnesota  
 William R. Barr, of Maryland  
 James L. Bullock, of Texas  
 Anne M. Chermak, of California  
 Patrick J. Corcoran, of Virginia  
 Donna Millons Culppepper, of Virginia  
 Albert W. Dalglish, Jr., of Michigan  
 Carol Doerflein, of Florida  
 John Davis Hamill, of Ohio  
 Hugh H. Hara, of Maryland  
 Joe B. Johnson, of Texas  
 Katherine Inez Lee, of California  
 Jack Richard McCreary, of California  
 Lois Winner Mervyn, of Arizona  
 William M. Morgan, of California  
 Eugene A. Nojek, of Virginia  
 Helen B. Picard, of Virginia

Stephen R. Rounds, of New Hampshire  
 Craig Butler Springer, of Connecticut  
 Louise Taylor, of Virginia  
 Francis B. Ward III, of Virginia  
 Van S. Wunder III, of Florida

The following-named Career Members of the Senior Foreign Service of the Department of Agriculture for promotion in the Senior Foreign Service to the classes indicated:

Career Member of the Senior Foreign Service of the United States of America, Class of Career Minister:  
 Christopher E. Goldthwait, of New York

Career Members of the Senior Foreign Service of the United States of America, Class of Minister-Counselor:  
 Franklin D. Lee, of Virginia  
 Richard T. McDonnell, of Virginia

The following-named Career Member of the Foreign Service of the Department of Agriculture for promotion into the Senior Foreign Service to the class indicated:

Career Member of the Senior Foreign Service of the United States of America, Class of Counselor:  
 William L. Brant II, of Oklahoma

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. HELMS, from the Committee on Foreign Relations:

Treaty Doc. 103-25 Treaty Convention on Conventional Weapons (Exec. Rept. 104-1).

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. CAMPBELL (for himself, Mr. BROWN, Mr. BENNETT, Mr. REID, Mr. BRYAN, Mr. BINGAMAN, Mr. DOMENICI, Mrs. FEINSTEIN, and Mr. HATCH):

S. 587. A bill to amend the National Trails System Act to designate the Old Spanish Trail and the Northern Branch of the Old Spanish Trail for potential inclusion into the National Trails System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE (for himself, Mr. HARKIN, Mr. WELLSTONE, and Mr. PRESSLER):

S. 588. A bill to amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or reduction of retiree health benefits; to the Committee on Labor and Human Resources.

By Mr. COATS (for himself, Mr. DOLE, Mr. SPECTER, Mr. LUGAR, and Mrs. KASSEBAUM):

S. 589. A bill to amend the Solid Waste Disposal Act to permit Governors to limit the disposal of out-of-State solid waste in their States, and for other purposes; to the Committee on Environment and Public Works.

By Mr. CRAIG:

S. 590. A bill for the relief of Matt Clawson; to the Committee on Energy and Natural Resources.

By Mr. HATFIELD:

S. 591. A bill for the relief of Ang Tsering Sherpa; to the Committee on the Judiciary.

By Mrs. HUTCHISON:

S. 592. A bill to amend the Occupational Safety and Health Act of 1970 and the Na-

tional Labor Relations Act to modify certain provisions, to transfer certain occupational safety and health functions to the Secretary of Labor, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HATCH (for himself, Mr. GREGG, Mrs. KASSEBAUM, Mr. ABRAHAM, Mr. FRIST, and Mr. COATS):

S. 593. A bill to amend the Federal Food, Drug, and Cosmetic Act to authorize the export of new drugs and for other purposes; to the Committee on Labor and Human Resources.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 594. A bill to provide for the Administration of certain Presidio properties at minimal cost to the Federal taxpayer; to the Committee on Energy and Natural Resources.

By Mr. BYRD (for himself and Mr. ROCKEFELLER):

S. 595. A bill to provide for the extension of a hydroelectric project located in the State of West Virginia; to the Committee on Energy and Natural Resources.

By Mr. HARKIN (for himself and Mr. BRADLEY):

S. 596. A bill to amend the Internal Revenue Code of 1986 to disallow deductions for advertising and promotional expenses for tobacco products; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, Mr. BRADLEY, and Mr. HARKIN):

S. 597. A bill to insure the long-term viability of the medicare, medicaid, and other federal health programs by establishing a dedicated trust fund to reimburse the government for the health care costs of individuals with diseases attributable to the use of tobacco products; to the Committee on Finance.

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 598. A bill to amend the Internal Revenue Code of 1986 to increase the excise taxes on tobacco products, and to use a portion of the resulting revenues to fund a trust fund for tobacco diversification, and for other purposes; to the Committee on Finance.

By Mr. SANTORUM:

S. 599. A bill to eliminate certain welfare benefits with respect to fugitive felons and probation and parole violators, and to facilitate sharing of information with law enforcement officers, and for other purposes; to the Committee on Finance.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CAMPBELL (for himself, Mr. BROWN, Mr. BENNETT, Mr. REID, Mr. BRYAN, Mr. BINGAMAN, Mr. DOMENICI, Mrs. FEINSTEIN, and Mr. HATCH):

S. 587. A bill to amend the National Trails System Act to designate the Old Spanish Trail and the northern branch of the Old Spanish Trail for potential inclusion into the National Trails System, and for other purposes; to the Committee on Energy and Natural Resources.

#### OLD SPANISH TRAIL DESIGNATION ACT

Mr. CAMPBELL. Mr. President, today I'm sending legislation to the desk to designate the Old Spanish Trail and the northern branch of the Old Spanish Trail for study for potential addition to the National Trails System.

The Old Spanish Trail has been called the "longest, crookedest, most arduous pack mule route in the history of America." Linking two quaint pueblo outposts, Villa Real de Santa Fe de San Francisco—now known as Santa Fe; and El Pueblo de Nuestra Señora La Reina de Los Angeles—present day Los Angeles—this 1,200 mile route was a well worn path 150 years ago as annual caravans traded woolen blankets from New Mexico for California horses and mules.

According to an early historian, the trail:

\*\*\* Headed Northwest from Santa Fe  
\*\*\* eased over the Continental Divide in northern New Mexico, cut through a spur of the Rocky Mountains into Colorado, forded two swift rivers (the Colorado and the Green above their junction), circled northward to avoid the Grand Canyon's sculptured country, dipped over the rim of the Great Basin into Utah, and crept southwest through desert stretches of Nevada and California to Los Angeles \*\*\* Hoofs of pack animals leave but fleeting imprints. As soon as the last mule train and left the Trail, nature closed in to obliterate marks of human intrusion. Matted brush sprang up to hide the mountain paths. Flash floods gullied the gravel courses beside the streams. Chalky gypsum surfaced the dry lake bottoms, so welcome to the hoofs of foot-sore mules. Wind-born sand drifted over the shallow trace through the wastelands. Even the dry bones that marked the toll of an insatiable desert's greed crumbled to dust.

The trail entered present day Colorado south of Pagosa Springs and proceeded northwesterly past today's settlements of Arboles, Ignacio, Durango, Mancos, Dolores, and Dove Creek. This is essentially the route used by Fathers Dominguez and Escalante in 1776. Unlike Dominguez and Escalante, the trail continued to the northwest toward the site of present day Monticello and crossed the Grand (Colorado) River at Moab and the Green River, 5 miles north of today's settlement of Green River. It continued westerly and passed the present settlements of Castle Dale, Salina, Sevier, Parowan, Newcastle, and St. George in Utah.

Another historic trade route, known as the northern branch of the Old Spanish Trail, was used by trappers and traders to access northwestern Colorado and northeastern Utah. This route followed the east side of the Rio Grande river northward to Taos and into Colorado to the area near the present town of Alamosa. Another route of the northern branch followed the west side of the Rio Grande northward to Tres Piedras, New Mexico, and to Antonito, Colorado, and joined the other branch near Monte Vista. From the vicinity of Monte Vista, the trail continued northwesterly and passed the present day settlements of Saguache, Gunnison, Montrose, Delta, and Grand Junction. From Grand Junction, the trail followed the Grand (Colorado) River for some 50 miles through Fruita and Loma to near Dewey, UT, and then struck out northeast across the desert and joined the main Spanish

Trail approximately 20 miles southeast of the Green River crossing.

The northern branch was less used than the main Spanish Trail and very little is recorded concerning its use. Antoine Robidoux's trading fort, near Delta, was a principal outpost on the trail.

The first person to record his journey from Santa Fe to Los Angeles was Antonio Armejo, who went on a trading expedition in 1829. His route had never been properly documented until 10 years ago when a historian from the University of Nevada began a study of the origins of the trail for her masters thesis. Much of what we know about the trail comes from recent scholarship and there is obviously much left to learn.

A journey over the Spanish Trail and the northern branch in 1848 was later recorded by Lt. George B. Brewerton. The young lieutenant accompanied a party of some 30 men which included the noted scout, Kit Carson. Carson was carrying mail from Los Angeles to the East Coast. The party left Los Angeles on May 4 and reached Santa Fe via Taos on June 14, 41 days later. Carson proceeded east, reaching Washington, DC in mid-August, bringing news of the discovery of gold in California, and the great gold rush was on.

Another description of the northern branch of the Old Spanish Trail in Colorado is told in the report of the Gunnison Expedition. In 1853, Capt. John Williams Gunnison, of the U.S. Corps of Topographic Engineers, was commissioned by the War Department to find a route for the railroad across the Colorado Rockies along the 38th Parallel. The party of 31 men and 32 U.S. Army Dragoons left Fort Leavenworth, KS, on June 23, 1853. Among the civilians were a topographer, an artist-topographer, an astronomer, a botanist, a geologist-surgeon, and a wagon master and his crew to manage the 18-unit wagon train.

After crossing the Sangre de Cristo Range, north of La Veta Pass, the Gunnison Expedition came upon the northern branch of the Spanish Trail in the San Luis Valley. Captain Gunnison followed this existing trade route of the northern branch of the Spanish Trail into eastern Utah where it joined the main Spanish Trail. The Gunnison Expedition came to a tragic end on October 26, 1853, when Gunnison and four of his men and three soldiers were killed in a skirmish with Indians near the present site of Delta, UT.

The Old Spanish Trail played a part in all the cultures that occupied the West: the Utes, Navajos, Spaniards, Mexicans, and American settlers, including the mormons. The trail's period of use, from 1830 to the 1880's spans the development of the West, from the Spaniard on foot to the great railways. Few routes, if any, pass through as much relatively pristine country as the Old Spanish Trail, particularly in northwest New Mexico, western Colorado, central Utah, southern Nevada

and southern California. A number of independent scholars and various researchers have begun separate studies of different segments of the trail, and an Old Spanish Trail Assoc. was recently founded in Colorado to study and preserve this trail, and raise the public awareness of our country's diverse cultural heritage in this region. Some of the members of the association have already located wagon ruts and other vestiges of the trail's heyday, and a proper study is certain to produce more such exciting echoes of our shared heritage.

These is a groundswell of support for a study of the Old Spanish Trail. I've received resolutions to designate the trail as historic from over 20 municipalities in Colorado, as well as the Colorado General Assembly. There are also a number of volunteer groups along the trail who are anxious to offer their services, expertise and assistance to this very exciting and long overdue endeavor.

The time has come to acknowledge the national historical importance of the Old Spanish Trail. Mr. President, this bill to designate the Old Spanish Trail for study for potential addition to the National Trails System promotes the recognition, protection and interpretation of our history in the West. By introducing this legislation today, we pay tribute to the cultures of the West, and to an important period in American history.

I urge my colleagues to support swift passage of this legislation.

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

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

S. 587

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

**SECTION 1. DESIGNATION.**

Section 5(c) of the National Trails System Act (16 U.S.C. 1244(c)) is amended by adding at the end the following new paragraph:

"(36) The Old Spanish Trail, beginning in Santa Fe, New Mexico, proceeding through Colorado and Utah, and ending in Los Angeles, California, and the Northern Branch of the Old Spanish Trail, beginning near Espanola, New Mexico, proceeding through Colorado, and ending near Crescent Junction, Utah.

By Mr. DASCHLE (for himself,  
Mr. HARKIN, Mr. WELLSTONE,  
and Mr. PRESSLER):

S. 588. A bill to amend the Employee Retirement Income Security Act of 1974 with respect to rules governing litigation contesting termination or reduction with respect to rules governing litigation contesting termination or reduction of retiree health benefits; to the Committee on Labor and Human Resources.

RETIREE HEALTH BENEFITS PROTECTION ACT

Mr. DASCHLE. Mr. President, last week on the floor of the Senate I spoke about the struggles of the 1,200 retirees

of the John Morrell meatpacking plant in Sioux Falls, who, along with over 2,000 other company retirees around the country, found out in January that their health benefits—benefits they believed they would have for life—were being abruptly terminated. These retirees, many of whom had accepted lower pensions in return for the promise of lifetime health benefits, were suddenly faced with the prospect of paying up to \$500 a month per couple for health insurance or losing the benefits that they had assumed would be available during their retirement years.

Today I am introducing legislation to help these retirees and their families; legislation that would restore their health benefits as they seek redress in court and establish protections against such arbitrary behavior by employers in the future.

My bill would protect retirees' health benefits in two ways:

First, it would require employers to continue to provide retiree health benefits while a cancellation of benefits is being challenged in court. Anyone who has dealt with our legal system and its long waiting periods and delays knows the importance of this measure.

Why should anyone who has worked for 20 or 30 years be forced to spend his or her life savings on health insurance—or go without health insurance entirely—while their pleas for simple justice wind through the courts?

Second, my bill would eliminate the surprise nature of employee health benefit cancellations by requiring employers to prove they had warned workers in advance, before they retire, that their future benefits could be canceled at some time in the future. That seems only fair.

This legislation recognizes that health benefits are not charity. Many workers give up larger pensions and other benefits in exchange for them. It never occurs to these workers that their benefits could be taken away, with no increase in their pensions or other benefits to compensate for the loss.

Many workers stay with the same company for dozens of years, perhaps all of their adult lives. They believe that a company they help build will reward their loyalty, honesty, and hard work.

Unfortunately, this is not always the case, as the 3,300 retirees of John Morrell & Co. found out only a week before their benefits were terminated.

In this particular case, Morrell retirees received a simple, yet unexpected, letter stating their health insurance plan was being terminated, effective midnight, January 31, 1995—only a week later. The benefits being terminated, the letter said, included all hospital, major medical, and prescription drug coverage, Medicare supplemental insurance, vision care, and life insurance coverage.

For those retirees under 65, this action poses a particular problem. While Morrell gave them the option of paying

for their own coverage for up to 1 year, few can afford the \$500 monthly premium for a couple. And many cannot purchase coverage at any price, because of preexisting conditions like diabetes or heart disease. Medicare beneficiaries would have to buy expensive supplemental insurance on their own.

Morrell's decision was all the more painful to the retirees because it was so unexpected. These retirees believed they worked for a fair company; that a fair day's work resulted in a fair day's pay. Part of a fair day's pay is the retirement income and benefits employees earn through their service.

These retirees found out the hard way that the company they had helped to build had turned its back on them.

They also found out that the court system was not sympathetic to their cause. An Eighth Circuit Court of Appeals ruling allowed the company to take this action. The union representing the retirees plans to appeal the decision to the Supreme Court.

Sadly, some of the retirees won't live long enough to benefit from a possible reversal.

These proud and hard-working people now worry that high medical costs will impoverish them or force them to rely on their children or the government for financial help. Each day they live in fear of illness and injury because they have no health insurance.

Because this legislation is not just for the Morrell retirees, because what happened to these workers is not an isolated situation—it could happen to any of the 14 million retired workers who believe they and their families have life-long health insurance coverage through their employers.

Two-thirds of American companies surveyed recently had plans to reduce retiree health benefits or to shift more costs to retirees.

The Morrell dispute is one of 35 cases nationwide in which retirees are suing their former companies for slashing those benefits, or cutting them altogether.

As I have said repeatedly, the long-run solution is comprehensive health reform that guarantees every American—and employer—access to affordable health care.

I have fought over the years for this kind of comprehensive reform and was deeply disappointed when the 103d Congress was unable to pass legislation addressing some of our health care system's most serious problems. If we had passed health reform, the Morrell retirees would not be facing this loss of their health benefits today.

Clearly, the problems we talked about in last year's health reform debate did not solve themselves when the session ended.

And some of these problems, like the one the Morrell retirees face, cannot wait for the long-run. These retirees cannot wait for the resolution of the health reform debate.

The new majority in Congress seems to believe the solution to all our prob-

lems—economic, social, moral, you name it—is passing their so-called Contract With America.

I believe the solution is restoring the old contract between workers and employers. The contract that said if you work hard, you can get ahead. The contract that said if you give a company 20 or 30 years of loyal service, you can retire with dignity. The contract that said if you give someone your word, you will keep it.

Restoring that contract must be our ultimate aim.

In the meantime, I am determined to work with my colleagues in Congress to make sure retirees can keep their health insurance while they wait for their day in court, and to be sure that no other retirees get an unexpected letter in the mail, similar to the one the Morrell retirees received.

That is the goal of the legislation that I am introducing today.

I hope we can pass this measure expeditiously, to end the injustice of the Morrell situation, and so that others never have to face the problem Morrell retirees are grappling with today.

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

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

S. 588

*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 "Retiree Health Benefits Protection Act".

**SEC. 2. RULES GOVERNING LITIGATION INVOLVING RETIREE HEALTH BENEFITS.**

(a) IN GENERAL.—Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131 et seq.) is amended by adding at the end the following new section:

**"SEC. 516. RULES GOVERNING LITIGATION INVOLVING RETIREE HEALTH BENEFITS.**

"(a) MAINTENANCE OF BENEFITS.—

"(1) IN GENERAL.—If—

"(A) retiree health benefits or plan or plan sponsor payments in connection with such benefits are to be or have been terminated or reduced under an employee welfare benefit plan; and

"(B) an action is brought by any participant or beneficiary to enjoin or otherwise modify such termination or reduction,

the court without requirement of any additional showing shall promptly order the plan and plan sponsor to maintain the retiree health benefits and payments at the level in effect immediately before the termination or reduction while the action is pending in any court. No security or other undertaking shall be required of any participant or beneficiary as a condition for issuance of such relief. An order requiring such maintenance of benefits may be refused or dissolved only upon determination by the court, on the basis of clear and convincing evidence, that the action is clearly without merit.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to any action if—

"(A) the termination or reduction of retiree health benefits is substantially similar to a termination or reduction in health benefits (if any) provided to current employees

which occurs either before, or at or about the same time as, the termination or reduction of retiree health benefits, or

“(B) the changes in benefits are in connection with the addition, expansion, or clarification of the delivery system, including utilization review requirements and restrictions, requirements that goods or services be obtained through managed care entities or specified providers or categories of providers, or other special major case management restrictions.

“(3) MODIFICATIONS.—Nothing in this section shall preclude a court from modifying the obligation of a plan or plan sponsor to the extent retiree benefits are otherwise being paid by the plan sponsor.

