Both the United Nations and Israel agree that minutes before the Israeli attack, Hezbollah guerrillas had fired Katyusha rockets at Israel from a position roughly 300 meters from the refugee camp. Clearly the Israelis were responding to the Katyusha attack, and unintentionally hit the refugee camp. Israeli officials, including Foreign Minister Barak, have issued assurances that Israel is not targeting civilians and would not have fired intentionally on a U.N. base.

If today's early news reports are correct, then we have witnessed a tragedy in the classic sense of the word—the deaths of these innocent civilians need not have occurred. Hezbollah has no right to launch rockets in such proximity to a refugee camp, apparently hoping to use the refugees as a shield against Israeli retribution. Israel, by the same token, has no right to respond as it did if it had any inkling that civilians would be harmed. If either party had put the best interests of the refugees first, then some 75 innocent noncombatants would be alive right now.

I do not dispute that Israel has a right to its own self-defense. I have taken care not to criticize Israel for its actions in Lebanon for the past 8 days because I understand well the threat that Hezbollah poses to Israel's security. I am keenly aware of—and condemn—Hezbollah's actions and intentions towards Israel. There can be no doubt that Hezbollah aims squarely to undermine the Middle East peace process, and I, in fact, agree with the widely held public sentiment that Israel was prodded into this latest operation in Lebanon. The overwhelming carnage of the past 8 days, however, compels me to call attention to what increasingly looks to be a disproportionate Israeli response. We cannot wring our hands about Hezbollah attacks against civilians and say nothing of Israeli excesses, whether or not they were intentional. Human life, after all, means as much on one side of the border as the other.

In the effort to root out Hezbollah, the Israelis appear to be attempting to cripple Lebanon's civilian economy and infrastructure. But as it tries to turn Lebanon against Hezbollah, Israel is running the risk that Lebanese Government and people will lose any stake in settling their differences with Israel peacefully. I fail to see how such an outcome serves Israel's long-term interests.

In being critical of Israel, I do not wish to absolve the Lebanese Government or Syria of their own responsibilities. Lebanon does not have the luxury of throwing up its hands and saying that it has no control over Hezbollah, and then complaining when Israel takes matters into its own hands. That is having it both ways. And I reserve special criticism for Syria. Syria has both the power and the means to shut down Hezbollah, but cynically lacks the will and has allowed Hezbollah's terrorism to go unchecked.

President Clinton has just announced that U.S. Special Middle East Coordinator Dennis Ross—and subsequently Secretary of State Christopher—will go to the region to try to end the violence. I join the President in calling for an immediate cease-fire. After today's tragedy, I would urge Israel—our friend, ally, and presumably the most advanced democracy in the region, to show greater restraint. As the stronger and more enlightened party, Israel even should contemplate a unilateral cease-fire. I understand fully that Israel faces enormous security risks, but its obligations to avoid miscues such as today are equally great.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senate majority leader.

HEALTH INSURANCE REFORM ACT

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, I wonder if we can get the yeas and nays on the Dole-Roth amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Maybe that vote can follow the statement of the Senator from Delaware, if it is all right with the Senator from North Dakota to wait for a later time.

Then after 3 minutes for the Senator from Delaware, we can start the vote on the Dole-Roth amendment.

TRAGIC MISTAKE IN LEBANON

Mr. BIDEN. Mr. President, I thank the majority leader. I was not going to take the occasion today, but in light of the distinguished Senator from Rhode Island speaking on this issue, I do not take issue with what he said but emphasize a very important point, from my point of view: this issue of sovereignty in Lebanon and whether or not there was a tragic mistake made in this particular raid. I do not deny there was a tragic mistake that was made.

I know we all know and heard that the Israeli military had no intention of striking the target they, in fact, struck. That happens in war. But the full responsibility, in my view, falls on the Lebanese Government and the Syrian Government. How can we talk about sovereignty, how can we talk about the notion that you cannot violate a nation's borders when, in fact, one nation—and the nation in this case, Lebanon—has within its borders Hezbollah that is, in fact, not under its control but within its mandate, and take no action to stop the action they are taking, firing Katyusha rockets into civilian populations into Israel and Syria, which has control of much of that area, refusing to do anything to stop it, and then criticize Israel for acting.

I just ask you all, what would happen if across the Mexican border Katyusha rockets were being fired into El Paso, TX, on a regular basis and the Mexican Government did nothing whatsoever to stop the terrorists from that action? Is there any American who would say we should withhold taking action on the grounds that we are crossing an international border? I think we would not even think twice about it.

I regret deeply the mistaken target that was, in fact, hit. I am confident the Israelis do as well. But we should be putting international pressure on Syria and Lebanon to act and deal with the Hezbollah operating almost in plain view across the Israeli border terrorizing Israeli citizens.

I yield the floor and thank my colleagues.

HEALTH INSURANCE REFORM ACT

The Senate continued with the consideration of the bill.

