of chiropractic services under the Medicare program; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. KENNEDY, Ms. SNOWE, Mr. KERRY, Mr. JEFFORDS, Mr. DODD, Mr. STEVENS, Mr. ROCKEFELLER, Mr. BENNETT, Mr. DASCHLE, Ms. COLLINS, Mr. WELLSTONE, Mr. SMITH of Oregon, Mr. BINGAMAN, Mr. CAMPBELL, Mrs. MURRAY, Mr. REED, Mrs. BOXER, Mr. LAUTENBERG, Mr. DURBIN, and Mr. REID):

S. 525. A bill to amend the Public Health Service Act to provide access to health care insurance coverage for children; to the Committee on Labor and Human Resources.

By Mr. HATCH (for himself, Mr. KENNEDY, Mr. BENNETT, Mr. BINGAMAN, Mrs. BOXER, Mr. DODD, Mr. DURBIN, Mr. JEFFORDS, Mr. KERRY, Mr. LAUTENBERG, Mrs. MURRAY, Mr. REED, Mr. REID, Mr. ROCKEFELLER, Ms. SNOWE, and Mr. WELLSTONE):

S. 526. A bill to amend the Internal Revenue Code of 1986 to increase the excise taxes on tobacco products for the purpose of offsetting the Federal budgetary costs associated with the Child Health Insurance and Lower Deficit Act; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, Mr. DURBIN, Mr. HARKIN, Mr. WELLSTONE, and Mr. KENNEDY):

S. 527. A bill to prescribe labels for packages and advertising for tobacco products, to provide for the disclosure of certain information relating to tobacco products, and for other purposes; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ABRAHAM:

S. 518. A bill to control crime by requiring mandatory victim restitution; to the Committee on the Judiciary.

THE VICTIM RESTITUTION ENFORCEMENT ACT

Mr. ABRAHAM. Mr. President, I rise today to introduce the Victim Restitution Enforcement Act of 1997. I have long supported restitution for crime victims, and have long been convinced that justice requires us to devise effective mechanisms through which victims can enforce restitution orders and make criminals pay for their crimes.

I was very pleased when we enacted mandatory victim restitution legislation last Congress as part of the Antiterrorism and Effective Death Penalty Act of 1996. I supported that legislation and very much appreciated the efforts of my colleagues, particularly Senators HATCH, BIDEN, NICKLES, GRASSLEY, and MCCAIN, to ensure that victim restitution provisions were included in the antiterrorism legislation.

Those victim restitution provisions—brought together as the Mandatory Victims Restitution Act of 1996—will significantly advance the cause of justice for victims in Federal criminal cases. The act requires Federal courts, when sentencing criminal defendants, to order these defendants to pay restitution to the victims of their crimes. It also establishes a single set of procedures for the issuance of restitution orders in Federal criminal cases to provide uniformity in the Federal system. Inclusion of mandatory victim restitution provisions in the Federal criminal code was long overdue, and I am pleased that Congress was able to accomplish that last year.

However, much more remains to be done to ensure that victims can actually collect those restitution payments and to provide victims with effective means to pursue whatever restitution payments are owed to them. Even if a defendant may not have the resources to pay off a restitution order fully, victims should still be entitled to go after whatever resources a defendant does have and to collect whatever they can. We should not effectively tell victims that it is not worth going after whatever payments they might get. That is what could happen under the current system, in which victims have to rely on Government attorneys—who may be busy with many other matters—to pursue restitution payments. Instead, we should give victims themselves the tools they need so that they can get what is rightfully theirs.

The victim restitution provisions enacted last Congress consolidated the procedures for the collection of unpaid restitution with existing procedures for the collection of unpaid fines. Unless more steps are taken to make enforcement of restitution orders more effective for victims, we risk allowing mandatory restitution to be mandatory in name only, with criminals able to evade ever paying their restitution and victims left without the ability to take action to enforce restitution orders.

Last Congress, I introduced the Victim Restitution Enforcement Act of 1995. Many components of my legislation were also included in the victim restitution legislation enacted as part of the Antiterrorism and Effective Death Penalty Act. The legislation I introduce today is similar to the legislation I introduced last Congress as Senate bill 1504, and is designed to build on what are now current provisions of law. All in all, I hope to ensure that restitution payments from criminals to victims become a reality, and that victims have a greater degree of control in going after criminals to obtain restitution payments.

Under my legislation, restitution orders would be enforceable as a civil debt, payable immediately. Most restitution is now collected entirely through the criminal justice system. It is frequently paid as directed by the probation officer, which means restitution payments cannot begin until the prisoner is released. This bill makes restitution orders payable immediately, as a civil debt, speeding recovery and impeding attempts by criminals to avoid repayment. This provision will not impose criminal penalties on those unable to pay, but will simply allow civil collection against those who have assets.