“(b) BURDEN OF PROOF.—In addition to the relief authorized in subsection (a) or otherwise available, if, in any action to which subsection (a)(1) applies, the terms of the employee welfare benefit plan summary plan description or, in the absence of such description, other materials distributed to employees at the time of a participant's retirement or disability, are silent or are ambiguous, either on their face or after consideration of extrinsic evidence, as to whether retiree health benefits and payments may be terminated or reduced for a participant and his or her beneficiaries after the participant's retirement or disability, then the benefits and payments shall not be terminated or reduced for the participant and his or her beneficiaries unless the plan or plan sponsor establishes by a preponderance of the evidence that the summary plan description or other materials about retiree benefits—

“(1) were distributed to the participant at least 90 days in advance of retirement or disability;

“(2) did not promise retiree health benefits for the lifetime of the participant and his or her spouse; and

“(3) clearly and specifically disclosed that the plan allowed such termination or reduction as to the participant after the time of his or her retirement or disability.

The disclosure described in paragraph (3) must have been made prominently and in language which can be understood by the average plan participant.

“(c) REPRESENTATION.—Notwithstanding any other provision of law, an employee representative of any retired employee or the employee's spouse or dependents may—

“(1) bring an action described in this section on behalf of such employee, spouse, or dependents; or

“(2) appear in such an action on behalf of such employee, spouse or dependents.

“(d) RETIREE HEALTH BENEFITS.—For the purposes of this section, the term ‘retiree health benefits’ means health benefits (including coverage) which are provided to—

“(1) retired or disabled employees who, immediately before the termination or reduction, have a reasonable expectation to receive such benefits upon retirement or becoming disabled; and

“(2) their spouses or dependents.”

(b) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 515 the following new item:

“Sec. 516. Rules governing litigation involving retiree health benefits.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions relating to terminations or reductions of retiree health benefits which are pending or brought, on or after March 23, 1995.

By Mr. COATS (for himself, Mr. DOLE, Mr. SPECTER, Mr. LUGAR, and Mrs. KASSEBAUM):

S. 589. A bill to amend the Solid Waste Disposal Act to permit Governors to limit the disposal of out-of-State solid waste in their States, and for other purposes; to the Committee on Environment and Public Works.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE

Mr. COATS. Mr. President, today I rise to introduce the Interstate Transportation of Municipal Solid Waste Act of 1995. For the past 5 years, I have fought to give all States and local communities the right to say “No” to out-of-State trash. I am convinced that interstate waste legislation is necessary so that States and communities can intelligently plan their waste disposal needs.

As interstate waste legislation has traveled through the Senate and the House, we have learned important principles in the effort to protect importing States while allowing exporters sufficient time to adjust to new rules. My bill incorporates these important principles.

First, my bill allows the importing States to ratchet down the amount of trash they receive. Beginning in 1997, landfills and incinerators that receive more than 50,000 tons of trash may reduce the amount of out-of-State trash they import.

Second, my bill requires the exporting States to reduce the amount of trash that they export by certain target dates. This provision allows for a gradual adjustment on the part of the large exporting States.

Third, my bill allows all States to choose between 1993 and 1994 freeze levels. This provision ensures flexibility without sacrificing protection from flow levels that fluctuate.

Finally, my bill will provide additional backup authority to limit waste flows by allowing the State planning and permitting process to take into account local need when siting new capacity. Under this provision, a State could deny a permit for construction or operation of a new landfill based on the fact that there is no local or regional need.

The flow of waste across State lines is not a new problem. States like Michigan, Ohio, Pennsylvania, Virginia, and Indiana have suffered under the tremendous volumes of out-of-State waste. States have tried to stop the growing shipments of interstate waste by enacting legislation that restricts the flow. Yet, courts have held many of these laws in violation of the commerce clause and therefore unconstitutional. In order to address the constitutional question, Congress must legislate the issue.

During the past 5 years, Congress has come close to giving the States the power to enact interstate waste legislation. Many of my colleagues have worked very hard to see that this is finally accomplished. We have had to give and take on both sides. I am hopeful that this is the year that Congress can complete the task.

This legislation issues a simple plea for each community, each State, to be responsible for the environment, and accountable for the trash they generate.

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

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

S. 589

*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 “Interstate Transportation of Municipal Waste Act of 1995”.

**SEC. 2. INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE.**

Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

“INTERSTATE TRANSPORTATION OF MUNICIPAL WASTE

“SEC. 4011. (a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL WASTE.—(1)(A) Except as provided in subsection (b), if requested in writing by an affected local government, a Governor may prohibit the disposal of out-of-State municipal waste in any landfill or incinerator that is subject to the jurisdiction of the Governor or the affected local government.

“(B) Prior to submitting a request under this section, the affected local government shall—

“(i) provide notice and opportunity for public comment concerning any proposed request; and

“(ii) following notice and comment, take formal action on any proposed request at a public meeting.

“(2) Beginning with calendar year 1995, a Governor of a State may, with respect to landfills covered by the exceptions provided in subsection (b)—

“(A) notwithstanding the absence of a request in writing by the affected local government—

“(i) limit the quantity of out-of-State municipal waste received for disposal at each landfill in the State to an annual quantity equal to the quantity of out-of-State municipal waste received for disposal at the landfill during the calendar year 1993 or 1994, whichever is less; and

“(ii) limit the disposal of out-of-State municipal waste at landfills that received, during calendar year 1993, documented shipments of more than 50,000 tons of out-of-State municipal waste representing more than 30 percent of all municipal waste received at the landfill during the calendar year, by prohibiting at each such landfill the disposal, in any year, of a quantity of out-of-State municipal waste that is greater than 30 percent of all municipal waste received at the landfill during calendar year 1993; and

“(B) if requested in writing by the affected local government, prohibit the disposal of out-of-State municipal waste in landfill cells that do not meet the design and location standards and leachate collection and ground water monitoring requirements of State law and regulations in effect on January 1, 1993, for new landfills.

“(3)(A) In addition to the authorities provided in paragraph (1)(A), beginning with calendar year 1997, a Governor of any State, if requested in writing by the affected local government, may further limit the disposal of out-of-State municipal waste as provided

in paragraph (2)(A)(ii) by reducing the 30 percent annual quantity limitation to 20 percent in each of calendar years 1998 and 1999, and to 10 percent in each succeeding calendar year.

“(B)(i) A State may ban imports from large exporting States if the volumes of municipal solid waste exported by those States did not meet reduction targets.

“(ii) A ban under clause (i) may prohibit imports from States that export more than—

- “(I) 3,500,000 tons in calendar year 1996;
- “(II) 3,000,000 tons in calendar year 1997;
- “(III) 3,000,000 tons in calendar year 1998;
- “(IV) 2,500,000 tons in calendar year 1999;
- “(V) 2,500,000 tons in calendar year 2000;
- “(VI) 1,500,000 tons in calendar year 2001; or
- “(VII) 1,500,000 tons in calendar year 2002;
- “(VIII) 1,000,000 tons in any calendar year after 2002,

excluding any volume legitimately covered by a host community agreement.

“(4)(A) Any limitation imposed by the Governor under paragraph (2)(A)—

“(i) shall be applicable throughout the State;

“(ii) shall not discriminate against any particular landfill within the State; and

“(iii) shall not discriminate against any shipments of out-of-State municipal waste on the basis of State of origin.

“(B) In responding to requests by affected local governments under paragraphs (1)(A) and (2)(B), the Governor shall respond in a manner that does not discriminate against any particular landfill within the State and does not discriminate against any shipments of out-of-State municipal waste on the basis of State of origin.

“(5)(A) Any Governor who intends to exercise the authority provided in this paragraph shall, within 120 days after the date of enactment of this section, submit to the Administrator information documenting the quantity of out-of-State municipal waste received for disposal in the State of the Governor during calendar years 1993 and 1994.

“(B) On receipt of the information submitted pursuant to subparagraph (A), the Administrator shall notify the Governor of each State and the public and shall provide a comment period of not less than 30 days.

“(C) Not later than 60 days after receipt of information from a Governor under subparagraph (A), the Administrator shall determine the quantity of out-of-State municipal waste that was received at each landfill covered by the exceptions provided in subsection (b) for disposal in the State of the Governor during calendar years 1993 and 1994, and provide notice of the determination to the Governor of each State. A determination by the Administrator under this subparagraph shall be final and not subject to judicial review.

“(D) Not later than 180 days after the date of enactment of this section, the Administrator shall publish a list of the quantity of out-of-State municipal waste that was received during calendar years 1993 and 1994 at each landfill covered by the exceptions provided in subsection (b) for disposal in each State in which the Governor intends to exercise the authority provided in this paragraph, as determined in accordance with subparagraph (C).

“(b) EXCEPTIONS TO AUTHORITY TO PROHIBIT OUT-OF-STATE MUNICIPAL WASTE.—The authority to prohibit the disposal of out-of-State municipal waste provided under subsection (a)(1) shall not apply to—

“(1) landfills in operation on the date of enactment of this section that—

“(A) received during calendar year 1993 documented shipments of out-of-State municipal waste; and

“(B) are in compliance with all applicable State laws (including any State rule or regulation) relating to design and location stand-

ards, leachate collection, ground water monitoring, and financial assurance for closure and post-closure and corrective action;

“(2) proposed landfills that, prior to January 1, 1993, received—

“(A) an explicit authorization as part of a host community agreement from the affected local government to receive municipal waste generated out-of-State; and

“(B) a notice of decision from the State to grant a construction permit; or

“(3) incinerators in operation on the date of enactment of this section that—

“(A) received, during calendar year 1993, documented shipments of out-of-State municipal waste;

“(B) are in compliance with the applicable requirements of section 129 of the Clean Air Act (42 U.S.C. 7429); and

“(C) are in compliance with all applicable State laws (including any State rule or regulation) relating to facility design and operations.

“(c) DENIAL OF PERMITS ON GROUND OF LACK OF NEED.—

“(1) DENIAL.—A State may deny a permit for the construction or operation of a new landfill or incinerator or a major modification of an existing landfill or incinerator if—

“(A) the State has approved a State or local comprehensive solid waste management plan developed under Federal or State law; and

“(B) the denial is based on the State's determination, pursuant to a State law authorizing such denial, that there is not a local or regional need of the landfill or incinerator in the State.

“(2) UNDUE BURDEN.—A denial of a permit under paragraph (1) shall not be considered to impose an undue burden on interstate commerce or to otherwise impair, restrain, or discriminate against interstate commerce.

“(d) DEFINITIONS.—As used in this section:

“(1) The term ‘affected local government’ means—

“(A) the public body authorized by State law to plan for the management of municipal solid waste, a majority of the members of which are elected officials, for the area in which the landfill or incinerator is located or proposed to be located; or

“(B) if there is not such body created by State law, the elected officials of the city, town, township, borough, county, or parish selected by the Governor and exercising primary responsibility over municipal solid waste management or the use of land in the jurisdiction in which the facility is located or proposed to be located.

“(2) The term ‘affected local solid waste planning unit’ means a political subdivision of a State with authority relating to solid waste management planning in accordance with State law.

“(3) With respect to a State, the term ‘out-of-State municipal waste’ means municipal waste generated outside the State. To the extent that it is consistent with the United States-Canada Free Trade Agreement and the General Agreement on Tariffs and Trade, the term shall include municipal waste generated outside the United States.

“(4) The term ‘host community agreement’ means a written, legally binding document or documents executed by duly authorized officials of the affected local government that specifically authorizes a landfill or incinerator to receive municipal solid waste generated out-of-State.

“(5) The term ‘municipal waste’ means refuse (and refuse-derived fuel) generated by the general public or from a residential, commercial, institutional, or industrial source (or any combination thereof), consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or

noncombustible materials such as metal or glass (or any combination thereof). The term ‘municipal waste’ does not include—

“(A) any solid waste identified or listed as a hazardous waste under section 3001;

“(B) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604, 9606) or a corrective action taken under this Act;

“(C) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal waste and has been transported into the State for the purpose of recycling or reclamation;

“(D) any solid waste that is—

“(i) generated by an industrial facility; and

“(ii) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator or a company with which the generator is affiliated;

“(E) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

“(F) any industrial waste that is not identical to municipal waste with respect to the physical and chemical state of the industrial waste, and composition, including construction and demolition debris;

“(G) any medical waste that is segregated from or not mixed with municipal waste; or

“(H) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.”.

### SEC. 3. TABLE OF CONTENTS AMENDMENT.

The table of contents of the Solid Waste Disposal Act is amended by adding at the end of the items relating to subtitle D the following new item:

“Sec. 4011. Interstate transportation of municipal waste.”.

By Mr. CRAIG:

S. 590. A bill for the relief of Matt Clawson; to the Committee on Energy and Natural Resources.

#### PRIVATE RELIEF FOR MATT CLAWSON

Mr. CRAIG. Mr. President, today, I am introducing legislation on behalf of Matt Clawson of Pocatello, ID. Mr. Clawson has been required to pay dearly for mistakes made by his Government. His plaintive appeal for help is a proper place for Congress to begin redressing and reforming profligate regulatory excesses, abuses, and injustices by this Government against its citizens.

Mr. Clawson obtained from the U.S. Forest Service all of the required approvals for his mining claim and plan of operations on the Middle Fork of the Salmon River near the Frank Church River of No Return Wilderness in Idaho. He spend what was for him an enormous sum of money to develop and begin working the claim according to Forest Service requirements. Shortly thereafter, however, and before he could recover any of his investment, he was required to cease operations. The reason was a lawsuit and subsequent court rulings that found the Forest Service had erred in granting the approvals.

This bill simply reimburses Mr. Clawson's expenses with interest

added. It does not attempt to provide compensation for any purported value of the claim. He has exhausted all of his legal remedies, necessitating this private relief bill. I believe the compensation is more than warranted. Moreover, U.S. Claims Court Judge Wiese commented on the record that Mr. Clawson's case had "been a very troubling case" for him and he believed "this man should be given some relief somewhere." That somewhere can only be, and must be, here.

By Mrs. HUTCHISON:

S. 592. A bill to amend the Occupational Safety and Health Act of 1970 and the National Labor Relations Act to modify certain provisions, to transfer certain occupational safety and health functions to the Secretary of Labor, and for other purposes; to the Committee on Labor and Human Resources.

OCCUPATIONAL SAFETY AND HEALTH REFORM ACT

Mrs. HUTCHISON. Mr. President, one issue about which all of us have heard from our constituents, over and over again, is the need for fundamental reform of the tortured and increasingly tangled web of Federal overregulation. Perhaps more than in any other area of Federal Government regulation, the Occupational Safety and Health Administration [OSHA] has come to symbolize what is wrong. Today I offer a bill to reform the laws that were originally intended to ensure workplace safety.

I have spoken on the floor of the Senate on numerous occasions in recent months on examples of Federal Government overregulation, of the unintended consequences of regulatory excess that puts Americans out of work, usurps our constitutional rights, and saps our productivity and economic competitiveness. OSHA problems are always at the top of my constituents' concerns.

For example, in my home State of Texas, an OSHA compliance officer from the Corpus Christi area office, stated under oath that OSHA area directors are under enormous pressure to produce high numbers of citations and penalties—that OSHA employees' job performance evaluations apparently depend on meeting *de facto* quotas. This same OSHA compliance officer also testified that his supervisor directed him to cite companies, even when both the supervisor and the inspector knew full well a company did not violate any regulation and did not warrant a citation. In the words of this conscientious officer, his supervisors told him to hit the employer.

In other words, Mr. President, one regulator can carry on a vendetta against an innocent business, thus jeopardizing that business and everyone who depends on that business to support themselves and their families. This sort of thing is not supposed to happen in America, and it is Congress' job to make sure it does not.

Congress originally established OSHA to protect Americans from the

threat of injury in the workplace. OSHA was charged with investigating and, if necessary, penalizing businesses that willfully endangered its workers. Businesses and workers have a mutual interest in promoting workplace safety. No responsible businessman or businesswoman would intentionally put another human being at risk. Furthermore, accidents reduce productivity and cost money; they deprive businesses of their most important, hard-working, productive employees. No business prospers when its employees are ill or injured.

Congress founded OSHA with the hope and expectation that the Federal Government could encourage businesses and employees to work together to resolve problems and to foster safer working environments. Mr. President, this hope has been dashed—dashed by the congress' failure to update Federal safety laws to keep pace with changes in the workplace, dashed by the emergence of a culture of regulatory excess that eats away at the vitality of our economy.

Therefore, I introduce a bill today to restore what Congress intended 25 years ago, when OSHA was created, and to inject into our regulatory agencies some common sense and sound objective criteria. My bill aims to foment real cooperation between employer, employee and the Federal Government, and to ensure that OSHA's resources are focused on the safety issues the American people want to have protected—not on vendettas against certain businesses, not on quotas for Federal inspectors to meet, not on tearing down labor-management cooperation we must have if we are to continue as the world's most productive and dynamic economy.

A safe worksite is everybody's responsibility, but today that is not the case. Laws are enforced so that the responsibility rests exclusively on the employer. Employers must be held accountable, but the frivolousness manner in which safety laws are applied in many cases does nothing to improve safety and does incalculable harm to American's confidence in their Government.

Not long ago, the Indiana OSHA found the owner of an Indiana Handy Mart liable for not providing a safe workplace after an armed bandit robbed and killed an employee of the store. In other words, it is the store owner's fault that there are armed criminals on our streets. By this same logic, it is every robbery victim's fault, for not having taken sufficient precautions.

Mr. President, we all know how serious the problem of crime and violence are. But does anyone think the fault for this crisis and the responsibility for overcoming it lies with the victims?

This case highlights the way that regulatory excess has been allowed to drift into absurdity. Indeed, the absurd is becoming the norm, as millions of Americans who operate businesses and

work for a living know. It is Congress that has refused to acknowledge how long overdue are the fundamental reforms needed to restore common sense.

My bill will also stop OSHA from citing an employer, even when he or she has provided the proper training and equipment to prevent an accident, and taken every conceivable step to assure safety.

In east Texas, after two workers—a supervisor and his assistant—died of asphyxiation after entering a confined space against strict company policy, originally OSHA concluded that there was no violation, and OSHA closed the case. However, OSHA reopened the case and issued several citations after a civil lawsuit was filed. The employer's insurance company panicked and settled the suit for \$1.5 million. Subsequently, OSHA dropped the citations. But the harm was done.

This kind of case sets a very dangerous precedent. The mere fact that OSHA has cited a company is often enough to convince a jury of employer wrongdoing, and in many jurisdictions a citation is admissible as *per se* negligence. An employer has no choice but to challenge very OSHA citation for fear of civil liability if he or she complies. We must change that, and my bill does—by making OSHA citations and abatement efforts inadmissible as evidence in any private litigation or enhancement of recovery under worker's compensation law.

My bill also changes current OSHA practice of conducting wall-to-wall inspections of a business whenever an employee files a complaint about a specific workplace issue. Congress didn't intend for Federal regulators to tear a business apart every time a complaint is filed. OSHA's current policies threaten every business with a disgruntled employee.