VOTE ON AMENDMENT NO. 3676, AS AMENDED, AS MODIFIED

The PRESIDING OFFICER. The question occurs on agreeing to amendment No. 3676, as amended, as modified, offered by the majority leader.

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Colorado [Mr. CAMPBELL] and the Senator from Florida [Mr. MACK] are necessarily absent.

The PRESIDING OFFICER (Mr. DEWINE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 73 Leg.]

YEAS—98

Abraham	Feinstein	Lugar
Akaka	Ford	McCain
Ashcroft	Frist	McConnell
Baucus	Glenn	Mikulski
Bennett	Gorton	Moseley-Braun
Biden	Graham	Moynihan
Bingaman	Gramm	Murkowski
Bond	Grams	Murray
Boxer	Grassley	Nickles
Bradley	Gregg	Nunn
Breaux	Harkin	Pell
Brown	Hatch	Pressler
Bryan	Hatfield	Pryor
Bumpers	Heflin	Reid
Burns	Helms	Robb
Byrd	Hollings	Rockefeller
Chafee	Hutchison	Roth
Coats	Inhofe	Santorum
Cochran	Inouye	Sarbanes
Cohen	Jeffords	Shelby
Conrad	Johnston	Simon
Coverdell	Kassebaum	Simpson
Craig	Kempthorne	Smith
D'Amato	Kennedy	Snowe
Daschle	Kerrey	Specter
DeWine	Kerry	Stevens
Dodd	Kohl	Thomas
Dole	Kyl	Thompson
Domenici	Lautenberg	Thurmond
Dorgan	Leahy	Warner
Exon	Levin	Wellstone
Faircloth	Lieberman	Wyden
Feingold	Lott	

NOT VOTING—2

Campbell	Mack

So the amendment (No. 3676), as amended, as modified, was agreed to.

Mr. MCCONNELL. Mr. President, 2 years ago, the Senate debated President Clinton's massive, 1,400-page proposal to radically restructure America's health care system. After great fan fare, this big-government era proposal faltered under the crushing weight of its 8 new entitlements, 17 new taxes, 50 newly-minted government bureaucracies, 177 new State mandates, and nearly 1,000 new Federal powers and responsibilities.

Republicans promised then that we would provide the focused, consumer-based health care reform plan that Americans have asked for by an overwhelming margin. Today, under the leadership of Senator KASSEBAUM, Senator ROTH, and Senator DOLE, we deliver on that promise.

S. 1028, the Health Insurance Reform Act, focuses on alleviating key burdens that restrict the ability of Americans to obtain and maintain health care coverage—a lack of portability and the barrier of preexisting conditions. Today when Americans change jobs or face layoffs, they are at-risk of becoming uninsured or subject to preexisting condition exclusions. When employers are forced to frequently change health care plans to control costs, employees with medical conditions find themselves further exposed to coverage gaps.

S. 1028 presents reforms that definitively address these problems. This bill limits the ability of insurers and employers to impose preexisting condition exclusions. It prevents insurers from dropping coverage when an individual changes jobs or a family member becomes sick. It helps small companies gain more purchasing clout in the market by allowing them to voluntarily form purchasing coalitions. According to GAO, S. 1028's portability reforms will help 25 million Americans each year.

By alleviating job lock and providing States with greater flexibility to address the coverage needs of high-risk consumers, S. 1028 presents broadly supported, commonsense reforms that build upon successful State health care initiatives.

I am proud to join with 64 of my colleagues in cosponsoring S. 1028's reasonable plan to promote private sector competition and market-driven innovation. This proposal fulfills Americans' request 2 years ago for sound, focused solutions to our Nation's health care concerns.

S. 1028's reforms to enhance the availability of health care coverage is further supported by the Finance amendment's provisions to address the affordability of health care insurance.

First, the Finance amendment increases the tax deduction for self-employed who purchase health insurance by 5-percent increments from the current 30 percent to 80 percent.

Second, it provides tax exemptions to State-sponsored risk pools which help bring down the cost of health insurance for businesses and high-risk individuals.

I am particularly supportive of the long-term care provisions included in the Finance package. The ability to access quality, private long-term care insurance plans is pivotal to families facing the emotional and financial challenges of long-term care.

Traditionally, a family member, most likely a wife or daughter, has cared for an ailing spouse or parent at home. However, today's pressures of work, child-rearing, and family mobility greatly restrict the ability of adult children to administer to the day-to-day needs of a chronically ill parent. In addition, the rigors of home-based care can have a debilitating impact on the health and well-being of a caring spouse.

As America's population ages, the need for long-term care increases. In 1993, almost 33 million Americans were over the age of 65, and by 2011, the elderly population is estimated to number close to 40 million. While the opportunity for a happy and healthy retirement is better than ever, an October 1995 long-term care survey by Harvard/Harris revealed that one in five Americans over age 50 is at high risk of needing long-term care during the next 12 months.