This will provide victims with new means of collecting restitution payments. If the debt is payable immediately, all normal civil collection procedures, including the Federal Debt Collection Act, can be used to collect the debt. The bill explicitly gives victims access to other civil procedures already in place for the collection of debts. This lightens the burden of collecting debt on our Federal courts and prosecutors.

My bill further provides that Federal courts will continue to have jurisdiction over criminal restitution judgments for 5 years, not including time that the defendant is incarcerated. The court is presently permitted to resentence or take several other actions against a criminal who willfully refuses to make restitution payments; the court may do so until the termination of the term of parole. Courts should have the ability to do more over a longer period of time, and to select those means that are more likely to prove successful. Under my bill, during the extended period, Federal courts will be permitted, where the defendant knowingly fails to make restitution payments, to modify the terms or conditions of a defendant's parole, extend the defendant's probation or supervised release, hold the defendant in contempt, increase the defendant's original sentence, or revoke probation or supervised release.

My legislation will also give the courts power to impose presentence restraints on defendants' uses of their assets in appropriate cases. This will prevent well-heeled defendants from dissipating assets prior to sentencing. Without such provisions, mandatory victim restitution provisions may well be useless in many cases. Even in those rare cases in which a defendant has the means to pay full restitution at once, if the court has no capacity to prevent the defendant from spending ill-gotten gains or other assets prior to the sentencing phase, there may be nothing left for the victim by the time the restitution order is entered.

The provisions permitting presentence restraints are similar to other provisions that already exist in the law for private civil actions and asset forfeiture cases, and they provide adequate protections for defendants. They require a court hearing, for example, and place the burden on the Government to show by a preponderance of the evidence that presentence restraints are warranted.

In short, I want to make criminals pay and to give victims the tools with which to make them pay. In enacting mandatory victim restitution legislation last Congress, we demonstrated our willingness to make some crimes subject to this process. I believe we must take additional steps to make those mandatorily issued orders easily enforceable.

This legislation is supported by the National Victim Center and by the Michigan Coalition Against Domestic and Sexual Violence. I ask unanimous consent to have placed in the RECORD letters of support from those victims' rights organizations.

I urge my colleagues to support my legislation, which will empower victims to collect on the debts that they

are owed by criminals and which will improve the enforceability of restitution orders.

I also ask unanimous consent that the text of the bill be placed in the RECORD.

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

S. 518

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 ''Victim Restitution Enforcement Act''.

SEC. 2. PROCEDURE FOR ISSUANCE AND ENFORCEMENT OF RESTITUTION ORDER.

Section 3664 of title 18, United States Code, is amended to read as follows:

''§ 3664. Procedure for issuance and enforcement of order of restitution

''(a) IN GENERAL.—

''(1) RELIANCE ON INFORMATION IN PRESENTENCE REPORT.—With respect to each order of restitution under this title, the court shall order the probation service of the court to obtain and include in its presentence report, or in a separate report, as the court directs, information sufficient for the court to exercise its discretion in fashioning a restitution order.

''(2) CONTENTS OF REPORT.—Each report described in paragraph (1) shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation service shall so inform the court.

''(b) DISCLOSURES.—The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a).

''(c) APPLICABILITY OF OTHER LAW.—This chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure are the only laws and rules applicable to proceedings under this section.

''(d) ENSURING AVAILABILITY OF PROPERTY OR ASSETS.—

''(1) IN GENERAL.—

''(A) RESTRAINING ORDER, INJUNCTION, EXECUTION OF PERFORMANCE BOND.—Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property or assets necessary to satisfy a criminal restitution order under this subchapter. An order under this subparagraph may be entered in the following circumstances:

''(i) Prior to the filing of an indictment or information charging an offense that may result in a criminal restitution order, and upon the United States showing that—

''(I) there is a substantial probability that the United States will obtain a criminal restitution order;

''(II) the defendant has or is likely to take action to dissipate or hide the property or assets of the defendant; and

''(III) the need to preserve the availability of the property or assets through the requested order outweighs the hardship of any party against whom the order is entered.

''(ii) Upon the filing of an indictment or information charging an offense that may result in a criminal restitution order, and upon the United States showing that the defendant has or is likely to take action to dissipate or hide the property or assets of the defendant.

''(iii) Upon the conviction, or entry of a guilty plea, to an indictment or information charging an offense that may result in a criminal restitution order, and upon the United States showing that the defendant may take action to dissipate or hide the property or assets of the defendant or that an order is necessary to marshal and determine the property or assets of the defendant.

''(B) PERIOD OF EFFECTIVENESS.—An order entered under subparagraph (A) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A)(ii) has been filed.