To encourage more labor-management cooperation, my legislation also asks that an employee first notify his or her employer of a potential workplace hazard. Any responsible business operator will take steps to rectify problems before an accident occurs. If not, OSHA can step in and take action. Common sense, Mr. President, just plain common sense.

Another provision of my legislation borrows from the TEAM Act, introduced by my friend from Kansas, Senator KASSEBAUM, who chairs the Senate Labor and Human Resources Committee. Federal regulators currently prohibit employers and employees from forming employer-employee groups to discuss issues like workplace safety. The legislation I introduce today, just like the TEAM Act which Senator KASSEBAUM has authored—which I co-sponsored—would permit such legitimate workplace cooperation.

Businesses, especially small businesses, are finding it increasingly difficult to endure the current regulatory environment. The same small business

sector that has always been the engine of economic growth, the creator of most new jobs in our country, is increasingly stifled and hamstrung by a rising tide of Federal overregulation.

But as I speak, OSHA is readying a gigantic expansion of its regulatory authority. Its so-called ergonomics rules will give OSHA authority to control virtually every aspect of a business' operations. Under the proposed new rules, OSHA would be able to set limits on employee productivity, to limit work shifts and overtime, to re-design machinery, even entire production lines, and to prohibit innovation.

At best, these proposed rules are based on the shakiest of scientific justification. But there is no doubt of the harm they will do. Initial estimates put the costs of compliance at \$21 billion a year. Eventually, however, these new rules would guarantee our businesses and our workers would lose ground steadily in the vital areas of productivity and innovation, thus doing incalculable harm to our economy.

According to the Clinton administration's 1995 regulatory plan, OSHA is also working on eight other significant new regulations. I bureaucratic parlance, a significant action is one that will cost at least \$100 million annually. It's no wonder the administration is requesting a more-than-10 percent increase in OSHA's budget. Enforcing all of these new regulations will require thousands of new inspectors, supervisors, and bureaucrats.

The administration also is fighting to maintain funding for the National Institute for Occupational Safety and Health, which I propose to end. NIOSH costs nearly \$133 million this year, with no appreciable benefits for workplace safety or the national welfare.

Twenty-five years ago, this body helped to create a new agency, OSHA, to pursue a worthwhile goal—protecting American workers from avoidable injury in the work place. The idea was based upon a partnership between employers, employees and the Government. That experiment has not worked. The very legislation that was meant to free people from the everyday threat of accidental injury is now threatening to remove our freedoms.

Mr. President, we have the responsibility of averting threats to our freedoms. We can do so merely by doing what Congress intended to do in the first place. Through the application of common sense tests for Federal involvement and return to cooperation, we can make worksites both safer and better.

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

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

S. 592

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

#### SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Occupational Safety and Health Reform Act of 1995".

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

#### SEC. 2. USE OF OSHA IN PRIVATE LITIGATION.

Section 4(b)(4) (29 U.S.C. 653(b)(4)) is amended by adding before the period the following: ", except that an allegation of a violation, a finding of a violation, or an abatement of an alleged violation, under this Act or the standards promulgated under this Act shall not be admissible as evidence in any civil action or used to increase the amount of payments received under any workmen's compensation law for any work-related injury".

#### SEC. 3. DUTIES OF EMPLOYERS AND EMPLOYEES.

Section 5 (29 U.S.C. 654) is amended by adding at the end the following new subsection:

"(c) On multi-employer work sites, an employer may not be cited for a violation of this section if the employer—

"(1) has not created the condition that caused the violation; or

"(2) has no employees exposed to the violation and has not assumed responsibility for ensuring compliance by other employers on the work site."

#### SEC. 4. STANDARD SETTING.

(a) STANDARDS.—Section 6(b)(5) (29 U.S.C. 655(b)(5)) is amended to read as follows:

"(5) The development of standards under this section shall be based on the latest scientific data in the field and on research demonstrations, experiments, and other information that may be appropriate. In establishing the standards, the Secretary shall consider, and make findings, based on the following factors:

"(A) The standard shall be needed to address a significant risk of material impairment to workers and shall substantially reduce that risk.

"(B) The standard shall be technologically and economically feasible.

"(C) There shall be a reasonable relationship between the costs and benefits of the standard.

"(D) The standard shall provide protection to workers in the most cost-effective manner and minimize employment loss due to the standard in the affected industries and sectors of industries.

"(E) Whenever practicable, the standard shall be expressed in terms of objective criteria and of the performance desired."

(b) VARIANCES.—Section 6(d) (29 U.S.C. 655(d)) is amended by adding at the end the following new sentences: "No citation shall be issued for a violation of an occupational safety and health standard that is the subject of a good faith application for a variance during the period the application is pending before the Secretary."

(c) STANDARD PRIORITIES.—The second sentence of section 6(g) (29 U.S.C. 655(g)) is amended to read as follows: "In determining the priority for establishing standards dealing with toxic materials or the physical agents of toxic materials, the Secretary shall consider the number of workers exposed to the substance, the nature and severity of potential impairment, and the likelihood of such impairment based on information obtained by the Secretary from the Environmental Protection Agency, the Department of Health and Human Services, and other appropriate sources."

(d) REGULATORY FLEXIBILITY ANALYSIS.—Section 6 (29 U.S.C. 655) is amended by adding at the end the following new subsections:

"(h) In promulgating an occupational safety and health standard under subsection (b), the Secretary shall perform a regulatory flexibility analysis described in sections 603 and 604 of title 5, United States Code.

"(i) In promulgating any occupational safety and health standard under subsection (b), the Secretary shall minimize the time, effort, and costs involved in the retention, reporting, notifying, or disclosure of information to the Secretary, to third parties, or to the public to the extent consistent with the purpose of the standard. Compliance with the requirement of this subsection may be included in a review under subsection (f)."

#### SEC. 5. INSPECTIONS.

(a) AUTHORITY OF SECRETARY.—Section 8(a)(2) (29 U.S.C. 657(a)(2)) is amended to read as follows:

"(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials in such place of employment.

In conducting inspections and investigations under paragraph (2), the Secretary may question any such employer, owner, operator, agent or employee. Interviews of employees may be in private if the employee so requests."

(b) RECORDKEEPING.—

(1) GENERAL MAINTENANCE.—The first sentence of section 8(c)(1) (29 U.S.C. 657(c)(1)) is amended to read as follows: "Each employer shall make, keep and preserve, and make available upon reasonable request and within reasonable limits to the Secretary or the Secretary of Health and Human Services, such records regarding the activities of the employer relating to this Act as the Secretary, in cooperation with the Secretary of Health and Human Services, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses."

(2) RECORDS OR REPORTS ON INJURIES.—Section 8(c) (29 U.S.C. 657(c)) is amended by adding at the end the following new paragraphs:

"(4) In prescribing regulations under this subsection, the Secretary may not require employers to maintain records of, or to make reports on, injuries that do not involve lost work time or that involve employees of other employers.

"(5) In prescribing regulations requiring employers to report work-related deaths and multiple hospitalizations, the Secretary shall include provisions that provide an employer at least 24 hours in which to make such report."

(c) INSPECTIONS BASED ON EMPLOYEE COMPLAINTS.—Section 8(f) (29 U.S.C. 657(f)) is amended to read as follows:

"(f)(1)(A) An employee or representative of an employee who believes that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or an authorized representative of the Secretary of such violation or danger.

"(B) Notice under subparagraph (A) shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall state that the alleged violation or danger has been brought to the attention of the employer and the employer has

refused to take any action to correct the alleged violation or danger.

“(C)(i) The notice under subparagraph (A) shall be signed by the employees or representative of employees and a copy shall be provided to the employer or the agent of the employer no later than the time of arrival of an occupational safety and health agency inspector to conduct the inspection.

“(ii) Upon the request of the person giving the notice under subparagraph (A), the name of the person and the names of individual employees referred to in the notice shall not appear in the copy or on any record published, released, or made available pursuant to subsection (i), except that the Secretary may disclose this information during prehearing discovery in a contested case.

“(D) The Secretary may not make an inspection under this section except on request by an employee or representative of employees.

“(E) If upon receipt of the notice under subparagraph (A), the Secretary determines that the employee or employee representative has brought the alleged violation or danger to the attention of the employer and the employer has refused to take corrective action, and there are reasonable grounds to believe such violation or danger still exists, the Secretary shall make a special inspection in accordance with this section as soon as possible. The special inspection shall be conducted for the limited purpose of determining whether such violation or danger exists.

“(2) If the Secretary determines either before, or as a result of, an inspection that there are not reasonable grounds to believe a violation or danger exists, the Secretary shall notify the complaining employee or employee representative of the determination and, upon request by the employee or employee representative, shall provide a written statement of the reasons for the Secretary's final disposition of the case.”

(d) TRAINING AND ENFORCEMENT.—Section 8 (29 U.S.C. 657) is amended—

(1) by redesignating subsection (g) as subsection (i); and

(2) by inserting after subsection (f) the following new subsections:

“(g) Inspections conducted under this section shall be conducted by at least one person who has training in, and is knowledgeable of, the industry or types of hazards being inspected.

“(h)(1) Except as provided in paragraph (2), the Secretary shall not conduct routine inspections of, or enforce any standard, rule, regulation, or order under this Act with respect to—

“(A) an employer who is engaged in a farming operation that does not maintain a temporary labor camp and employs 100 or fewer employees; or

“(B) an employer of not more than 100 employees if the employer is included within a category of employers having an occupational injury or a lost workday case rate (determined under the Standard Industrial Classification Code for which such data are published) which is less than the national average rate as most recently published by the Secretary acting through the Bureau of Labor Statistics under section 24.

“(2) In the case of an employer described in subparagraph (B) of paragraph (1), such paragraph shall not be construed to prohibit the Secretary from—

“(A) providing under this Act consultations, technical assistance, and educational and training services;

“(B) conducting under this Act surveys and studies;

“(C) conducting inspections or investigations in response to employee complaints, issuing citations for violations of this Act found during an inspection, and assessing a

penalty for violations that are not corrected within a reasonable abatement period;

“(D) taking any action authorized by this Act with respect to imminent dangers;

“(E) taking any action authorized by this Act with respect to health standards;

“(F) taking any action authorized by this Act with respect to a report of an employment accident that is fatal to at least one employee or that results in hospitalization of at least three employees and taking any action pursuant to an investigation of such report; and

“(G) taking any action authorized by this Act with respect to complaint of discrimination against employees for exercising their rights under this Act.”

#### SEC. 6. VOLUNTARY COMPLIANCE.

(a) PROGRAM.—The Occupational Safety and Health Act of 1970 (21 U.S.C. 651 et seq.) is amended by inserting after section 8 the following new section:

#### “SEC. 8A. VOLUNTARY COMPLIANCE.

“(a) IN GENERAL.—The Secretary shall by regulation establish a program to encourage voluntary employer and employee efforts to provide safe and healthful working conditions.

“(b) EXEMPTION.—In establishing a program under subsection (a), the Secretary shall, in accordance with subsection (c), provide an exemption from all safety and health inspections and investigations with respect to a place of employment maintained by an employer, except inspections and investigations conducted for the purpose of—

“(1) determining the cause of a workplace accident that resulted in the death of one or more employees or the hospitalization of three or more employees; or

“(2) responding to a request for an inspection pursuant to subsection (f)(1).

“(c) REQUIREMENTS FOR EXEMPTION.—In order to qualify for the exemption provided under subsection (b), an employer shall provide to the Secretary evidence that—

“(1) the place of employment or conditions of employment have, during the preceding year, been reviewed or inspected under—

“(A) a consultation program provided by any State agency relating to occupational safety and health;

“(B) a certification or consultation program provided by an insurance carrier or other private business entity pursuant to a State program, law, or regulation; or

“(C) a workplace consultation program provided by any other person certified by the Secretary for purposes of providing such consultations; or

“(2) the place of employment has an exemplary safety record and the employer maintains a safety and health program for the workplace that—

“(A) includes—

“(i) procedures for assessing hazards to the employees of the employer that are inherent to the operations or business of the employer;

“(ii) procedures for correcting or controlling the hazards in a timely manner based on the severity of the hazard; and

“(iii) employee participation in the program including, at a minimum—

“(I) regular consultation between the employer and nonsupervisory employees regarding safety and health issues; and

“(II) opportunity for nonsupervisory employees to make recommendations regarding hazards in the workplace and to receive responses or to implement improvements in response to such recommendations; and

“(B) provides assurances that participating nonsupervisory employees have training or expertise on safety and health issues consistent with the responsibilities of the employees.

A program under subparagraph (A) or (B) of paragraph (1) shall include methods that ensure that serious hazards identified in the consultation are corrected within an appropriate time.

“(d) CERTIFICATION.—The Secretary may require that an employer in order to claim the exemption under subsection (b) give certification to the Secretary and notice to the employees of the employer of the eligibility of the employer for an exemption.”

(b) DEFINITION.—Section 3 (29 U.S.C. 652) is amended by adding at the end the following new paragraph:

“(15) The term ‘exemplary safety record’ means that an employer has had, in the most recent annual reporting of the employer required by the Occupational Safety and Health Administration, no employee death caused by occupational injury and fewer lost workdays due to occupational injury and illness than the average for the industry of which the employer is a part.”

#### SEC. 7. EMPLOYER DEFENSES.

Section 9 (29 U.S.C. 658) is amended by adding at the end the following new subsections:

“(d) No citation may be issued under subsection (a) to an employer unless the employer knew or with the exercise of reasonable diligence would have known of the presence of the alleged violation. No citation shall be issued under subsection (a) to an employer for an alleged violation of section 5, any standard, rule, or order promulgated pursuant to section 6, any other regulation promulgated under this Act, or any other occupational safety and health standard, if such employer demonstrates that—

“(1) employees of such employer have been provided with the proper training and equipment to prevent such a violation;

“(2) work rules designed to prevent such a violation have been established and adequately communicated to employees by such employer; and

“(3) the failure of employees to observe work rules led to the violation.

“(e) A citation issued under subsection (a) to an employer that violates the requirements of any standard, rule, or order promulgated pursuant to section 6 or any other regulation promulgated under this Act shall be vacated if such employer demonstrates that employees of such employer were protected by alternative methods equally or more protective of the safety and health of the employee than the methods required by such standard, rule, order, or regulation in the factual circumstances underlying the citation.

“(f) Subsections (d) and (e) shall not be construed to eliminate or modify other defenses that may exist to any citation.”

#### SEC. 8. THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(a) PROCEDURE FOR ENFORCEMENT.—

(1) NOTIFICATION.—The first sentence of section 10(b) (29 U.S.C. 659(b)) is amended to read as follows: “If the Secretary has reason to believe an employer has failed to correct a violation for which a citation has been issued within the period permitted for the correction of such violation, the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has 15 working days within which to notify the Secretary that the employer desires to contest the notification of the Secretary or the proposed assessment of penalty. The period described in the first sentence shall not begin to run until the time for contestation has expired or the entry of a final order by the Commission in a contested case initiated by the employer in good faith and not solely for delay or avoidance of penalties.”



(2) BURDEN OF PROOF.—Section 10 (29 U.S.C. 659) is further amended by adding at the end the following new subsection:

“(d) In all hearings before the Commission relating to a contested citation, the Secretary shall have the burden of proving by a preponderance of the evidence—

“(1) the existence of a violation;

“(2) that the violation for which the citation was issued constitutes a realistic hazard to the safety and health of the affected employees;

“(3) that there is a likelihood that such hazard will result in employee injury;

“(4) that the employer knew or with the exercise of reasonable diligence should have known of the hazard and violation; and

“(5) that a technically and economically feasible method of compliance exists.”.

(b) JUDICIAL REVIEW.—Section 11(a) (29 U.S.C. 660(a)) is amended by inserting after “conclusive.” at the end of the sixth sentence the following: “The court shall make its own determination as to questions of law, including the reasonable interpretation of standards, and shall not accord deference to either the Commission or the Secretary.”.

#### SEC. 9. DISCRIMINATION.

(a) COMPLAINT.—Section 11(c)(2) (29 U.S.C. 660(c)(2)) is amended to read as follows:

“(2)(A)(i) Any employee who believes that such employee has been discharged or otherwise discriminated against by the employer of such employee in violation of this subsection may, within 30 days after such violation occurs, file a complaint with the Secretary alleging such discrimination.

“(ii) A complaint may not be filed under clause (i) after the expiration of the 30-day period described in such clause.

“(B)(i) Upon receipt of a complaint under subparagraph (A) and as the Secretary considers appropriate, the Secretary shall conduct an investigation.

“(ii) If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, the Secretary shall attempt to eliminate the alleged violation by informal methods.

“(iii) Nothing said or done, during the use of the informal methods applied under clause (ii) may be made public by the Secretary or used as evidence in any subsequent proceeding.

“(iv) The Secretary shall make a determination concerning the complaint as soon as possible and, in any event, not later than 90 days after the date of the filing of the complaint.

“(C) If the Secretary is unable to resolve the alleged violation through informal methods, the Secretary shall notify the parties in writing that conciliation efforts have failed.

“(D)(i) Not later than 90 days after the date on which the Secretary notifies the parties under subparagraph (C) in writing that conciliation efforts have failed, the Secretary may then bring an action in any appropriate United States district court against an employer described in subparagraph (A).

“(ii) The employer against whom an action under clause (i) is brought may demand that the issue of discrimination be determined by jury trial.

“(E) Upon a showing of discrimination under subparagraph (D)(ii), the Secretary may seek, and the court may award, any and all of the following types of relief:

“(i) An injunction to enjoin a continued violation of this subsection.

“(ii) Reinstatement of the employee to the same or equivalent position.

“(iii) Reinstatement of full benefits and seniority rights.

“(iv) Compensation for lost wages and benefits.

“(F) This subsection shall be the exclusive means of securing a remedy for any aggrieved employee.”.

(b) ACCESS TO RECORDS.—Section 11(c)(3) (29 U.S.C. 660(c)(3)) is amended to read as follows:

“(3) Any records of the Secretary, including the files of the Secretary, relating to investigations and enforcement proceedings pursuant to this subsection shall not be subject to inspection and examination by the public while such inspections and proceedings are open or pending in the United States district court.”.

#### SEC. 10. INJUNCTION AGAINST IMMINENT DANGER.

Section 13 (29 U.S.C. 662) is amended—

(1) by striking subsection (c);

(2) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(3) by inserting before subsection (b) (as so redesignated by paragraph (2)) the following new subsection:

“(a)(1)(A)(i) If the Secretary determines, on the basis of an inspection or investigation under this section, that a condition or practice in a place of employment is such that an imminent danger to safety or health exists that could reasonably be expected to cause death or serious physical harm or permanent impairment of the health or functional capacity of employees if not corrected immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act, the Secretary—

“(I) may inform the employer, and provide notice by posting at the place of employment to the affected employees of the danger; and

“(II) shall request that the condition or practice be corrected immediately or that the affected employees be immediately removed from exposure to such danger.