Today, a variety of long-term care services are available, from help in cleaning one's home and getting groceries to skilled nursing care with 24-hour supervision. However, the means to pay for long-term care are still very limited and the expense can be overwhelming. For example, $59 billion was spent on nursing home care for the elderly in 1993, and 90 percent was covered by out-of-pocket payments and Medicaid.

The cost of paying out-of-pocket for 1 year in a nursing home is more than triple a senior's average annual income. Long-term care expenses put a lifetime of work and investment at risk. To gain Medicaid coverage, seniors must ''spend down'' their assets in order to meet State eligibility requirements. While Medicare takes care of hospital costs and home care, it provides only limited coverage for short-term stays in skilled nursing facilities.

The medical side of long-term care has seen enormous advances over the years in new technologies, facilities, treatment methods, and even psychological studies of the effects of long-term care on patients. But the financing side of long-term care has simply failed to keep up, and as a result it is ill-prepared for seniors' future needs. Today, private insurance pays for less than 2 percent of long-term care costs. As Federal mandates for Medicaid coverage have increased, States have attempted to contain costs by restricting services for the elderly. State-imposed caps on the number of Medicaid-sponsored nursing home beds has separated families from their loved ones because the only Medicaid beds available were hundreds of miles away from their community. Most disturbingly, the remaining assets of a deceased elderly couple can be tapped through an estate recovery action to compensate the State for the couple's Medicaid expenses.

Since 1990, Medicaid expenditures for long-term care have been increasing by almost 15 percent annually, causing costs to double every 5 years. Medicaid's service as the sole long-term care safety net for middle class seniors may seriously impair the program's ability to serve the underprivileged. While low-income families accounted for 73 percent of Medicaid's beneficiaries in 1993, nearly 60 percent of expenditures went to nursing home care and other long-term care services. For example, in 1993, Kentucky's Medicaid spending per enrollee for children was $964; while the cost for elderly beneficiaries was $6,540. Without relief, a harsh battle between generations may emerge.

Mr. President, I am pleased that my work with Senator ROTH has produced a sound plan in response to this critical health care need. The Finance amendment includes several reforms which I supported through my own long-term care bill: providing long-term care insurance with the same favorable tax treatment now available to medical insurance; allowing tax-free withdrawals from life insurance policies for terminally and chronically ill patients; and establishing sound consumer protections.

Private long-term care insurance translates into quality, flexible care for seniors, more Medicaid funds for low-income families and the disabled, and essential support for families who want their loved ones to be safe and secure. These are priorities that all members of Congress share. We should not miss this opportunity to help America's families prepare for the challenges of long-term care.

I regret that the Senate was unsuccessful in retaining Finance's proposal to provide Americans with the choice of Medical Savings Accounts, better known as MSAs. Today, we have witnessed a full-court press against MSAs by those who favor greater government management of health care rather than the expansion of private-sector health care choice. They raise the specter of how MSAs would wreck havoc across our Nation's health care system, and present the threat of a Presidential veto of any health care bill that contains MSAs.

Mr. President, I find this attitude starkly contrasts the promotion of MSAs by the Democratic leadership just a few years ago. In 1992, Senator DASCHLE viewed MSAs as a means to effectively control medical spending by allowing employers to provide their employees with an annual allowance through a MSA to pay for their routine health care needs. During the 1994 consideration of the Clinton health care plan, Representative GEPHARDT offered a MSA plan in his leadership proposal, and all but one Democratic member of the House Ways and Means Committee supported it.

Just last week, President Clinton called for an expanded use of retirement accounts to pay for certain health care expenses. Ironically, Democratic members tell us today that the President firmly rejects the specific establishment of a medical account to pay for health care costs.

This inconsistent rhetoric blurs the potential benefits of a MSA option. In 17 states, 3,000 businesses as well as state and local governments are using MSAs. Based on a recent survey by Blue Cross/Blue Shield, 67 percent of employers surveyed were interested in MSAs. For employers who can not afford conventional coverage, and particularly for lower income workers, MSAs offer an affordable option to securing much-needed health care insurance.

As the House health care bill contains MSAs, it is my hope that this provision will be included in the conference committee's final legislative proposal for health care reform.

Mr. President, in sum, S. 1028 and the reforms included in the Finance amendment provide sensible, fundamental solutions to America's health care concerns. President Clinton has promised that ''the Era of Big Government is over.'' In fulfillment of his promise, the President should support S. 1028's effort to provide health care security through greater consumer choice, not greater Federal regulation.

Mr. KENNEDY. Mr. President, it is a little after 5 now. We started off early today at 9:30. We had a number of speeches, a good debate, and, I think, we had two enormously significant votes here which, I believe, open up the way for an early conference. Hopefully, if our good friends in the House view the medical savings accounts the way it was reflected here in the Senate, we can have this bill on the President's desk in very short order.