''(2) NOTICE OF ORDER.—

''(A) IN GENERAL.—Except as provided in paragraph (3), an order entered under this subsection shall be after notice to persons appearing to have an interest in the property and opportunity for a hearing, and upon the United States carrying the burden of proof by a preponderance of the evidence.

''(B) ADMISSIBLE EVIDENCE.—The court may receive and consider, at a hearing held under this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

''(3) TEMPORARY RESTRAINING ORDER.—

''(A) IN GENERAL.—A temporary restraining order may be entered without notice or opportunity for a hearing if the United States demonstrates that—

''(i) there is probable cause to believe that the property or assets with respect to which the order is sought would be subject to execution upon the entry of a criminal restitution order;

''(ii) there is a substantial probability that the United States will obtain a criminal restitution order; and

''(iii) the provision of notice would jeopardize the availability of the property or assets for execution.

''(B) EXPIRATION OF ORDER.—A temporary order under this paragraph shall expire not later than 10 days after the date on which it is entered, unless—

''(i) the court grants an extension for good cause shown; or

''(ii) the party against whom the order is entered consents to an extension for a longer period.

''(C) HEARING.—A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

''(4) DISCLOSURE OF CERTAIN INFORMATION.—

''(A) IN GENERAL.—Information concerning the net worth, financial affairs, transactions or interests of the defendant presented to the grand jury may be disclosed to an attorney for the Government assisting in the enforcement of criminal restitution orders, for use in the performance of the duties of that attorney.

''(B) USE OF CONSUMER CREDIT REPORTS.—

''(i) IN GENERAL.—An attorney for the Government responsible for the prosecution of criminal offenses, or responsible for the enforcement of criminal restitution orders, may obtain and use consumer credit reports to—

''(I) obtain an order under this section;

''(II) determine the amount of restitution that is appropriate; or

''(III) enforce a criminal restitution order.

''(ii) GRAND JURY SUBPOENA.—This subparagraph does not limit the availability of grand jury subpoenas to obtain a consumer credit report.

''(iii) PROBATION SERVICE.—Upon conviction, a consumer credit report used under this subparagraph may be furnished to the United States Probation Service.

''(e) INFORMATION TO PROBATION SERVICE.—

''(1) IN GENERAL.—

''(A) PROVISION OF INFORMATION BY GOVERNMENT.—Not later than 60 days after conviction, and in any event not later than 10 days prior to sentencing, the attorney for the Government after consulting with all victims (when practicable), shall promptly provide the probation service of the court all information readily available to the attorney, including matters occurring before the grand jury relating to the identity of the victim or victims, the amount of losses, and financial matters relating to the defendant.

''(B) PROVISION OF INFORMATION BY DEFENDANTS.—Each defendant shall prepare and file with the probation officer an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and any other information that the court requires relating to such other factors as the court determines to be appropriate.

''(C) NOTICE TO VICTIMS.—The attorney for the Government shall, to the maximum extent practicable and as soon as practicable after the provision of information by the Government to the probation service under subparagraph (A), provide notice to all victims. The notice shall inform the victims of—

''(i) the offenses for which the defendant was convicted;

''(ii) the amounts subject to restitution and any other information that is relevant to restitution submitted to the probation service;

''(iii) the right of the victim to submit information to the probation service concerning the amount of the losses of the victim;

''(iv) the scheduled date, time, and place of the sentencing hearing;

''(v) the availability of a lien in favor of the victim under subsection (n)(1)(D); and

''(vi) the opportunity of the victim to file a separate affidavit with the court under subparagraph (E).

''(D) LIMITATIONS ON INFORMATION.—Upon ex parte application to the court, and a showing that the requirements of subparagraph (A) may cause harm to any victim, or jeopardize an ongoing investigation, the court may limit the information to be provided to or sought by the probation service of the court.

''(E) AFFIDAVIT OF OBJECTION.—If any victim objects to any of the information provided to the probation service by the attorney for the Government under this paragraph, the victim may file a separate affidavit with the court.

''(2) ADDITIONAL DOCUMENTATION OR TESTIMONY.—After reviewing the report of the probation service of the court, the court may require additional documentation or hear testimony. The privacy of any records filed, or testimony heard, under this section shall be maintained to the greatest extent possible and those records may be filed or testimony heard in camera.

''(3) ADDITIONAL TIME FOR DETERMINATION OF LOSSES.—If the losses to the victim are not ascertainable by the date that is 10 days prior to sentencing as provided in paragraph (1), the United States Attorney (or a designee of the United States Attorney) shall so inform the court, and the court shall set a date for the final determination of the losses of the victim, not to exceed 90 days after sentencing. If the losses to the victim cannot

reasonably be ascertained, the court shall determine an appropriate amount of restitution based on the available information. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses during which to petition the court for an amended restitution order. The order may be granted only upon a showing of good cause for the failure to include those losses in the initial claim for restitutionary relief.