“(ii) A notice under clause (i) shall be removed by the Secretary from the place of employment not later than 72 hours after the notice was first posted unless a court in an action brought under subsection (c) requires that the notice be maintained.

“(B) The Secretary shall not prevent the continued activity of employees whose presence is necessary to avoid, correct, or remove the imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a cessation of operations or where cessation of operations is necessary, to permit the cessation to be accomplished in a safe and orderly way.

“(2) No employer shall discharge, or in any manner discriminate against any employee, because the employee has refused to perform a duty that has been identified as the source of an imminent danger by a notice posted pursuant to paragraph (1).”.

#### SEC. 11. SMALL BUSINESS ASSISTANCE AND TRAINING.

Section 16 (29 U.S.C. 655) is amended—

(1) by inserting “(a)” after “16.”; and

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

“(b) The Secretary shall publish and make available to employers a model injury prevention program that if completed by the employer shall be deemed to meet the requirement for an exemption under section 8A or a reduction in penalty under section 17(a)(2)(B).

“(c) The Secretary shall establish and implement a program to provide technical assistance and consultative services for employers and employees, either directly or by grant or contract, concerning work site safety and health and compliance with this Act. Such assistance shall be targeted at small employers and the most hazardous industries.

“(d) This subsection authorizes the provision of consultative services to employers through cooperative agreements between the States and the Occupational Safety and Health Administration. The consultative services provided under a cooperative agreement under this subsection shall be the same type of services described in part 1908 of title 39 of the Code of Federal Regulations.

“(e) Not less than one-fourth of the annual appropriation made to the Secretary to carry out this Act shall be expended for the purposes described in this section.”.

#### SEC. 12. PENALTIES.

(a) IN GENERAL.—Section 17 (29 U.S.C. 666) is amended—

(1) by striking out subsections (a), (b), (c), (f), (i), (j), and (k);

(2) by redesignating subsections (d), (e), (g), (h), and (l) as subsections (b), (c), (d), (e), and (f), respectively; and

(3) by inserting after “17.” the following:

“(a)(1) Any employer who violates the requirements of section 5, any standard, rule, or order promulgated pursuant to section 6, or any other regulation promulgated under this Act may be assessed a civil penalty of not more than \$7,000. The Commission shall have authority to assess all civil penalties provided for in this section, giving due consideration to the appropriateness of the penalty with respect to—

“(A) the size of the employer;

“(B) the number of employees exposed to the violation;

“(C) the likely severity of any injuries directly resulting from such violation;

“(D) the probability that the violation could result in injury or illness;

“(E) the good faith of the employer in correcting the violation after the violation has been identified;

“(F) the extent to which employee misconduct was responsible for the violation; and

“(G) the effect of the penalty on the ability of the employee to stay in business.

“(2) In assessing penalties under this section the Commission shall have authority to determine whether violations should be classified as willful, repeated, serious, other than serious, or de minimus. Regardless of the classification of a violation, there shall be only one penalty assessed for each violation. The Commission may not enhance the penalty based on the number of employees exposed to the violation or the number of instances of the same violation.

“(3)(A) A penalty assessed under paragraph (1) shall be reduced by 25 percent in any case in which the employer—

“(i) maintains a written safety and health program for the work site at which the violation for which the penalty was assessed occurred; or

“(ii) shows that the work site at which the violation for which the penalty was assessed occurred has an exemplary safety record.

“(B) If the employer maintains a program described in subparagraph (A)(i) and has the record described in subparagraph (A)(ii), the penalty shall be reduced by 50 percent.

“(4) No penalty shall be assessed against an employer for a violation other than a violation previously cited by the Secretary or a violation that creates an imminent danger or has caused death or a willful violation that has caused serious injury to an employee.”.

(b) CRIMINAL PENALTIES.—Section 17(c) (29 U.S.C. 666(c)) (as so redesignated by subsection (a)) is amended by adding at the end the following new sentence: “No employer shall be subject to any State or Federal criminal prosecution arising out of a workplace accident other than under this subsection.”.

**SEC. 13. TRANSFER OF CERTAIN OCCUPATIONAL SAFETY AND HEALTH FUNCTIONS.**

(a) TRANSFER OF FUNCTIONS; REPEAL.—

(1) NATIONAL INSTITUTE OF OCCUPATIONAL SAFETY AND HEALTH.—The functions and authorities provided to the National Institute of Occupational Safety and Health under section 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 671) are transferred to the Secretary of Labor.

(2) SECRETARY OF HEALTH AND HUMAN SERVICES.—The responsibilities and authorities of the Secretary of Health and Human Services under sections 20, 21, and 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669, 670, and 671) are transferred to the Secretary of Labor.

(3) REPEAL.—Section 22 (29 U.S.C. 671) is repealed.

(b) ADDITIONAL FUNCTIONS.—In carrying out the functions transferred under subsection (a), the Secretary of Labor shall take such actions as are necessary to avoid duplication of programs and to maximize training, education, and research under the Occupational Safety and Health Act of 1970 (29 U.S.C. 671 et seq.).

(c) REFERENCES.—

(1) IN GENERAL.—Each reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to—

(A) the head of the transferred office, or the Secretary of Health and Human Services, with regard to functions transferred under subsection (a), shall be deemed to refer to the Secretary of Labor; and

(B) a transferred office with regard to functions transferred under subsection (a), shall be deemed to refer to the Department of Labor.

(2) DEFINITION.—For the purpose of this subsection, the term "office" includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

(d) CONFORMING AMENDMENTS.—Not later than 180 days after the effective date of this Act, if the Secretary of Labor determines (after consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget) that technical and conforming amendments to Federal statutes are necessary to carry out the changes made by this section, the Secretary of Labor shall prepare and submit to Congress recommended legislation containing the amendments.

**SEC. 14. PREVENTION OF ALCOHOL AND SUBSTANCE ABUSE.**

The Occupational Safety and Health Act is amended—

(1) by striking sections 28 through 31;

(2) by redesignating sections 32, 33, and 34 as sections 29, 30, and 31, respectively; and

(3) by inserting after section 27, the following new section:

**"SEC. 28. ALCOHOL AND SUBSTANCE ABUSE TESTING.**

"(a) IN GENERAL.—Whenever there exists the reasonable probability that the safety or health of any employee could be endangered because of the use of alcohol or a controlled substance in the workplace, the employer of such employee may establish and implement an alcohol and substance abuse testing program in accordance with subsection (b).

"(b) STANDARDS.—The Secretary shall establish standards under section 6 for substance abuse and alcohol testing programs established under subsection (a) as follows:

"(1) The substance abuse testing program shall conform, to the maximum extent practicable, to part B of the mandatory guidelines for Federal workplace drug testing programs published on April 11, 1988, by the Secretary of Health and Human Services at 53

F.R. 11979 and any amendments adopted to such guidelines.

"(2) The alcohol testing program shall include an alcohol breath analysis and shall conform, to the maximum extent practicable; to any guidelines developed by the Secretary of Transportation for alcohol testing of mass transit employees under the Department of Transportation and Related Agencies Appropriations Act, 1992.

"(c) TESTING PRIOR TO EMPLOYMENT.—This section shall not be construed to prohibit an employer from requiring an employee to submit to and pass an alcohol or substance abuse test—

"(1) prior to employment by the employer;

"(2) on a for cause basis or where the employer has reasonable suspicion to believe that such employee is using or is under the influence of alcohol or a controlled substance;

"(3) where such test is administered as part of a scheduled medical examination;

"(4) in the case of an accident or incident involving the actual or potential loss of human life, bodily injury, or property damage; or

"(5) during and for a reasonable period of time (not to exceed 5 years) after the conclusion of an alcohol or substance abuse treatment program."

**SEC. 15. ECONOMIC IMPACT ANALYSIS.**

The Secretary of Labor shall conduct a continuing comprehensive analysis of the costs and benefits of each standard in effect under section 6 of the Occupational Safety and Health Act of 1970. The Secretary shall report the results of the analysis to Congress upon the expiration of the 2-year period beginning on the date of the enactment of this Act and every 2 years thereafter.

**SEC. 16. LABOR RELATIONS.**

(a) DEFINITIONS.—Paragraph (5) of section 2 of the National Labor Relations Act (29 U.S.C. 152(5)) is amended by adding at the end the following new sentence: "The term does not include a safety committee that is comprised of an employer and the employees of the employer and that is jointly established by the employer and the employees of the employer, or by the employer and a labor organization representing the employees of the employer, to carry out efforts to reduce injuries and disease arising out of employment."

(b) UNFAIR LABOR PRACTICES.—Section 8(a)(2) of the National Labor Relations Act (29 U.S.C. 158(a)(2)) is amended by inserting before the semicolon at the end thereof the following: "Provided, further, That it shall not constitute an unfair practice under this paragraph for an employer and the employees of the employer, or for an employer and a labor organization representing the employees of the employer, to jointly establish a safety committee in which the employer and the employees of the employer carry out efforts to reduce injuries and disease arising out of employment;"

By Mr. HATCH (for himself, Mr. GREGG, Mrs. KASSEBAUM, Mr. ABRAHAM, Mr. FRIST, and Mr. COATS):

S. 593. A bill to amend the Federal Food, Drug, and Cosmetic Act to authorize the export of new drugs and for other purposes; to the Committee on Labor and Human Resources.

**FDA EXPORT REFORM AND ENHANCEMENT ACT**

Mr. HATCH. Mr. President, almost 10 years ago, the Congress had a good idea.

In 1986, we approved legislation which took the unprecedented step of allowing pharmaceutical manufactur-

ers to export their products to 21 foreign nations, without prior FDA approval.

Many thought it was a bold step at the time.

It turned out to be a good idea which worked well.

Today, 9 years later, I rise to introduce legislation to take another step in that process. I am joined in cosponsorship of this legislation by Senator GREGG, and by Senators KASSEBAUM, ABRAHAM, FRIST, and COATS.

Let me at this time recognize the outstanding leadership that our House colleague, Representative FRED UPTON, has shown in both drafting and marshalling considerable support for this legislation. This bill would not be possible without Mr. UPTON'S leadership.

Undoubtedly some will also consider this legislation bold. But I submit to my colleagues that it will also turn out to be a good idea which works well. Even better than the 1986 law, which I authorized.

The Hatch-Gregg legislation, the FDA Export Reform and Enhancement Act of 1995, has a simple premise: that the Food and Drug Administration cannot continue to be the traffic cop for world trade in medical goods.

Current Food and Drug Administration regulations significantly restrict the ability of U.S. manufacturers of human and animal drugs, biological, and medical devices to export their products to world markets.

Under section 801(e) of the Federal Food, Drug and Cosmetic Act, exporting a medical device that is not commercially distributed in the U.S. is subject to FDA receipt of the receiving country's approval of the device and FDA determination that the export would not be contrary to the public health and safety of the importing country.

The FDA requires an export permit for unapproved, class III devices, those requiring pre-market approval [PMA's]. Many countries also request a certificate of free sale from the United States indicating that the product has been approved in the United States. This is basically a rubber stamp provided by the FDA on a voluntary basis.

The irony in this situation is that a manufacturer cannot export certain unapproved medical devices, even if they have been approved by the foreign country with an established regulatory system.

Also under section 801(e) of the Food, Drug, and Cosmetic Act, pharmaceutical companies are only free to export unapproved drugs to 21 countries delineated in the law. Those countries are; Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

Prior to 1986, there was no authority for manufacturers of FDA-regulated

products to send those products overseas unless they were first approved by the FDA. The Pharmaceutical Export Act of 1986, allowed, for the first time, manufacturers to export their products to the above list of countries, provided the sponsor is pursuing a new drug application [NDA] in the United States.

Our experience since that time has shown that the law is still too rigid. The list of countries is too proscriptive, and the regulatory requirements unnecessarily burdensome.

For example, the list does not include Israel. It does not include Eastern European countries or most of the Pacific rim. There is near universal agreement this needs to be rectified.

Although the 1986 act represented a good step forward, it has led to the development of a patchwork quilt of bureaucracy that has forced U.S. manufacturers to establish and maintain facilities outside the United States.

For example, prior approval of export plans by FDA is required to ship products overseas. To ship bulk or finished products, companies must apply for prior approval from FDA, be granted approval, and ship the products. This process takes 3-12 months plus transportation time, creating costly delays that reduce market access and penetration by U.S. firms.

It is important to note that market conditions in importing companies may dictate the sale of products utilizing dosage strengths, e.g., 250 milligrams versus 125 milligrams, formulations—caplet, tablet, etc.—or inert ingredients different from those approved or being pursued in the U.S. export of similar, but not identical, products is currently prohibited.

Another problem is that FDA labeling requirements mandate that packaged exports be labeled in English for the FDA-approved indications, regardless of the linguistic or regulatory requirements of the importing country.

At the same time, the law imposes time-consuming requirements on FDA, whose resources should be better directed to reviewing new, life-saving medicines and technologies.

It is clear that FDA is making progress in speeding up review times for drugs and devices, although there still are problems.

For example, FDA says that its average processing time for export permits for medical devices has moved from 65 days in 1993 to 16 days in 1994. For export certificates, the FDA says its processing times have declined from 51.5 days in 1993 to 10 days in 1994.

I must commend the Center director, Dr. Bruce Burlington, and the Office of Device Evaluation Director, Dr. Susan Alpert, for that progress. Their work has really made a difference.

But the FDA statistics don't tell the whole story. These are average review times. In 1993, in some cases, it took the FDA over 270 days to approve export permits, and still up to 150 days for approval in 1994. In 1994 they proc-

essed 756 permit applications, and 1,469 certificates.

Not only can FDA review be time-consuming, but using it is a measure of export delays is misleading. Manufacturers have to compile the data to send to FDA requesting export. And, they have to go to the importing country and get a letter proving that the country has approved the device for import. This, too, adds substantial time to the process upfront.

Another concern we have is about the potential for FDA reprogramming its resources away from this activity to another. We have no assurance that the statistics will stay at the current rate.

But I feel compelled to raise the larger point.

I think we have to ask ourselves if this export review is how we want to be spending Government resources in this day and age. If other nations wish to receive the benefits of our technology, why must we insist on approving that technology first?

In a time of unprecedented harmony in worldwide trade, as reflected by recent passage of GATT, our laws relating to the export of foods, drugs, medical devices and cosmetics should reflect that comity as well. The paternalistic approach evidenced in our current law is no longer compatible with today's world marketplace.

The Hatch-Gregg bill remedies this situation by allowing manufacturers to export their products in any countries belonging to the World Trade Organization [WTO]. A second provision allows export to non-WTO countries unless the Secretary of Health and Human Services determines that the possibility of the reimportation of the device or drug into the United States presents an imminent hazard to the public health and safety of the United States and the only means of limiting the hazard is to prohibit the export of the device or drug.

The products to be exported must accord to the specifications of the foreign purchaser. They must not be in conflict with the laws of the country to which they are intended for export. They must be labeled for export on the outside of the shipping package. They must not be sold or offered for sale in domestic commerce. And they cannot have been "banned," or turned down for approval here in the United States.

This is not a health bill, Mr. President, S. 593 is about exports and jobs. It is about U.S. competitiveness abroad.

The U.S. drug manufacturing industry accounts for about \$60 billion in annual production, with a trade surplus of \$800 million in 1993. Last year, U.S. drug companies accounted for about a third of total world production.

There are approximately 11,000 medical device companies in the United States which make between 60,000 and 80,000 different brands or models. Most of these companies are small. Two-thirds of the companies have fewer than 50 employees.

In Utah, we have over 100 device manufacturing companies, some of the finest in the Nation, and they are really feeling the pinch of our restrictive export policies.

The U.S. medical device manufacturing industry accounts for more than \$50 billion in production and had a trade surplus in 1994 of \$4.9 billion.

Last year, U.S. companies accounted for 46 percent of global production. Moreover, this industry has been a major source of employment and export growth in recent years.

Between 1988 and 1993, 32 percent of production growth for this industry went to serve strong overseas demand for medical technology. During the same period, employment grew by more than 4 percent a year in this industry.

In June 1994, the Gallup Organization surveyed 58 medical electronics manufacturing companies which—based on their estimates—serve as many as 76 million patients around the world with their products.

These companies indicated the following:

Eighty-three percent said they experienced excessive delays by FDA for approval of new products;

Forty percent said they reduced the number of employees in the United States due to FDA delays;

Twenty-nine percent said they increased their investment in non-U.S. operations; and

Twenty-two percent said they moved U.S. jobs overseas.

This provides compelling evidence that U.S. regulatory policies are driving medical device manufacturing companies offshore. The same thing is happening with pharmaceuticals.

Manufacturers experience so much red-tape in sending their products overseas, that they prefer to make them overseas. The United States is a net loser: in jobs and productivity.

We should not allow this to continue.

Mr. President, almost a week ago, the administration announced it was undertaking several FDA reforms, including a review of its export policy.

I am hopeful that the administration will seriously consider our legislation so that we may work together to see these needed changes in the law are made.

Mr. GREGG. Mr. President, the bill we are introducing today is designed to address a number of problems that currently prohibit American companies from competing in the international marketplace: the Food and Drug Administration's [FDA] export policies on the overseas sale of drugs, biological products, and medical devices. The FDA has repeatedly stated that export issues are not within their realm of expertise, and that they would not oppose a new standard as put forth by Congress.

We are here to submit that new standard. This bill does not call for radical measures that would jeopardize

the safety of citizens of other countries. This bill does not simply allow unapproved products to be randomly shipped around the world. It does not allow export products to be sold domestically.

What this bill does do is recognize the authority of our international trading partners by acknowledging that WTO [World Trade Organization] members have an evolved import system to control what products are being brought into their country, a step up from general GATT signatories. It permits WTO countries to decide for themselves whether or not they want to approve a product to be available to their citizens, and specifies a notification process by U.S. manufacturers to the FDA for those nations that are not WTO members. Our bill specifies that a device which is banned in the United States by the FDA cannot be exported. This legislation provides recourse to the Secretary of Health and Human Services to prohibit exports if she judges there to be an "imminent hazard" that the product would be shipped back into the United States, threatening to the health or safety of consumers.

These are all critical components and appropriate to promoting U.S. manufacturers in the international marketplace. The bill is designed to allow U.S. medical technology and products, the best in the world, to compete fairly with foreign manufacturers. And it allows autonomy among our trading partners.

I am pleased to hear the President address FDA reform in his speech on March 16 as part of "Reinventing Government." This is a positive step in dealing with a number of issues that stem from the current regulatory climate at this, and many other, Federal agencies. I look forward to working with the administration and my colleagues here on the Hill to reform the policies and procedures of this important agency.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 594. A bill to provide for the administration of certain Presidio properties at minimal cost to the Federal taxpayer; to the Committee on Energy and Natural Resources.