The leaders have instructed that we will stay here through this evening. We want to deal with these various measures. Earlier today, we asked Members, if they had amendments, to come up and see us. We are working through some, which are effectively universally accepted. We will try and make sure they are. If they are controversial and not unanimously supported, we will resist them. We want to try to move this along.

We have had a good day. We still have some outstanding amendments, but there is no reason we cannot finish this by 8 or 9 o'clock this evening. So we hope the Members who have amendments will come in now. There are some people that will just wait and see. But Senator KASSEBAUM and I are committed to trying to get this finished up in short order. We will ask those that planned to offer their amendments, if they would, to contact us right away. Otherwise, we will move to third reading.

Mr. DOLE. Mr. President, let me indicate and underscore what the Senator from Massachusetts just stated. We want to complete action on this bill. If we do, we will not have votes tomorrow. We may have debate on term limits, but no votes. We need to complete this to keep on schedule here. We still have to go back and finish illegal immigration. We have a day or two to make up there. Maybe we can do that next week, and, if not, the following week.

I hope anybody who has amendments will come to the floor. I know the Senator from North Dakota wishes to speak. That will be 15 minutes. So anybody that has an amendment, if you can be on the floor at, say, 5:30, it would be helpful to the managers.

Mr. LOTT. Mr. President, I want to talk about a needed addition to the Kennedy-Kassebaum legislation.

If you are an employee of a Fortune 500 company, you will probably make out okay under Kennedy-Kassebaum. If you are a union member, you'll definitely come out ahead.

But there is not enough in Kennedy-Kassebaum to address the needs of working families and small businesses. How can you have health care portability when you cannot afford health care, like many small businesses cannot afford to provide for their employees?

In the House-passed health portability bill, there was a pro-small business provision that I think we should include in any bill sent to the President.

The provision, which the House called the Health Coverage Availability and Affordability Act of 1996, clarifies existing law. It allows small employers to join together to purchase health insurance for their employees. This act also included provisions allowing individuals to open medical savings accounts—something I support.

But let me dwell on the small-business pooling aspect of this act. Right now, before we pass any bill in this Chamber, certain groups can pool their resources to buy lower cost insurance for their members or employees. These certain groups are large corporations and unions. For years, these groups could bargain for lower prices with insurers. If you are bigger, you can dictate better terms. That is just economics.

Unions and big business also could exempt themselves from burdensome State regulations. Each State has a different list of benefits that insurers usually must pay for.

Back in 1974, there were only 158 State-mandated benefits. Now, there are over 1,000 State-mandated benefits that insurers usually must cover. Some benefits covered in various States included massage therapy, acupuncture, hairpieces—and there are more exotic treatments. Many of these mandates are expensive. No wonder health costs are going up each year.

I said that insurers usually must cover these benefits. Under the Federal ERISA law, unions and large corporations are exempted from some State rules, and can set their own benefits. They also have less paperwork—complying with one general standard as opposed to 50 different State standards saves a lot of trees.

So we see that unions and big business have it easy when it comes to covering their members or workers. What about the small businessperson?

Well, the self-employed or small business owner does not have the bargaining power of a large corporation or union. They do not qualify for ERISA exemption. They have to comply fully with State regulations.

So, says the National Federation of Independent Businesses, small businesses' premiums are 30 percent higher than large corporations due to State mandates. Also, small businesses pay 30 percent more for similar benefits than larger corporations.

We talk a lot about the uninsured in this body. The Kennedy-Kassebaum bill is one way of addressing part of the problem. A large source of uninsured Americans though, is the inequity between small businesses and large businesses and unions. Kennedy-Kassebaum does not adequately address this issue.

Any final bill should include what the House did, and allow small businesses to form groups to purchase full health coverage or cover their employees under self-insured health plans. Allowing small companies to join together would give them bargaining powers similar to big businesses or unions. They would be exempt from certain burdensome State mandates.

Also, the House proposal allows States that allow small employers access to the small group market to opt out of the bill. The House bill balances the need for uniformity of laws across States, while maintaining States' rights.

The House bill is a good bill, and would have an immediate effect.

About 85 percent of the 40 million uninsured are in families with at least one employed worker, many of whom work for small businesses. That is a lot of people who could be covered if we changed the rules.

The National Center for Policy Analysis says that one in five small companies that do not now offer health insurance would do so if they could get free of heavy State mandates.

If these companies could have the same opportunity as big companies and unions, 6.3 million people would have access to health care. Immediately, you would take care of almost 16 percent of the uninsured in America. Others say 50 percent of the uninsured could probably have access to health care.

Whatever the number, we can take a substantial leap toward providing health care for all Americans—all without new taxes or unfunded mandates.

I am not the only one who thinks this is a good idea. Mr. President, I will soon submit for the RECORD two letters to the House leadership from the National Association of Manufacturers

and the National Restaurant Association in support of the House bill.

Also, the chamber of commerce, National Association of Independent Businesses, National Retail Federation, and other groups supported the bill I have been talking about here.