#### PRESIDIO TRUST ESTABLISHMENT ACT

Mrs. BOXER. Mr. President, today I am introducing a bill to minimize the costs to the taxpayer of the newest addition to our National Park System, the Presidio of San Francisco.

In 1972, Congress recognized the park potential of the Presidio. At that time Congressman Phil Burton's legislation creating the Golden Gate National Recreation Area [GGNRA] was drawn to include the Presidio, and provided that the Presidio would become a national park when it was no longer needed by the Army. Thus when the Army vacated the base last September, the Park Service assumed responsibility

for administering the Presidio as part of the GGNRA.

It is projected that the new park will attract 10 million or more visitors a year. Those visitors will enjoy one of the most beautiful and historic urban open spaces in the world. The park offers spectacular vistas of the Pacific Ocean, the Golden Gate, the Marin Headlands, San Francisco Bay, and the skyline of San Francisco.

The Presidio also offers over 200 years of military history, from its founding in 1776, through the Civil War, the Spanish-American War and World Wars I and II. Presidio architecture represents a remarkable collection of structures dating from the days of Mexican sovereignty over California. The entire Presidio was declared a national historic landmark in 1962.

The bill we introduce today will establish the Presidio Trust, a public entity modeled on the successful Pennsylvania Avenue Development Corporation.

The Trust will help us put the Presidio's buildings to work for the park. Rents and other revenues will be retained to restore and conserve the Presidio's extraordinary natural and historic resources.

The Trust will manage the facilities at the Presidio which are not of the type normally administered by the National Park Service. It will be responsible for leasing, maintenance, and property management—consistent with the park management plan and the legislation creating the Golden Gate National Recreation Area. The open space, forests, and recreational land will be managed by the Park Service as they are doing in other parts of the GGNRA.

Critical to the success of this undertaking will be the Presidio's ability to generate revenues to offset the costs of operation and capital improvement. The Trust will have the flexibility necessary to negotiate terms of leases and other contracts, to leverage lease revenues, and to utilize a staff qualified in financial management. It will be accountable to the public through a public-private governing board of directors, annual auditing and reporting requirements, and a requirement to adhere to the publicly approved general management plan for the Presidio and the GGNRA authorizing legislation.

According to expert analysis, the Presidio Trust established by this bill would produce savings of 20 to 30 percent when compared to the cost of total Federal management of the Presidio. The Presidio is an example of defense conversion that will be cost effective while serving an important national purpose.

The Presidio is one of the Nation's great treasures. If we act now, we can ensure its successful transformation from a military base into one of the world's outstanding urban parks.

Mr. President, I ask unanimous consent that the full 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. 594

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

#### SECTION 1. FINDINGS.

The Congress finds that—

(1) the Presidio, located amidst the incomparable scenic splendor of the Golden Gate, is one of America's great natural and historic sites;

(2) the Presidio is the oldest continuously operating military post in the Nation dating from 1776, and was designated as National Historic Landmark in 1962;

(3) preservation of the cultural and historic integrity of the Presidio for public use recognizes its significant role in the history of the United States;

(4) the Presidio, in its entirety, is a part of the Golden Gate National Recreation Area, in accordance with Public Law 92-589;

(5) as part of the Golden Gate National Recreation Area, the Presidio's outstanding natural, historic, scenic, cultural, and recreational resources must be managed in a manner which is consistent with sound principles of land use planning and management, and which protects the Presidio from development and uses which would destroy the scenic beauty and historic and natural character of the area; and

(6) the Presidio will be managed through an innovative public/private partnership that minimizes cost to the United States Treasury and makes efficient use of private sector resources that could be utilized in the public interest.

#### SEC. 2. INTERIM LEASING AUTHORITY.

The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized to negotiate and enter into leases, at fair market rental and without regard to section 321 of chapter 314 of the Act of June 30, 1932 (40 U.S.C. 303b), for all or part of the Presidio of San Francisco that is under the administrative jurisdiction of the Secretary until such time as the property concerned is transferred to the administrative jurisdiction of the Presidio Trust. Notwithstanding sections 1341 and 3302 of title 31 of the United States Code, the proceeds from any such lease shall be retained by the Secretary and used for the preservation, restoration, operation and maintenance, improvement, repair and related expenses incurred with respect to Presidio properties. For purposes of any such lease, the Secretary may adjust the rental by taking into account any amounts to be expended by the lessee for preservation, maintenance, restoration, improvement, repair and related expenses with respect to properties within the Presidio.

#### SEC. 3. THE PRESIDIO TRUST.

(a) ESTABLISHMENT.—There is established a body corporate within the Department of the Interior to be known as the Presidio Trust (hereinafter in this Act referred to as the "Trust").

(b) TRANSFER.—(1) The Secretary shall transfer to the administrative jurisdiction of the Trust those areas commonly known as the Letterman/LAIR complex, Fort Scott, Main Post, Cavalry Stables, Presidio Hill, Wherry Housing, East Housing, the structures at Crissy Field, roads, utilities or other infrastructure servicing the properties and such other properties that the Secretary deems appropriate, as depicted on the map referred to in this subsection. The Trust and the Secretary shall agree on the use and occupancy of buildings and facilities necessary to house and support activities of the National Park Service at the Presidio.

(2) Within 60 days after enactment of this section, the Secretary shall prepare a map identifying properties to be conveyed to the Trust.

(3) The transfer for administrative jurisdiction shall occur within 60 days after appointments are made to the board of Directors.

(4) The Secretary shall transfer, with the transfer of administrative jurisdiction over any property, all leases, concessions, licenses, permits, programmatic agreements and other agreements affecting such property and any revenues and unobligated funds associated with such leases, concessions, licenses, permits, and agreements.

(c) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The powers and management of the Trust shall be vested in a Board of Directors consisting of the following 5 members:

(A) The Secretary of the Interior or the Secretary's designee.

(B) 4 individuals, who are not employees of the Federal Government, appointed by the President, who shall possess extensive knowledge and experience in one or more of the fields of city planning, finance, and real estate. At least 3 of these individuals shall reside in the region in which the Presidio is located.

(2) TERMS.—The President shall make the appointments referred to in subparagraph (B) of paragraph (1) within 90 days and in such a manner as to ensure staggered 4-year terms. Any vacancy under subparagraph (B) of paragraph (1) shall be filled in the same manner in which the original appointment was made, and any member appointed to fill a vacancy shall serve for the remainder of the term for which his or her predecessor was appointed. No appointed director may serve more than 8 years in consecutive terms. No member of the Board of Directors may have a financial interest in any tenant of the Presidio.

(3) ORGANIZATION AND COMPENSATION.—The Board shall organize itself in such a manner as it deems most appropriate to effectively carry out the authorized activities of the Trust. Board members shall serve without pay, but may be reimbursed for the actual and necessary travel and subsistence expenses incurred by them in the performance of the duties of the Trust.

(4) LIABILITY OF DIRECTORS.—Members of the Board of Directors shall not be considered Federal employees by virtue of their membership on the Board, except for purposes of the Federal Tort Claims Act.

(5) PUBLIC LIAISON.—The Board shall establish procedures whereby liaison with the public, through the Golden Gate National Recreation Area Advisory Commission, and the National Park Service, shall be maintained.

(d) DUTIES AND AUTHORITIES.—In accordance with the purposes set forth in this Act and in section 1 of the Act entitled "An Act to establish the Golden Gate National Recreation Area in the State of California, and for other purposes", approved October 27, 1972 (Public Law 92-589; 86 Stat. 1299; 16 U.S.C. 460bb), the Trust shall manage the leasing, maintenance, rehabilitation, repair and improvement of property within the Presidio which is under its administrative jurisdiction. The Trust may participate in the development of programs and activities at the properties that have been transferred to the Trust. In exercising its powers and duties, the Trust shall act in accordance with the approved General Management Plan, as amended, for the Presidio (hereinafter in this Act referred to as the "Plan") and shall have the following authorities:

(1) The Trust is authorized to manage, lease, maintain, rehabilitate and improve, either directly or by agreement, those prop-

erties within the Presidio which are transferred to the Trust by the Secretary.

(2)(A) The Trust is authorized to negotiate and enter into such agreements, leases, contracts and other arrangements with any person, firm, association, organization, corporation or governmental entity, including without limitation entities of Federal, State and local governments (except any agreement to convey fee title to any property located at the Presidio) as are necessary and appropriate to finance and carry out its authorized activities. Agreements under this paragraph may be entered into without regard to section 321 of the Act of June 30, 1992 (40 U.S.C. 303b).

(B) Except as provided in subparagraphs (C), (D), and (E), Federal laws and regulations governing procurement by Federal agencies shall apply to the Trust.

(C) The Secretary may authorize the Trust, in exercising authority under section 303(g) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 253(g)) relating to simplified purchase procedures, to use as the dollar limit of each purchase or contract under this subsection an amount which does not exceed \$500,000.

(D) The Secretary may authorize the Trust, in carrying out the requirement of section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) to furnish the Secretary of Commerce for publication notices of proposed procurement actions, to use as the applicable dollar threshold for each expected procurement an amount which does not exceed \$1,000,000.

(E) The Trust shall establish procedures for lease agreements and other agreements for use and occupancy of Presidio facilities, including a requirement that in entering into such agreements the Trust shall obtain such competition as is practicable in the circumstances.

(3) The Trust is authorized to appoint and fix the compensation and duties of an executive director and such other officers and employees as it deems necessary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay them without regard to the provisions of chapter 51, and subchapter III of chapter 53, title 5, United States Code (relating to classification and General Schedule pay rates).

(4) To augment or encourage the use of non-Federal funds to finance capital improvements on Presidio properties transferred to its jurisdiction, the Trust, in addition to its other authorities, shall have the following authorities:

(A) The authority to guarantee any lender against loss of principal or interest on any construction loan, provided that (i) the terms of the guarantee are approved by the Secretary of the Treasury, (ii) adequate guarantee authority is provided in appropriations Acts, and (iii) such guarantees are structured so as to minimize potential cost to the Federal Government.

(B) The authority, subject to available appropriations, to make loans to the occupants of property managed by the Trust for the preservation, restoration, maintenance, or repair of such property.

(C) The authority to issue obligations to the Secretary of the Treasury, but only if the Secretary of the Treasury agrees to purchase such obligations after determining that the projects to be funded from the proceeds thereof are credit worthy and that a repayment schedule is established. The Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include

any purchase of such notes or obligations acquired by the Secretary of the Treasury under this subsection. The aggregate amount of obligations issued under this subparagraph which are outstanding at any one time may not exceed \$150,000,000. Obligations issued under this subparagraph shall be in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury, and shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. No funds appropriated to the Trust may be used for repayment of principal or interest on, or redemption of, obligations issued under this paragraph. All obligations purchased under authority of this subparagraph must be authorized in advance in appropriations Acts.

(D) The Trust shall be deemed to be a public agency for the purpose of entering into joint exercise of powers agreements pursuant to California government code section 6500 and following.

(5) The Trust may solicit and accept donations of funds, property, supplies, or services from individuals, foundations, corporations and other private or public entities for the purpose of carrying out its duties. The Trust shall maintain philanthropic liaison with the Golden Gate National Park Association, the fund raising association for the Golden Gate National Recreation Area.

(6) All proceeds received by the Trust shall be retained by the Trust without further appropriation and used to offset the costs of administration, preservation, restoration, operation, maintenance, repair and related expenses incurred by the Trust with respect to such properties under its jurisdiction. Upon the request of the Trust, the Secretary of the Treasury shall invest excess moneys of the Trust in public debt securities with maturities suitable to the needs of the Trust.

(7) The Trust may sue and be sued in its own name to the same extent as the Federal Government. Litigation arising out of the activities of the Trust shall be conducted by the Attorney General, as needed; the Trust may retain private attorneys to provide advice and counsel.

(8) The Trust shall have all necessary and proper powers for the exercise of the authorities invested in it.

(9) For the purpose of compliance with applicable laws and regulations concerning properties transferred to the Trust by the Secretary, the Trust shall negotiate directly with regulatory authorities.

(e) INSURANCE.—The Trust shall procure insurance against any loss in connection with the properties managed by it or its authorized activities as is reasonable and customary.

(f) BUILDING CODE COMPLIANCE.—The Trust shall ensure that all properties under its jurisdiction are brought into compliance with all applicable Federal building codes and regulations within 10 years after the enactment of this Act.

(g) TAXES.—The Trust shall be exempt from all taxes and special assessments of every kind in the State of California, and its political subdivisions, including the city and county of San Francisco to the same extent as the Secretary.

(h) FINANCIAL INFORMATION AND REPORT.—(1) Financial statements of the Trust shall be audited annually in accordance with section 9105 of title 31 of the United States Code.

(2) At the end of each calendar year, the Trust shall submit to the Secretary and the

Congress a comprehensive and detailed report of its operations, activities, and accomplishments for the prior fiscal year. The report also shall include a section that describes in general terms the Trust's goals for the current fiscal year.

(i) SAVINGS CLAUSE.—Nothing in this section shall preclude the Secretary from exercising any of the Secretary's lawful powers within the Presidio.

(j) LEASING.—In managing and leasing the properties transferred to it, the Trust should consider the extent to which prospective tenants maximize the contribution to the implementation of the General Management Plan and to the generation of revenues to offset costs of the Presidio. The Trust shall give priority to the following categories of tenants: tenants that enhance the financial viability of the Presidio thereby contributing to the preservation of the scenic beauty and natural character of the area; tenants that facilitate the cost-effective preservation of historic buildings through their reuse of such buildings, or tenants that promote through their activities the general programmatic content of the plan.

(k) REVERSION.—In the event of failure or default, all interests and assets of the Trust shall revert to the United States to be administered by the Secretary.

(l) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out the activities of the Trust.

(m) SEPARABILITY OF PROVISIONS.—If any provisions of this Act or the application thereof to any body, agency, situation, or circumstance is held invalid, the remainder of the Act and the application of such provision to other bodies, agencies, situations, or circumstances shall not be affected thereby.

By Mr. BYRD (for himself and Mr. ROCKEFELLER):

S. 595. A bill to provide for the extension of a hydroelectric project located in the State of West Virginia; to the Committee on Energy and Natural Resources.

EXTENSION OF FERC LICENSE FOR GRAFTON, WV

Mr. BYRD. Mr. President, I introduce, on behalf of myself and Senator ROCKEFELLER, a bill to grant the city of Grafton, WV, a 4-year extension of its Federal Energy Regulatory Commission [FERC] license to begin construction of a hydroelectric power project at Tygart Dam in Taylor County. This project is to be financed entirely by the city of Grafton and its investors through nonpublic equity and debt. This extension is necessary because the license expires during the current year and over \$3 million has already been invested in this project. The hydroelectric project takes advantage of the existing dam on the Tygart River in order to generate power and will also include the development of recreational facilities. Extensive environmental studies on the project have been conducted in coordination with interested regulatory agencies. Without any contribution from the Federal Government, the city and its investors will finance the project, which will include fishing piers, walkways, picnic facilities, and a parking area.

The city and its investors anticipate that the project would employ 200 staff during the peak of construction, with a \$1 million monthly payroll. The total

construction payroll for the project is expected to be \$15 million. The Grafton hydropower project will provide substantial taxes and other payments to various governmental entities during construction and operation. The Federal Government will benefit from this project since it will receive annual payments of \$200,000 from the hydroelectric project. The Federal Government also will receive income tax from the project, as it will be privately financed. It is hoped that the license extension made possible by this bill will bring significant economic development to the Taylor County region of West Virginia.

By Mr. HARKIN (for himself and Mr. BRADLEY):

S. 596. A bill to amend the Internal Revenue Code of 1986 to disallow deductions for advertising and promotional expenses for tobacco products; to the Committee on Finance.

ELIMINATION OF DEDUCTIBILITY OF TOBACCO ADVERTISING

Mr. HARKIN. Mr. President, I rise today to introduce an important piece of legislation that addresses a very serious problem in a commonsense way. During the budget debate in 1992 I offered an amendment to limit the tax deductibility of tobacco advertising. It didn't pass. And, because it didn't pass, the American taxpayers are still coughing up billions to promote smoking.

The legislation I am introducing today would eliminate the taxpayer deductibility of tobacco advertising and promotion.

These days we hear a lot of talk about cuts in school lunches, cuts in the WIC Program, cuts in investments to improve the health of Americans.

I believe there's a better way to go—with commonsense cuts that promote the health of our economy and the health of our people.

It's time for tobacco companies to quit blowing our tax dollars up in smoke with their big tobacco advertising campaigns. It's time for them to stop luring our kids into their death-traps.

According to the Federal Trade Commission the tobacco industry spent \$5.2 billion in 1992 to advertise and promote cigarettes. But that's not just their money, it's ours, too. Because all of those expenses are tax deductible.

In fact, American taxpayers are coughing up nearly \$2 billion a year in tax subsidies and serving as a silent partner in helping big tobacco companies peddle their products and hook our kids.

This taxpayer-subsidized multi-billion-dollar effort includes ads in magazines and newspapers, and outside advertising such as billboards, advertising at supermarkets and convenience stores, use of gifts, and sponsorship of sporting events.

And all of this is designed to convince people that smoking is cool—necessary for social acceptance and helps make one attractive to the opposite

sex. It is deliberately designed to keep people smoking, but more importantly, to attract a new generation to the smoking habit.

Every day, another \$5 million of taxpayer money is used to promote a product that—when used as intended—causes disease, disability, and death.

Every day, another 3,000 of America's children get hooked on smoking.

Consider what the taxpayers receive for their money. We get Old Joe Camel. If you don't know who Joe Camel is just ask any first-grader.

According to a study published in the Journal of the American Medical Association, more 6-year-olds can identify Old Joe Camel than adults. In fact, just as many 6-year-olds can identify Old Joe Camel as they can Mickey Mouse.

And his name recognition has really paid off—since the introduction of Old Joe, sales of Camel cigarettes to children under 18 went from \$6 million to over \$476 million a year.

But that's not all. Joe is branching out. And so are some of his competitors. They have all started what I call merchandising clubs in which you can smoke your way to all sorts of gifts.

A study in this month's Consumer Reports magazine found that 11 percent of children between the age of 12 to 17 owned at least one tobacco industry promotional item.

And it only gets worse, cigarette companies not only know what kids like, they know where they live. The same poll in Consumer Reports found that 7.6 percent of teens received cigarette company mail at home addressed directly to them. If you carry those figures nationwide, that means 1.6 million children are on the tobacco mailing list.

These campaigns are outrageous and they violate the industry's own cigarette advertising code. The industry has adopted a code that states that "cigarette advertising shall not represent that cigarette smoking is essential to social prominence, distinction, success, or sexual attraction.

But how does that square with these ads? How does that square with the Marlboro Adventure Team? How does that square with Joe Camel? It simply doesn't and we ought not subsidize it.

Mr. President, I am also pleased to join Senator LAUTENBERG in legislation he is offering today to allow American taxpayers to recover Medicare, Medicaid, and other Federal health program costs associated with tobacco-related illnesses. For too long the tobacco companies have been raking in profits while the American taxpayers have been coughing up billions in health care costs attributable to tobacco related illness.