So there is much support for this, and I hope at least in conference we can look at this issue, and provide some relief for small business and the self-employed. I personally believe that we have been unfair to the job creators and those who want to be their own boss.

Right now, self-employed people can only deduct 30 percent of their health care costs. Big businesses and unions can deduct 100 percent. This year, Congress passed a bill that would have raised this 30 to 50 percent. Guess what? The President vetoed it! Is this fair? Is this pro-business? Is the President for entrepreneurship in this country?

I think it is high time that the President signs the bill he vetoed, and we should eventually pass the House bill that expands health care for Americans who work for small businesses.

The large companies and the unions have had the benefits and advantages for too long. If they can do it, a small businessman in Pascagoula should be able to cover his family and employees.

Let us help small business in this chamber. Remember them in this debate we are having about health care.

I ask unanimous consent that the letters I mentioned be printed in the RECORD.

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

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, DC, March 8, 1996.

Hon. J. DENNIS HASTERT,
Chief Deputy Whip, House of Representatives, Washington, DC.

DEAR REPRESENTATIVE HASTERT: I am delighted to hear that the House Republican leadership has put together a package of realistic and achievable health care reforms and will pursue them as part of the 1996 legislative agenda. It is my understanding that these reforms include:

Portability reforms to ensure that employees won't be denied health coverage if they change or lose their jobs;

Medical malpractice reforms so that valuable dollars intended for health care won't be wasted on frivolous litigation;

Increased health insurance deductibility for the self-employed to further mitigate unfair differences based solely on the form of doing business;

Reforms to facilitate small group pooling and thereby improve both affordability and access for small businesses;

Medical savings account provisions to further improve both choice and affordability for all Americans; and

Accountability provisions to curb fraud and abuse, leading to lower costs throughout the system.

These are all provisions which NAM has supported in the past and continues to support. In our view, this kind of targeted, incremental approach, which retains the private, voluntary health system while improving and strengthening it, is exactly the right approach. The NAM is therefore pleased both to endorse and to enthusiastically support your plan.

Sincerely,

JERRY JASINOWSKI,
President.

NATIONAL RESTAURANT ASSOCIATION,
Washington, DC, March 27, 1996.

House of Representatives, Washington, DC.

DEAR REPRESENTATIVE: On behalf of the National Restaurant Association and the 739,000 foodservice units nationwide, we urge you to support H.R. 3103, the Health Coverage Availability and Affordability Act.

As you may know, our industry has been working to enact healthcare reform legislation for years. Our research continues to demonstrate that the basic reason why employers and individuals do not purchase health insurance is because of the cost. This legislation takes a major step forward by eliminating some of the barriers that prevent people from purchasing health insurance, while at the same time helps keep down the cost.

The restaurant industry is dominated by small businesses. More than four out of ten eating and drinking places are sole proprietorships or partnerships. Nine out of ten eating and drinking places have less than 50 paid employees. Seventy-two percent of eating and drinking places have sales of $500,000 a year or less. While many would like to offer their employees health benefits, the cost has proven to be prohibitive.

In addition to addressing key concerns about portability and preexisting condition limitations, H.R. 3070 would increase the deductibility of health insurance for the self-employed from 30 percent to 50 percent. For small businessmen and women—and their families—deductiblity of health insurance premiums is a must. Other important components of the legislation tackle medical malpractice reform, fraud and abuse and administrative simplification. Also, this legislation will allow small businesses to form voluntary purchasing pools which would help level the playing field by giving them some of the negotiating tools of large businesses and reducing the cost of providing coverage.

The National Restaurant Association is strongly opposed to any amendment that would raise the cost of health coverage with federal mandates or by expanding COBRA coverage. If employers cannot control the costs of their own health care plans because Congress mandates certain types of coverage, employers will be forced to drop their coverage altogether.

We urge you to support H.R. 3103, the Health Coverage Availability and Affordability Act.

Sincerely,

ELAINE Z. GRAHAM,
Senior Director, Government Affairs.
CHRISTINA M. HOWARD,
Legislative Representative.

Mr. LOTT. Mr. President, I had an amendment that I drafted, which I will not offer at this time for a variety of reasons. I do want to move this legislation along. But in the House-passed bill, there was a pro-small-business provision, and I think we should include that in any bill that we send to the President. The provision, which the House called the Health Coverage Availability and Affordability Act of 1996, clarifies existing law. It allows small business employers to join together to purchase health insurance for their employees.

This act also included provisions allowing individuals to open the medical savings accounts that we have already dealt with this afternoon. I really do think there is a real justification for small businesses to be able to join pools and provide coverage for their workers. That could be a pool through the Restaurant Association, the National Federation of Independent Business, or within their own corporation.

I realize that it is not as simple as it sounds, but it is something that should be done. I think it would help a lot of people now that work for small businesses—particularly fast food services—be able to get access to insurance through these pools.

So I will be working with the conferees to try to get them to take a look at this and see if we cannot perhaps perfect some of the language that was in the House bill and allow this coverage to be available.

I know of many instances where people are working for hamburger places or pizza places, where most employees have no coverage. They cannot afford it, and the employer cannot provide it. This would give them a way to get it through pools.

I hope we will look at this approach in the conference, since it is in the House bill. If we cannot work it out there, let us see if we cannot find an opportunity to give serious consideration to this at the earliest opportunity.

Mr. KENNEDY. Mr. President, we have some provisions in here to encourage pooling among small businesses. We would be glad to work with the Senator from Mississippi in reviewing that language, since the House has similar language, to find out how we may be able to make that more effective. And we will certainly be glad to visit with him prior to the time of the conference and see if we cannot find ways of making it more effective. He has identified a very important problem and challenge, and we attempted to make some important, modest steps, but very important steps, I think, to encourage this kind of activity and programs. He has additional ideas, and we look forward to talking with him.

Mr. LOTT. I thank the Senator. I will be glad to work with him on this issue.

AMENDMENT NO. 3678

(Purpose: To provide equitable relief for the generic drug industry)

Mr. BROWN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Colorado [Mr. BROWN] proposes an amendment numbered 3678.

Mr. BROWN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in title III, insert the following:

SEC. . EQUITABLE TREATMENT FOR THE GENERIC DRUG INDUSTRY.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that the generic drug industry should be provided equitable relief in the same manner as other industries are provided with such relief under the patent transitional provisions of section 154(c) of title 35, United States Code, as amended by section 532 of the Uruguay Round Agreements Act of 1994 (Public Law 103–465; 108 Stat. 4983).

(b) APPROVAL OF APPLICATIONS OF GENERIC DRUGS.—For purposes of acceptance and consideration by the Secretary of an application under subsections (b), (c), and (j) of section 505, and subsections (b), (c), and (n) of section 512, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (b), (c), and (j), and 360b (b), (c), and (n)), the expiration date of a patent that is the subject of a certification under section 505(b)(2)(A) (ii), (iii), or (iv), section 505(j)((2)(A)(vii) (II), (III), (IV), or section 512(n)(1)(H) (ii), (iii), or (iv) of such Act, respectively, made in an application submitted prior to June 8, 1995, shall be deemed to be the date on which such patent would have expired under the law in effect on the day preceding December 8, 1994.

(c) MARKETING GENERIC DRUGS.—The remedies of section 271(e)(4) of title 35, United States Code, shall not apply to acts—

(1) that were commenced, or for which a substantial investment was made prior to June 8, 1995; and

(2) that became infringing by reason of section 154(c)(1) of such title, as amended by section 532 of the Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4983).

(d) SUBSTANTIAL INVESTMENT.—For purposes of this Act and section 154(c)(2)(A) of title 35, United States Code, with respect to a product that is subject to the requirements of subsections (b)(2) or (j) of section 505, or of subsections (b)(2) and (n) of section 512, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)(2) and (j), and 360(b)(2) and (n), the submission of an application described in subsection (b), and only the submission of such an application, shall constitute substantial investment.

(e) NOTICE.—

(1) IN GENERAL.—Unless the notice required by this subsection has previously been provided, when an applicant submitting an application described in subsection (b) receives notice from the Secretary that the application has been tentatively approved, such applicant shall give notice of such application to—

(A) each owner of the patent which is the subject of the certification or the representative of such owner designated to receive such notice; and

(B) the holder of the approved application under section 505(b) or section 512(c)(1), respectively, for the drug which is claimed by the patent or a use of which is claimed by the patent or the representative of such holder designated to receive such notice.

(2) CERTIFICATION OF NOTICE.—The applicant shall certify to the Secretary the date that such notice is given. The approval of such application by the Secretary shall not be made effective until 7 calendar days after the date so certified by such applicant.

(f) EQUITABLE REMUNERATION.—For acts described in subsection (c), equitable remuneration of the type described in section 154(c)(3) of title 35, United States Code, as amended by section 532 of the Uruguay Round Agreements Act (Public Law 103–465; 108 Stat. 4983) shall be awarded to a patentee only if there has been—

(1) the commercial manufacture, use, offer to sell, or sale, within the United States of an approved drug that is the subject of an application described in subsection (b); or

(2) the importation by the applicant into the United States of an approved drug or of active ingredient used in an approved drug that is the subject of an application described in subsection (b).

(g) APPLICABILITY.—The provisions of this section shall govern the approval or effective date of approval of all pending applications that have not received final approval as of the date of enactment of this Act.

Mr. BROWN. Mr. President, this is not a new subject for Members of Congress. This is one we have considered before. I will make my remarks very succinct. I know other Members are waiting to speak.

What this does is complete our consideration of GATT. In the GATT agreements, the provisions with regard to exclusive use of drugs was extended. But the GATT provided specifically for exceptions where people have made substantial investments in generic drugs. This goes along with the language in the GATT agreement. It puts us in conformity with what other countries are considering. It allows us to provide the original length of protection that was planned for drugs.