The Medicare and Medicaid share of these costs total over \$15 billion per year and the costs to other Federal health programs are nearly \$5 billion.

The Columbia University Center on Addiction and Substance Abuse has estimated that tobacco-related illnesses

will cost the Medicare program \$800 billion over the next 20 years. At that rate, Medicare will go bankrupt.

It is unconscionable that the tobacco industry has profited while the taxpayer has been left with the devastating and widespread costs associate with tobacco use.

The legislation introduced by Senator LAUTENBERG would hold manufacturers accountable for the damage they do. Manufacturers of tobacco products would pay for the cost of tobacco-related illness incurred by Government through the Medicaid, Medicare, and other health programs.

I am also pleased that Senator BRADLEY is introducing legislation to further the effort to decrease cigarette smoking. An increase in the tobacco tax is one of the most effective methods for significantly reducing tobacco use among children and adults. We know that for every 10 percent increase in the price of tobacco products, there will be approximately a 4-percent decrease in tobacco consumption, and possibly even greater decrease in tobacco use among children.

Mr. President, we must take every possible opportunity to convince people to stop smoking and prevent children from ever taking up the habit. As former Surgeon General C. Everett Koop stated:

Smoking is associated with more death and illness than drugs, alcohol, automobile accidents, and AIDS combined.

U.S. Public Health Service figures tell us that over 430,000 Americans will die from cigarette smoking this year. That is more than the number of Americans who died in all of World War II. Over 1,000 Americans will die today from smoking. That is more than the equivalent of two fully loaded jumbo jets crashing with no survivors—every day.

The medical data on the health effects of smoking are well established. Since 1964, when the first Surgeon General's "Report on Smoking and Health" was issued, some 50,000 scientific studies on the relationship between smoking and disease have been conducted. Smoking has been shown to be a major cause of heart disease, chronic bronchitis, and emphysema; cancers of the lung, larynx, mouth, esophagus, pancreas, and bladder; pneumonia and stomach cancers.

Mr. President, as we look for way to tackle the budget deficit we should not be cutting initiatives that help people and investment in our future. Instead we should close the corporate tax loopholes. And let's start by eliminating special breaks that help big tobacco corporations and hurt our kids.

Passage of the Harkin, Lautenberg, and Bradley bills would be a triple play for our economy and our Nation's health.

Mr. President, I ask unanimous consent that a copy 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. 596

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

**SECTION 1. DISALLOWANCE OF DEDUCTIONS FOR ADVERTISING AND PROMOTIONAL EXPENSES RELATING TO TOBACCO PRODUCT USE.**

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1986 (relating to items not deductible) is amended by adding at the end the following new section:

**"SEC. 280I. DISALLOWANCE OF DEDUCTION FOR TOBACCO ADVERTISING AND PROMOTIONAL EXPENSES.**

No deduction shall be allowed under this chapter for expenses relating to advertising or promoting cigars, cigarettes, smokeless tobacco, pipe tobacco, or any similar tobacco product. For purposes of this section, any term used in this section which is also used in section 5702 shall have the same meaning given such term by section 5702."

(b) CONFORMING AMENDMENT.—The table of sections for such part IX is amended by adding after the item relating to section 280H the following new item:

"Sec. 280I. Disallowance of deduction for tobacco advertising and promotion expenses."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1995.

Mr. BRADLEY. Mr. President, I rise today, along with Senator HARKIN, to introduce legislation that would amend the Internal Revenue Code of 1986 to forbid tobacco companies to deduct their advertising and promotional expenses when calculating their taxes.

I have already discussed the huge toll—in both economical and human terms—which tobacco wreaks on this country. And I have already introduced a bill increasing the tax on all tobacco products by a factor of five. Mr. President, the Harkin-Bradley bill complements my earlier bill by ensuring that Federal Government acts consistently when it comes to tobacco.

Why do I say the Government acts inconsistently with regard to tobacco? Because on the one hand, it allows tobacco companies to deduct their advertising and promotional costs on their taxes. These tax exemptions are the equivalent of direct Government payments. In terms of lost revenues to the Federal Treasury, they are no different from cash payments to AFDC recipients. And we're not talking a small amount of money—in 1992, these deductions were worth approximately \$1.7 billion a year to tobacco companies.

On the other hand, the Government spends millions and millions of dollars to try to offset the harmful effects caused by tobacco use. We are giving more than \$1.7 billion to the National Cancer Institute for research this year alone; this includes \$114 million specifically for lung cancer. We require warning labels to be placed on cigarette packages to inform our citizens of the direct links between tobacco use and respiratory and lung diseases and possible birth defects. We provide millions

of dollars for public health campaigns to warn people of the danger of tobacco, and to help them to quit.

These are directly contradictory policies. First, we give the tobacco companies a tremendous tax incentive—a Government handout—essentially encouraging them to advertise and promote tobacco products. Then, we turn around and spend a billion or two trying to unravel the harm that we have helped to cause, to reduce the health devastation we have contributed to, by funding research on tobacco use and to fund campaigns to discourage and end its use.

And think about those advertising and promotional campaigns which we are helping to finance. Many of them are targeted at our youth, who often may ignore well-intended and wise warnings about mortality, and instead obey the behavior of their own peer groups who believe that smoking is cool. Approximately 90 percent of all smokers begin in their teens or younger. The tobacco companies know this and specifically target younger age groups in their advertising. And the Federal Government helps to pay the bill for them to do so.

Mr. President, virtually all of the health care bills which were considered last session placed great emphasis on prevention. We know we can reduce health care costs if we encourage our citizens to avoid unhealthy choices, and to exercise regularly, to eat right, and design our health care system to focus on preventive care and not wait until someone is sick to treat them. Yet cigarette smoking is the single most preventable cause of death in the United States. This bill takes action now to put meaning into all the rhetoric about prevention. And at the same time, it will save the Federal Government an estimated \$1.7 billion a year in foregone tax expenditures, once it is fully implemented.

Mr. President, this bill is health care reform that is right on target. It doesn't control prices, limit choices, or require any new Government intervention in health care. It addresses only those who are directly responsible for the largest preventable cause of death in the United States—the tobacco companies themselves.

Mr. President, the Government should speak with one voice on this problem, and that voice should unequivocally say: "Tobacco use will harm you." We will not subsidize the seller; we will not underwrite the smoker; we will support efforts to stop; and we will dedicate our resources to preventing Americans from ever starting. I urge my colleagues to join me in ensuring that we speak with one voice by supporting this bill.

By Mr. LAUTENBERG (for himself, Mr. BRADLEY, and Mr. HARKIN):

S. 597. A bill to insure the long-term viability of the Medicare, Medicaid, and other Federal health programs by

establishing a dedicated trust fund to reimburse the Government for the health care costs of individuals with diseases attributable to the use of tobacco products; to the Committee on Finance.

MEDICARE/MEDICAID SOLVENCY ACT

Mr. LAUTENBERG. Mr. President, I rise today to introduce the Medicare/Medicaid Solvency Act of 1995. This legislation will require the tobacco industry to reimburse the Federal Government for Medicare, Medicaid, and other Federal health care program costs for diseases attributable to tobacco products.

Deliberations on the budget will soon begin and it looks like the Congress is serious about undertaking real, meaningful, and significant deficit reduction. My bill will do just that.

Any serious attempt at deficit reduction must consider health care, particularly the Medicare, Medicaid, and the other Federal health care programs. Federal expenditures for these programs have skyrocketed in recent years and current HCFA projections indicate that the Medicare trust fund, which pays for Medicare part A costs, will become insolvent shortly after the turn of the century. Medicare part B, Medicaid, and other Federal health programs have no dedicated trust fund and contribute with increasing severity each year to the deficit spending about which we here in Congress complain so vehemently. It is now clear to everyone that changes in our Federal health care programs are inevitable if we wish to control and reduce the deficit.

My Republican colleagues have proposed to cut Medicare and Medicaid by \$255-\$275 billion over the next 5 years. As much as I admire the Republicans' commitment to reducing Government waste and inefficiency, I do not believe we should seek to reduce the deficit by cutting health care for our most vulnerable citizens: seniors, children, and the disabled.

And so I now proposed a better idea. The Centers for Disease Control tell us that Federal health care expenditures for diseases attributable to tobacco products are currently about \$20 billion per year. While tobacco companies receive approximately \$100 billion in annual revenues and earn huge profits from the sale of their deadly products, taxpayers are forced to pay the health care bills for the diseases those products cause. This is outrageous and is exactly backwards from what logic and justice tell us it ought to be. We need to turn this system on its head. We should be sending the Federal health care bills for tobacco-related diseases to the tobacco companies rather than to the taxpayers.

It is time to get serious about reducing the deficit. And the right way to reduce the deficit is not to reduce health care programs for people in need; rather it is to insist that the tobacco industry accept financial responsibility for the problems it knowingly causes. My bill does this.

My message to the Republican leadership is simple: The tobacco industry must be a part of any deficit reduction package. Much has been said in this Chamber about the need to reduce the Federal deficit, and the need for individuals to take responsibility for their actions. Now it is time for the tobacco industry to accept responsibility for its actions. No member of this body who wishes to remain credible on deficit reduction can continue to ignore the extraordinary impact of this one industry on Government spending. There is no choice: either we vote to make the tobacco industry part of the solution to the deficit problem, or we abandon any pretense of being serious on this issue.

My bill will reduce the deficit by \$100 billion over 5 years. That is approximately \$1,000 for every taxpayer in the country. It does this by directing the Secretary of Health and Human Services to annually determine the amount of Federal health care expenditures for diseases attributable to tobacco products and then authorizes the Secretary of the Treasury to bill each tobacco company for its share of those expenditures, based on each company's share of the market for tobacco products. My bill does not penalize smokers nor does it restrict smoking in any way. It simply demands that those tobacco companies whose products are the direct and immediate cause of many billions of dollars of Federal health care costs pay their fair share of those costs.

The real question is: Who will pay for the Federal health care costs for diseases attributable to tobacco products? Will it be the American taxpayers who are drowning in our national debt, or will it be the tobacco companies who are swimming in profits? With this legislation, I choose to side with the taxpayers and I hope my Senate colleagues will do so as well.

Mr. President, I ask unanimous consent to have the text of this bill, a fact sheet, and a letter of support from the Coalition or Smoking or Health printed in the RECORD.

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

S. 597

*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 "Medicare/Medicaid Solvency Act".

**SEC. 2. FINDINGS AND PURPOSE.**

- (a) FINDINGS.—The Congress finds that—
- (1) illnesses and diseases that result from the use of tobacco products cost Federal Government health care programs billions of dollars, including \$10,200,000,000 in the medicare program, \$5,100,000,000 in the medicaid program, and \$4,700,000,000 in other Federal health programs in fiscal year 1993;
  - (2) in April 1994, the trustees of the medicare trust funds concluded that such funds may be insolvent in 2001;
  - (3) such insolvency would severely affect the ability of the medicare trust funds to continue to protect the health of America's senior citizens; and
  - (4) the medicare population has a significantly higher risk of contracting illnesses

and diseases that result from the use of tobacco products than younger age groups.

(b) PURPOSE.—The purpose of this Act is to insure the long-term viability of the medicare, medicaid, and other federal health programs by establishing a dedicated trust fund to reimburse the government for the health care costs of individuals with diseases attributable to the use of tobacco products.

**SEC. 3. TOBACCO PRODUCT MANUFACTURERS CONTRIBUTION TO HEALTH CARE COST REIMBURSEMENT TRUST FUND.**

(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by adding at the end the following new subtitle:

**"Subtitle K—Tobacco Product Manufacturers Contribution to Health Care Cost Reimbursement Trust Fund.**

**"CHAPTER 100. Tobacco Product Manufacturers Contribution to Health Care Cost Reimbursement Trust Fund.**

**"CHAPTER 100—TOBACCO PRODUCT MANUFACTURERS CONTRIBUTION TO HEALTH CARE COST REIMBURSEMENT TRUST FUND.**

"Sec. 9801. Establishment of Tobacco Product Health Care Cost Reimbursement Trust Fund.

"Sec. 9802. Contributions to Trust Fund.

**"SEC. 9801. ESTABLISHMENT OF TOBACCO PRODUCT HEALTH CARE COST REIMBURSEMENT TRUST FUND.**

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Tobacco Product Health Care Cost Reimbursement Trust Fund' (hereafter referred to in this chapter as the 'Trust Fund'), consisting of such amounts as may be appropriated or transferred to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—The Secretary shall transfer to the Trust Fund an amount equivalent to contributions received in the Treasury under section 9802.

"(c) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—

"(1) IN GENERAL.—The amounts in the Trust Fund shall be available in each fiscal year (beginning with fiscal year 1997), as provided by appropriation Acts, to the Secretary—

"(A) to distribute to each particular Secretary responsible for the expenditure of Federal funds for that fiscal year under title XVIII or XIX of the Social Security Act or any other Federal program for the payment of health care costs of individuals with diseases attributable to the use of tobacco products, and

"(B) to pay all expenses of administration incurred by the Department of the Treasury in administering this chapter and the Trust Fund.

"(2) DETERMINATION OF DISTRIBUTION.—Each particular Secretary described in paragraph (1)(A) shall submit to the Secretary of the Treasury such documentation as the Secretary requires to determine the appropriate distribution under paragraph (1)(A).

"(3) USE OF DISTRIBUTIONS.—In any case in which an expenditure of Federal funds described in paragraph (1)(A) was made from a trust fund, the distribution under paragraph (1)(A) reimbursing such expenditure shall be made to such trust fund.

"(4) STATE MEDICAID EXPENDITURES.—For purposes of this section, the Secretary of Health and Human Services shall include in the Secretary's submission under paragraph (2) the expenditure of State funds under State plans under title XIX of the Social Security Act for the payment of health care



costs of individuals with diseases attributable to the use of tobacco products, and to the extent the distribution to the Secretary under paragraph (1)(A) is attributable to such expenditure, shall reimburse the various States for such expenditures.

“(d) ADMINISTRATIVE RULES.—For purposes of this section, the rules of subchapter B of chapter 98 shall apply.

“(e) TOBACCO PRODUCTS.—For purposes of this chapter, the term ‘tobacco products’ has the meaning given such term by section 5702(c).

**“SEC. 9802. CONTRIBUTIONS TO TRUST FUND.**

“(a) ANNUAL PREMIUMS.—Each manufacturer of tobacco products shall pay to the Trust Fund, an annual contribution equal to the product of the amount determined under subsection (b) for each fiscal year (beginning with fiscal year 1997) and the manufacturer’s market share percentage determined under subsection (c) for the calendar year preceding such fiscal year.

“(b) DETERMINATION OF FUNDING LEVELS.—

“(1) IN GENERAL.—Not later than the date the President is required to submit the budget of the United States for a fiscal year to Congress, the Director of the Centers for Disease Control and Prevention, after consultation with the Directors of the National Institutes of Health, the National Cancer Institute, and the National Heart, Lung, and Blood Institute, shall make an estimate of—

“(A) the amount of Federal expenditures for that fiscal year under titles XVIII and XIX of the Social Security Act and other Federal programs, and

“(B) the amount of State expenditures for that fiscal year under State plans under title XIX of the Social Security Act,

for payment of health care costs of individuals with diseases attributable to the use of tobacco products.

“(2) DISCLOSURE OF ESTIMATE METHODOLOGY.—The Director of the Centers for Disease Control and Prevention shall publish in the Federal Register all relevant documentation considered and the methodology used in making the estimate described in paragraph (1).

“(3) REPORT IN BUDGET.—The President shall include the estimate described in paragraph (1) in the budget for the fiscal year.

“(c) MARKET SHARE PERCENTAGE.—

“(1) IN GENERAL.—Not later than July 1, the Secretary shall determine and publish the market share percentage for the preceding calendar year for each manufacturer of tobacco products by determining such manufacturer’s percentage share of the total amount of tobacco products sold in the United States during such calendar year.

“(2) INFORMATION.—Not later than April 1, each manufacturer of tobacco products shall furnish to the Secretary such information as the Secretary may require to determine any market share percentage under this subsection for the preceding calendar year.

“(d) PAYMENT OF CONTRIBUTIONS.—The annual contribution under subsection (a) for any fiscal year shall be payable in 12 monthly installments, due on the twenty-fifth day of each calendar month in the fiscal year.

“(e) ENFORCEMENT.—For penalties and other general and administrative provisions applicable to this section, see subtitle F.

“(f) MANUFACTURER OF TOBACCO PRODUCTS.—For purposes of this section, the term ‘manufacturer of tobacco products’ has the meaning given such term by section 5702(d).”

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

MEDICARE/MEDICAID SOLVENCY ACT—  
SUMMARY

Federal Health Care Costs Associated with Tobacco Use:

Medicare, \$10.2 billion; Medicaid, \$5.1 billion; Other Fed., \$4.7 billion.

Total: \$20.0 billion (Per Year—1993 CDC Figures).

MEDICARE/MEDICAID SOLVENCY ACT

A special HHS panel will determine the total amount of Federal funds spent on tobacco related illnesses each year.

The Secretary of Treasury shall collect a special annual levy from each tobacco company, based on market share, to recoup all the Federal funds spent on treating tobacco related illnesses.

Any State Medicaid funds recouped under this bill would be returned to state treasuries.

This legislation is similar to the Black Lung Trust Fund which collects a levy on mined coal to pay for the health care costs associated with Black Lung Disease.

This legislation will help cut the deficit by approximately \$100 billion over the next five years and will help ensure the long-term viability of the Medicare trust fund, which is likely to be insolvent by the year 2001.

COALITION ON SMOKING OR HEALTH,  
Washington, DC, March 21, 1995.

Hon. FRANK R. LAUTENBERG,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR LAUTENBERG: We commend you for your leadership in introducing your bill to assess the tobacco industry for the health care costs it imposes on American taxpayers. We agree with you that it is more appropriate for the tobacco industry to pay these costs than innocent taxpayers.

Your proposal would be one of the most important public health steps this country has ever taken. It would conserve taxpayer dollars, discourage hundreds of thousands of teenagers from becoming addicted to tobacco and save about two million lives over time.

You have our full support. We look forward to working with you and your staff.

Sincerely,

SCOTT D. BALLIN,  
Vice President for Public Affairs,  
American Heart Association.  
FRAN DU MELLE,  
Deputy Managing Director,  
American Lung Association.  
MICHAEL F. HERON,  
National Vice President for Public Affairs,  
American Cancer Society.

By Mr. BRADLEY (for himself  
and Mr. LAUTENBERG):

S. 598. A bill to amend the Internal Revenue Code of 1986 to increase the excise taxes on tobacco products, and to use a portion of the resulting revenues to fund a trust fund for tobacco diversification, and for other purposes; to the Committee on Finance.