Without action on this amendment, what we stand to have is American consumers lose roughly $5 million a day. The impact on U.S. consumers is roughly $5 million. Every day we delay enacting this means a day in which consumers are denied generic drug alternatives, which can save them $5 million a day. We have already delayed to a point where, by the end of this month, U.S. consumers will have lost over $700 million, and the price tag rises dramatically.

A bill we had up in committee was put off. It is, thus, imperative that we offer this on this vehicle. It is an enormous savings to American consumers.

Mr. President, it is fairness because it gives drug companies the same protection for which they planned on all along. But it does not give them a windfall, or more than what was planned.

Mr. President, I yield the floor at this point.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I thank the Chair for recognizing me.

Mr. President, I am very pleased and honored to join with my friend from Colorado, Senator BROWN, in the introduction of this amendment. This is the so-called GATT Glaxo amendment. The issue has been presented here on the floor. In fact, this is a simple way of correcting a major mistake that Congress made in adopting the GATT Treaty. It was an oversight. It has been testified to time and time again by Mickey Kantor—our then U.S. Trade Representative who negotiated this particular treaty—that it was a mistake, and that it needs to be corrected. The Patent Office said it was a mistake, and all up and down the line people agree that this was an enormous mistake that we need to correct at this time.

The first time we brought this issue to a vote on the floor was December 7, 1995. On that particular vote, the vote cast in the Senate was 48 to 49. There was one abstention. There was one absent Senator. And since that day, since that particular delay, I think it might be interesting to note that very few—a handful of drug companies—Glaxo specifically, have made a profit, or a gross income, because of this variation in the GATT Treaty giving a particular exception, a particular benefit, to a handful of drug companies. There has been an extra $5 million per day in income to these companies. Since December 7, 1995, we have seen an income of $665 million extra to these drug companies that is being paid out of the pockets of the consumers especially for drugs such as Zantac; $665 million—a windfall profit gift that we have given to these particular companies, and especially to a company called Glaxo.

We also note that Senator HATCH wrote a letter to us, the sponsors of this amendment, on December 13. He said he promised hearings on February 27, 1996. So we waited and waited and waited around for that hearing. According to his promise, the distinguished chairman, Senator HATCH, held a hearing. By that time another $310 million had been given to the drug companies in a windfall profit situation.

We waited another month—until March 28, 1996. The Judiciary markup was scheduled, and it was abruptly canceled. So once again there was a delay.

This morning, on April 18, 1996, another Judiciary markup on S. 1277 to correct this egregious error in GATT was held. And, when the Senators arrived at the markup, it was noted that a Senator had put a hold on the markup, that there would be no actual vote on S. 1277. And, therefore, Mr. President, another $665 million in profits for a very few drug companies.

Now it is noted that the chairman this morning stated that if possible we will have a hearing in the Judiciary Committee next week on the 25th of April, and possibly we could mark this bill up, S. 1277.

But in the meantime, Mr. President, the clock is running. We feel that this is a health bill, that this is the proper way to bring this bill to the attention of our colleagues, and it is the proper measure to attach this correction to the GATT Treaty.

We hope that our colleagues will support this measure.

Mr. President, I thank the Chair for recognizing me. I yield the floor.

Mr. HATCH. Mr. President, although I understand that the Senator from Colorado plans to withdraw his amendment, I want to take this opportunity to express my opposition to both the Brown/Pryor/Chafee amendment and the idea that it should be included as part of the Kassebaum-Kennedy health insurance reform measure.

I said it on December 7, and I say it today: ''Here we go again.''

Four months ago, we considered the Pryor language in this chamber. That time, it was an amendment to the partial birth abortion ban bill the President just vetoed. We agreed then, by a vote of this body, that the Judiciary Committee should hold hearings on the issue.

On December 13, I sent a letter to Senators PRYOR, BROWN, and CHAFEE, and I made a commitment to hold a hearing on February 27 and a markup by the end of March.

In fact, the committee did hold the hearing on February 27, as I promised. I agreed to hold a markup the week of March 25, but had to delay that because of lengthy committee consideration of the immigration bills. I rescheduled the markup at the first opportunity. In fact, it was to have been today, but as my colleague may have heard, we did not get a quorum.

I still intend to press forward expeditiously for consideration of this issue in the committee. It will be on the agenda for the next markup and that is my commitment.

I find it ironic that proponents of this amendment are using the same timetable as I. There is no disagreement here. The process is moving forward.

In sum, I have lived up to my word.

As a matter of fact, I have bent over backwards to accommodate the interests of this body in a full and fair examination of the issue.

We had 10 witnesses at the February 27 hearing, 5 on each side. It was a good session, one during which I believe we all learned a lot.

I plan to go ahead with the markup. We will try to work out a resolution. I hope we will be able to. I don't think that the Brown amendment today meets that test.

The GATT/pharmaceutical patent issue is unquestionably one of the most complicated we have seen, as it involves the confluence of patent law, trade policy and food and drug law and regulations.

Its resolution has potentially enormous consequences, both on the future of biomedical research in this country and on the ability of consumers to have access to the most safe, effective, and low cost drugs possible.

The proponents of this amendment argued today, as they have in the past, that this is a case of Congress making a simple mistake and that now we should act to fix this mistake by adopting this technical mistake.

This is the type of argument that is often made when this body acts through unanimous consent.

I wonder how many times we have debated a purported technical corrections bill for 3 hours—as we did on December 7—then split almost down the middle on a 49–48 vote that cut across party lines.

There is no foundation for the argument that this is a simple perfecting amendment that would achieve a result which is clearly intended by Congress.

Again today we heard the now familiar litany on the issue of intent. We heard about Ambassador Kantor, FDA Deputy Commissioner Bill Schultz, and all the other Administration representatives who attend the school of revisionist history on this issue.

What has become apparent to me during this debate, a fact which has not been revealed today by any of my colleagues, is that the argument on intent has been rejected by the Court of Appeals for the Federal Circuit, which could find no definitive evidence of intent.

In the November, 1995 Royce decision, the Federal Circuit stated:

> The parties have not pointed to, and we have not discovered, any legislative history on the intent of Congress, at the time of passage of the URAA, regarding the interplay between the URAA and the Hatch–Waxman Act.

Perhaps some day my colleagues can explain why it is that the Federal Circuit, a neutral judicial tribunal, is having so much trouble finding any evidence on the question of intent, a question that seems to lie at the center of this debate.

Perhaps some day my colleagues can explain why, in their quest to ''level the playing field,'' they have created a special benefit for one industry. I challenge them to identify any industry that has attempted, let alone succeeded, to use the GATT transition rules to reach the market prior to expiration of the newly extended patents. It just hasn't happened, and it probably will not unless anyone can identify acts that would not have been infringing before we enacted the URAA that continued and became infringing after the URAA was enacted.

It is curious to me that a lawyer for the generic drug industry would argue to the Supreme Court that ''the most obvious intended beneficiary of this statutory licensing system was the generic drug industry . . . In fact, since the adoption of TRIPS and the URAA, no industry other than the generic drug industry has emerged as being potentially affected by the equitable remuneration system.''

I will not prolong my remarks today. I look forward to exploring these and other issues in much greater detail at the markup.

In closing, I want to reiterate my strong opposition to the amendment, and my disappointment that we are considering it here today prior to the Judiciary Committee's scheduled markup.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I request to be able to use the 15 minutes that I am allotted under the former UC that was decided by the Senate.

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

MINIMUM WAGE AND SOCIAL SECURITY

Mr. DORGAN. Mr. President, I intend to yield some of that time to the Senator from South Carolina.

Mr. President, everyone has a right to characterize or mischaracterize the activities of the Senate. A colleague of mine during the previous debate on the motion to strike came to the floor and in that debate characterized the series of things that had happened earlier this week—or rather mischaracterized them—and described the certain circumstances as highly partisan, just politics, and so on.

I felt it necessary that I correct the RECORD and not allow this moment to pass without responding. I want everyone to understand that there are times here in the Chamber when amendments are offered that it is not convenient for people, amendments are offered that just are uncomfortable for people. But the way the system works here is sometimes you do not have an opportunity to offer an amendment except in the certain circumstance, and then you must offer it, or you are never going to have a chance to have the Senate consider it.

We had a circumstance earlier this week where a bill was brought to the floor of the Senate. Senator KENNEDY, I, and some others were intending to offer an amendment. Senator KENNEDY was going to offer an amendment on the minimum wage, which I support. That is inconvenient for some people. They do not want to debate the minimum wage. Some in this Chamber say we do not want to deal with the minimum wage issue. Some of us do. Some of us think when you have gone 6 years without a change in the minimum wage that at least those on the lower rung of the ladder have lost one-half dollar of their purchasing power from the minimum wage, and maybe people in this Chamber ought to care a little about that. I know there are no high-paid lobbyists out beyond this Chamber saying, ''Yes, we care about the people at the bottom of the economic ladder.'' If we are working on issues that dealt with the people at the top of the ladder, you can bet the halls would be full of high-paid lobbyists. But not for the minimum wage.

Some of us insist that these are issues that we ought to be debating.

Is it partisan? No. It is public policy.

The second issue which I introduced as an amendment on Monday dealt with the Social Security issue. It is mischaracterized as totally partisan, irrelevant, and a troublemaking amendment.

Let me describe what this issue is. Let me go back to 1983. In 1983 this Congress passed the Social Security Reform Act. I know that because I helped write it. I was a member of the Ways and Means Committee in the U.S. House. If anybody wants to go back to the record of the markup, you will find that I offered the amendment in 1983 during the markup that said let us not