TOBACCO CONSUMPTION REDUCTION AND HEALTH  
IMPROVEMENT ACT

Mr. BRADLEY. Mr. President, I rise today to introduce legislation that takes a bold step toward reducing the devastating health and financial effects of tobacco use in this country.

Mr. President, in both 1991 and 1993, I rose before this Chamber to talk about the destructive effects of tobacco use and to introduce legislation that would begin to redress these effects. Since my 1993 statement, almost 1 million more people have died from tobacco-related illnesses. The time to stop this travesty is now, and to do that I am introducing legislation that will raise the Federal excise tax on tobacco by a fac-

tor of five, which translates to an increase of \$1.00 per pack of cigarettes.

Over 30 years after the 1964 Surgeon General’s report sounded the health alarm for smoking, approximately one-quarter of the Nation’s adults remain addicted to cigarettes. Smoking now kills an estimated 419,000 Americans every year—more than alcohol, heroin, crack, automobile and airplane accidents, homicides, suicides, and AIDS combined. Furthermore, environmental tobacco smoke—smoke from other people’s cigarettes—causes tens of thousands of additional deaths. This year, one out of every five Americans who dies will die from tobacco use.

If these statistics were not staggering enough, each year a growing number of teenagers start smoking, even though selling cigarettes to minors is illegal. Virtually all new users of tobacco are teenagers or younger, and every 30 seconds a child in the United States smokes for the first time. The efforts that have been waged by public health officials against youth smoking have been dwarfed by the billions spent by the industry on advertising aimed at children and teenagers. The addiction of children to tobacco, and consequently the long-term effects, is a moral disgrace.

A spokesman for the Tobacco Institute, a lobbying group for the tobacco industry, was quoted as saying with regard to smoking:

This is a day and age when we ultimately have to recognize that adults are going to indulge in the legal pleasures that others don’t approve of.

My response to the industry is: This legal pleasure kills more than one out of three long-term users when used as intended. This legal pleasure has been determined to be a major cause of heart disease, lung cancer, emphysema, chronic bronchitis, low-birthweight babies, strokes, and a variety of other diseases. This legal pleasure is as addictive as cocaine or heroin. They are right that I don’t approve of the effects of this legal pleasure, and for good reason.

Furthermore, this legal pleasure contributes substantially to health care costs every year. According to the Centers for Disease Control and Prevention, health care expenditures caused directly by smoking totaled \$50 billion in 1993, and \$22 billion of those costs were paid by Government funds. According to a former Secretary of the Department of Health, Education, and Welfare, smoking is the largest single drain on the Medicare trust fund.

One of the most effective things we can do to control health care costs is to end smoking. I view tobacco taxes as compensation for a portion of the health care costs burden we are forced to bear, thanks to smoking. It is more than fair to ask smokers to share some of the costs which they help to create.

Some people may think that the tobacco tax has already been raised substantially in recent years, and therefore that it is unfair to raise it again. This is a misconception. Despite the fact that the average price of a pack of cigarettes has risen by more than \$1.10 since 1982, only 8 cents of this increase is due to a rise in the Federal excise tax. And even the dollar-per-pack increase which I am proposing will generate only about \$12 billion a year in additional income—far less than the \$50 billion in health care costs caused directly by tobacco in 1 year.

But this bill has an even more important goal than recovering health care expenditures. It will help decrease tobacco consumption significantly. Conservative estimates predict that a 10 percent increase in the price of cigarettes will reduce overall smoking by about 4 percent. And for kids, who are more price sensitive than adults, the impact is even greater—every 10-percent increase in cigarette prices decreases demand among children and teenager by as much as 14 percent.

Mr. President, despite the many advantages of this legislation, I am not blind to the fact that there are those whom it will impact negatively—particularly, tobacco farmers. By no means do I think that the potential losses to these farmers are an adequate justification for making no efforts to reduce tobacco consumption. But because I realize the impact of an increased excise tax on these farmers, my bill puts 3 percent of all revenues it generates into a special trust fund to be used to help tobacco framers substitute new crops in place of tobacco.

Mr. President, these days everyone is looking for a way to reduce Government spending on health care. Almost all of the actions under consideration will be painful. In contrast, increasing the tobacco tax is one of the wisest and most beneficial ways of addressing this problem. It will save billions of dollars in health care costs, not only for the Federal Government but for private insurers and citizens across the country. It will save countless lives. It will decrease unnecessary suffering. It will discourage millions of children and teenagers from ever becoming addicted to tobacco. And poll after poll has found that public support is high for a significant hike in the tobacco tax—and this support is consistent across people from all geographic and economic backgrounds.

Mr. President, this bill is good health policy. It is good economic policy. And it is key to helping our children and teenagers achieve a tobacco-free future. I urge my colleagues to join me in support of this bill.

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

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

S. 598

*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 “Tobacco Consumption Reduction and Health Improvement Act of 1995”.

**SEC. 2. INCREASE IN TAXES ON TOBACCO PRODUCTS.**

(a) IN GENERAL.—

(1) CIGARS.—Subsection (a) of section 5701 of the Internal Revenue Code of 1986 (relating to rate of tax on cigars) is amended—

(A) by striking “\$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 and 1992)” in paragraph (1) and inserting “\$5.8125 per thousand”; and

(B) by striking paragraph (2) and inserting the following new paragraph:

“(2) LARGE CIGARS.—On cigars weighing more than 3 pounds per thousand, a tax equal to 65.875 percent of the price for which sold but not more than \$155 per thousand.”

(2) CIGARETTES.—Subsection (b) of section 5701 of such Code (relating to rate of tax on cigarettes) is amended—

(A) by striking “\$12 per thousand (\$10 per thousand on cigarettes removed during 1991 and 1992)” in paragraph (1) and inserting “\$62 per thousand”; and

(B) by striking “\$25.20 per thousand (\$21 per thousand on cigarettes removed during 1991 and 1992)” in paragraph (2) and inserting “\$130.20 per thousand”.

(3) CIGARETTE PAPERS.—Subsection (c) of section 5701 of such Code (relating to rate of tax on cigarette papers) is amended by striking “0.75 cent (0.625 cent on cigarette papers removed during 1991 or 1992)” and inserting “3.875 cents”.

(4) CIGARETTE TUBES.—Subsection (d) of section 5701 of such Code (relating to rate of tax on cigarette tubes) is amended by striking “1.5 cents (1.25 cents on cigarette tubes removed during 1991 or 1992)” and inserting “7.75 cents”.

(5) SNUFF.—Paragraph (1) of section 5701(e) of such Code (relating to rate of tax on smokeless tobacco) is amended by striking “36 cents (30 cents on snuff removed during 1991 or 1992)” and inserting “\$1.86”.

(6) CHEWING TOBACCO.—Paragraph (2) of section 5701(e) of such Code is amended by striking “12 cents (10 cents on chewing tobacco removed during 1991 or 1992)” and inserting “62 cents”.

(7) PIPE TOBACCO.—Subsection (f) of section 5701 of such Code (relating to rate of tax on pipe tobacco) is amended by striking “67.5 cents (56.25 cents on chewing tobacco removed during 1991 or 1992)” and inserting “\$3.4875”.

(8) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to cigars, cigarettes, cigarette paper, cigarette tubes, snuff, chewing tobacco, and pipe tobacco removed after December 31, 1995.

(b) IMPOSITION OF EXCISE TAX ON MANUFACTURE OR IMPORTATION OF ROLL-YOUR-OWN TOBACCO.—

(1) IN GENERAL.—Section 5701 of the Internal Revenue Code of 1986 (relating to rate of tax) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

“(g) ROLL-YOUR-OWN TOBACCO.—On roll-your-own tobacco, manufactured in or imported into the United States, there shall be imposed a tax of \$1.86 per pound (and a proportionate tax at the like rate on all fractional parts of a pound).”

(2) ROLL-YOUR-OWN TOBACCO.—Section 5702 of such Code (relating to definitions) is amended by adding at the end the following new subsection:

“(p) ROLL-YOUR-OWN TOBACCO.—The term ‘roll-your-own tobacco’ means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.”

(3) TECHNICAL AMENDMENTS.—

(A) Subsection (c) of section 5702 of such Code is amended by striking “and pipe tobacco” and inserting “pipe tobacco, and roll-your-own tobacco”.

(B) Subsection (d) of section 5702 of such Code is amended—

(i) in the material preceding paragraph (1), by striking “or pipe tobacco” and inserting “pipe tobacco, or roll-your-own tobacco”, and

(ii) by striking paragraph (1) and inserting the following new paragraph:

“(1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person's own personal consumption or use, and”.

(C) The chapter heading for chapter 52 of such Code is amended to read as follows:

**“CHAPTER 52—TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES”.**

(D) The table of chapters for subtitle E of such Code is amended by striking the item relating to chapter 52 and inserting the following new item:

“CHAPTER 52. Tobacco products and cigarette papers and tubes.”

(4) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to roll-your-own tobacco removed (as defined in section 5702(p) of the Internal Revenue Code of 1986, as added by this subsection) after December 31, 1995.

(B) TRANSITIONAL RULE.—Any person who—

(i) on the date of the enactment of this Act is engaged in business as a manufacturer of roll-your-own tobacco or as an importer of tobacco products or cigarette papers and tubes, and

(ii) before January 1, 1996, submits an application under subchapter B of chapter 52 of such Code to engage in such business,

may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of such chapter 52 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit under such chapter 52 to engage in such business.

(c) FLOOR STOCKS.—

(1) IMPOSITION OF TAX.—On cigars, cigarettes, cigarette paper, cigarette tubes, snuff, chewing tobacco, and pipe tobacco manufactured in or imported into the United States which is removed before January 1, 1996, and held on such date for sale by any person, there shall be imposed the following taxes:

(A) SMALL CIGARS.—On cigars, weighing not more than 3 pounds per thousand, \$4.6875 per thousand.

(B) LARGE CIGARS.—On cigars, weighing more than 3 pounds per thousand, a tax equal to 53.125 percent of the price for which sold, but not more than \$125 per thousand.

(C) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, \$50 per thousand.

(D) LARGE CIGARETTES.—On cigarettes, weighing more than 3 pounds per thousand, \$105 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¼ inches, or fraction thereof, of the length of each as one cigarette.

(E) CIGARETTE PAPERS.—On cigarette papers, 3.125 cents for each 50 papers or fractional part thereof; except that, if cigarette papers measure more than 6½ inches in length, they shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.

(F) CIGARETTE TUBES.—On cigarette tubes, 6.25 cents for each 50 tubes or fractional part thereof; except that, if cigarette tubes measure more than 6½ inches in length, they shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.

(G) SNUFF.—On snuff, \$1.50 per pound and a proportionate tax at the like rate on all fractional parts of a pound.

(H) CHEWING TOBACCO.—On chewing tobacco, 50 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.

(I) PIPE TOBACCO.—On pipe tobacco, \$2.8125 per pound and a proportionate tax at the like rate on all fractional parts of a pound.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding cigars, cigarettes, cigarette paper, cigarette tubes, snuff, chewing tobacco, and pipe tobacco on January 1, 1996, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be treated as a tax imposed under section 5701 of the Internal Revenue Code of 1986 and shall be due and payable on February 15, 1996, in the same manner as the tax imposed under such section is payable with respect to cigars, cigarettes, cigarette paper, cigarette tubes, snuff, chewing tobacco, and pipe tobacco removed on January 1, 1996.

(3) CIGARS, CIGARETTES, CIGARETTE PAPER, CIGARETTE TUBES, SNUFF, CHEWING TOBACCO, AND PIPE TOBACCO.—For purposes of this subsection, the terms "cigar", "cigarette", "cigarette paper", "cigarette tubes", "snuff", "chewing tobacco", and "pipe tobacco" shall have the meaning given to such terms by subsections (a), (b), (e), and (g), paragraphs (2) and (3) of subsection (n), and subsection (o) of section 5702 of the Internal Revenue Code of 1986, respectively.

(4) EXCEPTION FOR RETAIL STOCKS.—The taxes imposed by paragraph (1) shall not apply to cigars, cigarettes, cigarette paper, cigarette tubes, snuff, chewing tobacco, and pipe tobacco in retail stocks held on January 1, 1996, at the place where intended to be sold at retail.

(5) FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (19 U.S.C. 81a et seq.) or any other provision of law—

(A) cigars, cigarettes, cigarette paper, cigarette tubes, snuff, chewing tobacco, and pipe tobacco—

(i) on which taxes imposed by Federal law are determined, or customs duties are liquidated, by a customs officer pursuant to a request made under the first proviso of section 3(a) of the Act of June 18, 1934 (19 U.S.C. 81c(a)) before January 1, 1996, and

(ii) which are entered into the customs territory of the United States on or after January 1, 1996, from a foreign trade zone, and

(B) cigars, cigarettes, cigarette paper, cigarette tubes, snuff, chewing tobacco, and pipe tobacco which—

(i) are placed under the supervision of a customs officer pursuant to the provisions of the second proviso of section 3(a) of the Act of June 18, 1934 (19 U.S.C. 81c(a)) before January 1, 1996, and

(ii) are entered into the customs territory of the United States on or after January 1, 1996, from a foreign trade zone,

shall be subject to the tax imposed by paragraph (1) and such cigars, cigarettes, cigarette paper, cigarette tubes, snuff, chewing tobacco, and pipe tobacco shall, for purposes of paragraph (1), be treated as being held on January 1, 1996, for sale.

(d) ESTABLISHMENT OF TRUST FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following new section:

"SEC. 9512. TOBACCO CONVERSION TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Tobacco Conversion Trust Fund" (hereafter referred to in this section as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—The Secretary shall transfer to the Trust Fund an amount equivalent to 3 percent of the net increase in revenues received in the Treasury attributable to the amendments made to section 5701 by subsections (a) and (b) of section 2 and the provisions contained in section 2(c) of the Tobacco Consumption Reduction and Health Improvement Act of 1995, as estimated by the Secretary.

"(c) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—Amounts in the Trust Fund shall be available to the Secretary of Agriculture, as provided by appropriation Acts, for making expenditures for purposes of—

"(1) providing assistance to farmers in converting from tobacco to other crops and improving the access of such farmers to markets for other crops, and

"(2) providing grants or loans to communities, and persons involved in the production or manufacture of tobacco or tobacco products, to support economic diversification plans that provide economic alternatives to tobacco to such communities and persons.

The assistance referred to in paragraph (1) may include government purchase of tobacco allotments for purposes of retiring such allotments from allotment holders and farmers who choose to terminate their involvement in tobacco production."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end the following new item:

"Sec. 9512. Tobacco Conversion Trust Fund."

#### TOBACCO CONSUMPTION REDUCTION AND HEALTH IMPROVEMENT ACT OF 1995—SUMMARY

This bill provides for an increase of the Federal excise tax on tobacco products. It raises the excise tax five-fold on cigarettes, from 24 cents to \$1.24 per pack. The excise tax for all other tobacco products will also be increased five-fold. This bill will generate approximately \$12 billion in additional Federal revenues each year.

The reasons for this increase are clear. First, it allows us to use the most potent weapon we have at our disposal to discourage smoking—raising the price of tobacco. This will allow us to specifically direct our attention to a vulnerable and price sensitive group—children and teenagers. It is also smart tax policy—it taxes what we want to discourage so we can cut taxes on the things we want to encourage. Second, the Centers for Disease Control and the Office of Technology Assessment have estimated the cost to society of cigarette smoking at over \$100 billion annually; \$22 billion of these costs were paid by government funds. It is more than fair to ask smokers to shoulder some of these costs.

By Mr. SANTORUM:

S. 599. A bill to eliminate certain welfare with respect to fugitive felons and probation and parole violators, and to facilitate sharing of information with law enforcement officers, and for other purposes; to the Committee on Finance.

#### FUGITIVE FELONS AND WELFARE REFORM

Mr. SANTORUM. Mr. President, like most of my colleagues in the Senate, I have followed with interest the activity in the House regarding welfare reform. It is with a unique perspective that I have viewed the House action having been at the center of the House's welfare reform debate last year and having been deeply involved in the direction and decision making of the House Republican platform.

During the 103d Congress, I served as the ranking Republican member on the Ways and Means Human Resources Subcommittee. Preceding me in that capacity is quite a list of dedicated ranking members who all have and continue to make a very significant contribution to the welfare reform discussions—Senator HANK BROWN, Gov. Carroll Campbell, and the current chairman of that subcommittee, Congressman CLAY SHAW. As the Senate now prepares for its own activity on welfare reform, I hope to continue to be equally active on this side in setting that direction.

It is hard to undertake any discussion on welfare reform without realizing the multitude of issues, programs, problems, and complexities that are involved. And while my activity in the House covered many aspects of welfare and welfare-related programs, one such issue that I wanted to discuss today pertains to fugitive felons receiving welfare benefits.

Under current law, barriers exist to information sharing between law enforcement officials and social service agencies. While few States have defined criteria where the exchange of information can occur between police and social service offices, most States have not. And with the reality of fugitives receiving public assistance, it makes sense to provide police access to welfare records that indicate the whereabouts of wanted individuals, without violating the privacy language and rights of welfare beneficiaries.

In the 103d Congress, I introduced legislation (H.R. 4657) which establishes criteria for information sharing between law enforcement officials and social service agencies, allows cross reference checks between the Immigration and Naturalization Service and law enforcement with regard to illegal immigration, and sets a Federal definition of temporarily absent in instances where children of beneficiaries are away from the home for extended periods of time.

The information and record referencing under the bill is limited to individuals for whom warrants are outstanding. The bill permits access by law enforcement to information when a warrant is produced, and it is found that

the individual is receiving benefits. Someone who is not a fugitive felon would remain fully protected from such inquiries under the Welfare Privacy Act.

Is there a need for such information sharing? I'd like to submit for the RECORD a copy of a news article from Pittsburgh Tribune-Review on July 29, 1994. The article describes a situation in which an individual wanted for an 1984 slaying in Pittsburgh, had been on the run and receiving Federal welfare benefits under his real name. Likewise, a situation last year in Cleveland, OH, highlighted the difficulties that exist in tracking fugitives and trying to interface with social service agencies. In that instance, Cuyahoga County officials were denied access to records as they attempted to cross reference outstanding fugitive warrants with social service records.

It is absurd that taxpayers are subsidizing a fugitive's freedom when checking a recipient's address could lead to their apprehension. Currently, the National Crime Information Center lists 397,000 outstanding fugitive warrants nationwide—warrants being defined as "felonies" or "high misdemeanors" in cases where States agree to extradition. Several police groups have projected that as many as 75 percent of those fugitives are receiving public assistance. Additionally, as I have discovered with Pennsylvania, the extradition stipulation for warrants in the NCIC data bank actually shields the number of outstanding warrants in a given State. You too may find that your State figures are significant.

Last week, I met with the Philadelphia Fugitive Task Force to discuss the practical effects of the legislation. In confronting their 50,000 outstanding fugitive warrants, they feel strongly that the bill provides them yet another tool in their investigative efforts. Likewise, the measure has received similar comment from the Federal Bureau of Investigation, the National Association of Chiefs of Police, the Fraternal Order of Police, and the Law Enforcement Alliance of America.

While the fugitive felon situation generally involves the parent or an adult, the bill also addresses ambiguity in the law with regard to children. Under current law, a mother can continue to receive AFDC payment for a child even if that child is temporarily absent from the home. Depending on their definition, States have the authority to end AFDC payments if the child is not going to physically be in the home for an extended period of time. Again, like the fugitive felon issue, Federal and State law remains undefined in most cases for temporarily absent. My bill would federally define temporarily absent for those instances where juveniles are away from the home as a result of a court decision or criminal activity.

Mr. President, while this legislation today may serve as my first official measure for the 104th Congress in the area of welfare reform, it is by no

means the sole measure I will be introducing to the Senate. In the weeks ahead, I plan on introducing proposals covering child support enforcement, supplemental security income, and a more comprehensive proposal speaking to welfare reform in its entirety. Additionally, I plan on being very active within the Agriculture Committee in the area of nutrition programs and examining the reform options available to us, including a review of the block grant concept.

I welcome and encourage my colleagues' interest in this and other initiatives.

Mr. President, I ask unanimous consent that a copy of the bill and a copy of the article I referenced earlier be printed in the RECORD.

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

S. 599

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

**SECTION 1. ELIMINATION OF WELFARE BENEFITS WITH RESPECT TO FUGITIVE FELONS AND PROBATION AND PAROLE VIOLATORS.**

(a) MEDICAID PROGRAM.—

(1) INELIGIBILITY FOR MEDICAL ASSISTANCE.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(A) by striking "and" at the end of paragraph (61);

(B) by striking the period at the end of paragraph (62) and inserting "; and"; and

(C) by inserting after paragraph (62) the following new paragraph:

"(63) provide that no medical assistance shall be available under the plan to any individual during any period during which the individual—

"(A) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) which, under the laws of the place from which the recipient is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor); or

"(B) is violating a condition of probation or parole imposed under Federal or State law.".

(2) EXCHANGE OF INFORMATION WITH LAW ENFORCEMENT AGENCIES.—Section 1902(a)(7) of such Act (42 U.S.C. 1396a(a)(7)) is amended by striking the semicolon and inserting the following: ", except that nothing in this paragraph shall be construed to prevent the State agency from furnishing a Federal, State, or local law enforcement officer with the current address, Social Security number and photograph (if applicable) of a recipient at the officer's request if the officer notifies the agency that—

"(A) the recipient is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) which, under the laws of the place from which the recipient is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under Federal or State law,

"(B) the location or apprehension of the recipient is within the officer's official duties, and

"(C) the request is made in the proper exercise of the officer's official duties;".

(b) AFDC PROGRAM.—

(1) INELIGIBILITY FOR AID.—Section 402(a) of the Social Security Act (42 U.S.C. 602(a)) is amended—

(A) by striking "and" at the end of paragraph (44);

(B) by striking the period at the end of paragraph (45) and inserting "; and"; and

(C) by inserting after paragraph (45) the following new paragraph:

"(46) provide that aid shall not be payable under the State plan with respect to any individual during any period during which the individual is—

"(A) fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) which, under the laws of the place from which the individual is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor); or

"(B) violating a condition of probation or parole imposed under Federal or State law.".

(2) EXCHANGE OF INFORMATION WITH LAW ENFORCEMENT AGENCIES.—Section 402(a)(9) of such Act (42 U.S.C. 602(a)(9)) is amended by striking "State or local" and all that follows through "official duties" and inserting "Federal, State, or local law enforcement officer, upon such officer's request, with the current address, Social Security number and photograph (if applicable) of any recipient if the officer furnishes the agency with such recipient's name and notifies the agency that such recipient is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) which, under the laws of the place from which the recipient is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under Federal or State law, or has information that is necessary for the officer to conduct the officer's official duties, that the location or apprehension of such recipient is within the officer's official duties".

(c) FOOD STAMP PROGRAM.—

(1) INELIGIBILITY FOR FOOD STAMPS.—Section 6 of the Food Stamp Act of 1977 (7 U.S.C. 2015) is amended by adding at the end the following new subsection:

"(i) No member of a household who is otherwise eligible to participate in the food stamp program shall be eligible to participate in the program as a member of that or any other household during any period during which the individual is—

"(I) fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) which, under the laws of the place from which the individual is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor); or

"(2) violating a condition of probation or parole imposed under Federal or State law.".

(2) EXCHANGE OF INFORMATION WITH LAW ENFORCEMENT OFFICERS.—Section 11(e)(8) of such Act (7 U.S.C. 2020(e)(8)) is amended—

(A) by striking "and (C)" and inserting "(C)"; and

(B) by inserting before the semicolon at the end the following: ", and (D) notwithstanding any other provision of law, the address, Social Security number and photograph (if applicable) of a member of a household shall be made available, on request, to a Federal, State, or local law enforcement officer if the officer furnishes the State agency with the name of the member and notifies the agency that (i) the member (I) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) which, under the laws of the place from which the individual is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under Federal or State law, or (II) has information that is necessary for the officer to conduct the officer's official duties, (ii) the location or apprehension of the member is within the official duties of the officer,

and (iii) the request is made in the proper exercise of the officer's official duties".

(d) SSI PROGRAM.—

(1) INELIGIBILITY FOR AID.—Section 1611(e) of the Social Security Act (42 U.S.C. 1382(e)) is amended by inserting after paragraph (3) the following:

"(4) A person shall not be an eligible individual or eligible spouse for purposes of this title with respect to any month if, throughout the month, the person is—

"(A) fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) which, under the laws of the place from which the person is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor); or

"(B) violating a condition of probation or parole imposed under Federal or State law.".

(2) EXCHANGE OF INFORMATION WITH LAW ENFORCEMENT AGENCIES.—Section 1631(e) of such Act (42 U.S.C. 1383(e)) is amended—

(A) by redesignating the paragraphs (6) and (7) inserted by sections 206(d)(2) and 206(f)(1) of the Social Security Independence and Programs Improvement Act of 1994 (Public Law 103-296; 108 Stat. 1514, 1515) as paragraphs (7) and (8), respectively; and

(B) by adding at the end the following new paragraph:

"(9) Notwithstanding any other provision of law, the Secretary shall furnish any Federal, State, or local law enforcement officer, upon such officer's request, with the current address, Social Security number and photograph (if applicable) of any recipient of benefits under this title, if the officer furnishes the agency with such recipient's name and notifies the agency that—

"(A) such recipient—

"(i) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) which, under the laws of the place from which the person is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor);

"(ii) is violating a condition of probation or parole imposed under Federal or State law; or

"(iii) has information that is necessary for the officer to conduct the officer's official duties;

"(B) the location or apprehension of such recipient is within the officer's official duties; and

"(C) the request is made in the proper exercise of the officer's official duties.".

(e) HOUSING PROGRAMS.—

(1) ELIGIBILITY FOR ASSISTANCE.—The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended—

(A) in section 6(j)—

(i) in paragraph (5), by striking "and" at the end;

(ii) in paragraph (6), by striking the period at the end and inserting "; and"; and

(iii) by inserting immediately after paragraph (6) the following new paragraph:

"(7) provide that it shall be cause for immediate termination of the tenancy of a public housing tenant if such tenant—

"(A) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) which, under the laws of the place from which the tenant is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor); or

"(B) is violating a condition of probation or parole imposed under Federal or State law."; and

(B) in section 8(d)(1)(B)—

(i) in clause (iii), by striking "and" at the end;

(ii) in clause (iv), by striking the period at the end and inserting "; and"; and

(iii) by adding after clause (iv) the following new clause:

"(v) it shall be cause for termination of the tenancy of a tenant if such tenant—

"(I) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) which, under the laws of the place from which the tenant is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor); or

"(II) is violating a condition of probation or parole imposed under Federal or State law.".

(2) PROVISION OF INFORMATION TO LAW ENFORCEMENT AGENCIES.—Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following new section:

**"SEC. 27. PROVISION OF INFORMATION TO LAW ENFORCEMENT AND OTHER AGENCIES.**

"(a) EXCHANGE OF INFORMATION WITH LAW ENFORCEMENT AGENCIES.—Notwithstanding any other provision of law, each public housing agency that enters into a contract for assistance under section 6 or 8 of this Act with the Secretary shall furnish to any Federal, State, or local law enforcement agency, upon request, the current address, Social Security number and photograph (if applicable) of any recipient of assistance under this Act if the law enforcement agency—

"(1) furnishes the public housing agency with such recipient's name; and

"(2) notifies such agency that—

"(A) such recipient—

"(i) is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) which, under the laws of the place from which the tenant is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor);

"(ii) is violating a condition of probation or parole imposed under Federal or State law; or

"(iii) has information that is necessary for the officer to conduct the officer's official duties;

"(B) the location or apprehension of such recipient is within the official duties of the agency; and

"(C) the request is made in the proper exercise of the officer's official duties.".

**SEC. 2. NOTICE TO IMMIGRATION AND NATURALIZATION SERVICE OF ILLEGAL ALIENS.**

(a) MEDICAID PROGRAM.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (61);

(2) by striking the period at the end of paragraph (62) and inserting "; and"; and

(3) by inserting after paragraph (62) the following new paragraph:

"(63) provide that the State agency shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the agency knows is unlawfully in the United States.".

(b) AFDC PROGRAM.—Section 402(a)(9) of the Social Security Act (42 U.S.C. 602(a)(9)) is amended—

(1) by redesignating subparagraphs (A), (B), (C), (D), and (E) as clauses (i), (ii), (iii), (iv), and (v), respectively;

(2) by striking "(9)" and inserting "(9)(A)";

(3) in clause (v) (as so redesignated), by striking "(D)" and inserting "(iv)";

(4) by adding "and" after the semicolon at the end; and

(5) by adding at the end the following:

"(B) provide that, the State agency shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and

other identifying information on, any individual who the agency knows is unlawfully in the United States.".

(c) FOOD STAMP PROGRAM.—Section 11(e) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)), as amended by section 1(c)(2), is amended—

(1) paragraph (8)—

(A) by striking "and (D)" and inserting "(D)"; and

(B) by inserting before the semicolon at the end the following: ", and (E) such safeguards shall not prevent compliance with paragraph (26)";

(2) in paragraph (24) by striking "and" at the end;

(3) in paragraph (25) by striking the period and inserting "; and"; and

(4) by adding at the end the following:

"(26) that the State agency shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the agency knows is unlawfully in the United States.".

(d) SSI PROGRAM.—

(1) IN GENERAL.—Section 1631(e) of the Social Security Act (42 U.S.C. 1383(e)), as amended by section 1(d)(2) of this Act, is amended by adding at the end the following new paragraph:

"(10) Notwithstanding any other provision of law, the Commissioner shall, at least 4 times annually and upon request of the Immigration and Naturalization Service (hereafter in this paragraph referred to as the 'Service'), furnish the Service with the name and address of, and other identifying information on, any individual who the agency knows is unlawfully in the United States, and shall ensure that each agreement entered into under section 1616(a) with a State provides that the State shall furnish such information at such times with respect to any individual who the State knows is unlawfully in the United States.".

(e) HOUSING PROGRAMS.—Section 27 of the United States Housing Act of 1937, as added by section 1(e)(2) of this Act, is amended by adding at the end the following new subsection:

"(b) NOTICE TO IMMIGRATION AND NATURALIZATION SERVICE OF ILLEGAL ALIENS.—Notwithstanding any other provision of law, the Secretary shall, at least 4 times annually and upon request of the Immigration and Naturalization Service (hereafter in this subsection referred to as the 'Service'), furnish the Service with the name and address of, and other identifying information on, any individual who the Secretary knows is unlawfully in the United States, and shall ensure that each contract for assistance entered into under section 6 or 8 of this Act with a public housing agency provides that the public housing agency shall furnish such information at such times with respect to any individual who the public housing agency knows is unlawfully in the United States.".

**SEC. 3. TERMINATION OF AFDC BENEFITS FOR DEPENDENT CHILDREN WHO ARE ABSENT FROM THE HOME FOR A SIGNIFICANT PERIOD.**

Section 402(a) of the Social Security Act (42 U.S.C. 602(a)), as amended by section 1(b)(1) of this Act, is amended—

(1) by striking "and" at the end of paragraph (45);

(2) by striking the period at the end of paragraph (46) and inserting "; and"; and

(3) by inserting after paragraph (46) the following new paragraph:

"(47)(A) provide that aid shall not be payable under the State plan to a family with respect to any dependent child who has been, or is expected by the caretaker relative in the family to be, absent from the home for a

period of 45 consecutive days or, at the option of the State, such period of not less than 30 and not more than 90 consecutive days as the State may provide for in the State plan;

"(B) at the option of the State, provide that the State may establish such good cause exceptions to subparagraph (A) as the State considers appropriate if such exceptions are provided for in the State plan; and

"(C) provide that a caretaker relative shall not be eligible for aid under the State plan if the caretaker relative fails to notify the State agency of an absence of a dependent child from the home for the period specified in or provided for under subparagraph (A), by the end of the 5-day period that begins on the date that it becomes clear to the caretaker relative that the dependent child will be absent for the period so specified or provided for in subparagraph (A)."

#### SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise specifically provided in subsection (b), the amendments made by this Act shall be effective with respect to calendar quarters beginning on or after the date of the enactment of this Act.

(b) SPECIAL RULE.—In the case of a State that the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order to meet the additional requirements imposed by the amendments made by this Act, the State shall not be regarded as failing to comply with the requirements of such amendments before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of this subsection, in the case of a State that has a 2-year legislative session, each year of the session shall be treated as a separate regular session of the State legislature.

[From the Tribune-Review]

#### FUGITIVE USED REAL NAME FOR WELFARE

(By Lille Wilson)

James Brabham knew who he was. During a decade on the lam for a 1984 slaying in Pittsburgh, he used at least five aliases and five Social Security numbers.

But when he went on welfare, Brabham used his real name—and his state-issued welfare card bore his current address and photo.

The cops who arrested him Wednesday in Philadelphia saw the card when they asked Brabham for identification. They hadn't known he was on welfare.

"I'm sure it would have made things a lot easier," said Detective Joe Hasara of the Federal Fugitive Task Force in Philadelphia, one of the squads that for years pursued lead after dead-end lead searching for Brabham.

Police—even those looking for longtime fugitives—don't routinely look at welfare rolls to locate suspects, primarily because of the legal obstacles, Hasara said.

"It's just not feasible," said Hasara, citing red tape. "We'd have to have one or two people doing nothing but getting subpoenas and court orders. We can't operate like that."

Hasara, a Philadelphia police detective who makes up part of the city's federally funded fugitive task force, located Brabham after a typically long and laborious investigation that involved following tips and digging into clues. He won't be more specific than that, for fear of divulging the task force's gumshoe secrets.

The victim, Charlene Summers, 36, was living with Brabham in Pittsburgh's Beltzhoover area. Police said Brabham reported the January 1984 killing to city homicide in a telephone call. He claimed Summers had attacked him with a knife.

Brabham, who posted bond days after he was charged with her murder, never showed up at a coroner's hearing. A bench warrant for his arrest went out in May 1984. In March 1990, a federal court handed down a fugitive warrant.

By then, the Greater Pittsburgh Fugitive Task Force was already hunting him, said FBI Agent Ralph Young, a task force member.

"We had people all over the country looking for him," Young said. "He never came back to Pittsburgh."

Philadelphia was one of the investigative hot spots: Brabham had relatives there, Young said.

"We'd hear sightings. We'd follow up. It'd lead to a dead end," he said.

The state's welfare listings may be accessible to police who petition the Commonwealth Court for specific information, said department spokesman Kevin Campbell.

Although state law forbids disclosure of individual welfare information for personal, commercial or political uses, a specific statute allows law enforcement queries if authorized by a judge, Campbell said.

"District attorneys have done it in the past, certainly," said Campbell, who added that police face no other official barriers.

"Apparently they've never worked the street," Hasara snorted.

After Brabham's arrest Wednesday, Young telephoned Summers' mother, Lillie Jones, with the news.

"For ten years, I never gave up on this," said Jones, 70, who described a dream she had Tuesday night. "She and I was very close. In the spiritual world, we had a lot of connection."

"I dreamed some man was chasing her around and around my house with a gun, and around and around my neighbor's house, and she was calling me for help: she ran to me and said, 'Mama, save me.'"

#### ADDITIONAL COSPONSORS

S. 170

At the request of Mr. DASCHLE, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 170, a bill to amend the Public Health Service Act to provide a comprehensive program for the prevention of Fetal Alcohol Syndrome, and for other purposes.

S. 184

At the request of Mr. HATFIELD, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 184, a bill to establish an Office for Rare Disease Research in the National Institutes of Health, and for other purposes.

S. 244

At the request of Mr. DORGAN, his name was added as a cosponsor of S. 244, a bill to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

S. 293

At the request of Mr. CONRAD, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 293, a bill to amend title 38, United States Code, to authorize the payment to States of per diem for veterans receiving adult day health care, and for other purposes.

S. 343

At the request of Mr. DOLE, the names of the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from Iowa [Mr. GRASSLEY], the Senator from Idaho [Mr. KEMPTHORNE], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of S. 343, a bill to reform the regulatory process, and for other purposes.

S. 441

At the request of Mr. MCCAIN, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 441, a bill to reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes.

S. 478

At the request of Mr. BREAU, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 478, a bill to amend the Internal Revenue Code of 1986 to allow the taxable sale or use, without penalty, of dyed diesel fuel with respect to recreational boaters.

S. 495

At the request of Mrs. KASSEBAUM, the names of the Senator from Utah [Mr. HATCH] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of S. 495, a bill to amend the Higher Education Act of 1965 to stabilize the student loan programs, improve congressional oversight, and for other purposes.

S. 584

At the request of Mr. ROBB, the names of the Senator from Wisconsin [Mr. KOHL] and the Senator from Arizona [Mr. MCCAIN] were added as cosponsors of S. 584, a bill to authorize the award of the Purple Heart to persons who were prisoners of war on or before April 25, 1962.

#### SENATE CONCURRENT RESOLUTION 3

At the request of Mr. SIMON, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from Tennessee [Mr. THOMPSON], and the Senator from Missouri [Mr. BOND] were added as cosponsors of Senate Concurrent Resolution 3, a concurrent resolution relative to Taiwan and the United Nations.

At the request of Mr. HELMS, the name of the Senator from Wisconsin [Mr. FEINGOLD] was added as a cosponsor of Senate Concurrent Resolution 3, supra.

#### SENATE CONCURRENT RESOLUTION 9

At the request of Mr. MURKOWSKI, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of Senate Concurrent Resolution 9, a concurrent resolution expressing the sense of the Congress regarding a private visit by President Lee Teng-hui of the Republic of China on Taiwan to the United States.

#### AMENDMENT NO. 401

At the request of Mr. ABRAHAM the name of the Senator from Utah [Mr.