''(4) REFERRAL TO MAGISTRATE OR SPECIAL MASTER.—The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

''(5) INSURANCE OF VICTIM NOT CONSIDERED.—In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

''(f) EVIDENTIARY STANDARD.—Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and the dependents of the defendant shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

''(g) FACTORS FOR CONSIDERATION.—

''(1) IN GENERAL.—

''(A) ECONOMIC CIRCUMSTANCES OF VICTIM NOT CONSIDERED.—In each order of restitution, the court shall order restitution to each victim in the full amount of the losses of each victim as determined by the court and without consideration of the economic circumstances of the defendant.

''(B) AWARD OF REASONABLY ASCERTAINABLE LOSSES.—The court shall order restitution in the amount of the total loss that is reasonably ascertainable, if—

''(i) the number of victims is too great;

''(ii) the actual identity of the victims cannot be ascertained; and

''(iii) or the full amount of the losses of each victim cannot be reasonably ascertained;

''(2) AMOUNT AND TIMING OF RESTITUTION.—The restitution order shall be for a sum certain and payable immediately.

''(3) NOMINAL PERIODIC PAYMENTS.—If the court finds from facts on the record that the economic circumstances of the defendant do not allow and are not likely to allow the defendant to make more than nominal payments under the restitution order, the court shall direct the defendant to make nominal periodic payments in the amount the defendant can reasonably be expected to pay by making a diligent and bona fide effort toward the restitution order entered under paragraph (1). Nothing in the paragraph shall impair the obligation of the defendant to make full restitution under this subsection.

''(4) STATUS OF DEBT.—Notwithstanding any payment schedule entered by the court under paragraph (2), each order of restitution shall be a civil debt, payable immediately, and subject to the enforcement procedures provided in subsection (n). In no event shall a defendant incur any criminal penalty for failure to make a restitution payment under the restitution order because of the indigency of the defendant.

''(h) VICTIM RIGHTS.—

''(1) NO PARTICIPATION REQUIRED.—No victim shall be required to participate in any phase of a restitution order. If a victim declines to receive restitution made mandatory by this title, the court shall order that the share of the victim of any restitution owed be deposited in the Crime Victims Fund in the Treasury.

''(2) ASSIGNMENT OF INTEREST.—A victim may at any time assign the interest of the victim in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make those payments.

''(3) VICTIMS NOT IDENTIFIED OR LOCATED.—If the victim cannot be located or identified, the court shall direct that the restitution payments be made to the Crime Victims Fund of the Treasury. This paragraph shall not be construed to impair the obligation of the defendant to make those payments.

''(i) JOINT AND SEVERAL LIABILITY OF MULTIPLE DEFENDANTS.—If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant jointly and severally liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the loss of the victim and economic circumstances of each defendant.

''(j) PRIORITY OF PAYMENTS.—If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may issue an order of priority for restitution payments based on the type and amount of the loss of the victim accounting for the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all individual victims receive full restitution before the United States receives any restitution.

''(k) INSURANCE.—

''(1) IN GENERAL.—If a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution shall be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to any such provider of compensation.

''(2) REDUCTION OF AMOUNT.—Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—

''(A) any Federal civil proceeding; and

''(B) any State civil proceeding, to the extent provided by the law of the State.

''(3) OTHER RESOURCES.—If a person obligated to provide restitution receives substantial resources from any source, including inheritance, settlement, or other judgment, that person shall be required to apply the value of those resources to any restitution still owed.

''(l) MATERIAL CHANGES IN ECONOMIC STATUS OF DEFENDANT.—The defendant shall notify the court and the Attorney General of any material change in the economic circumstances of the defendant that might affect the ability of the defendant to pay restitution. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

''(m) JURISDICTION OF COURT.—

''(1) IN GENERAL.—The court shall retain jurisdiction over any criminal restitution judgment or amended criminal restitution judgment for a period of 5 years from the date the sentence was imposed. This limitation shall be tolled during any period of time that the defendant—

''(A) was incarcerated;

''(B) was a fugitive; or

''(C) was granted a stay that prevented the enforcement of the restitution order.

''(2) FAILURE TO PAY.—While within the jurisdiction of the court, if the defendant knowingly fails to make a bona fide effort to pay whatever amount of restitution is ordered by the court, or knowingly and willfully refuses to pay restitution, the court may—

''(A) modify the terms or conditions of the probation or supervised release of the defendant;

''(B) extend the probation or supervised release of the defendant until a date not later than 10 years from the date the sentence was imposed;

''(C) revoke the probation or supervised release of the defendant;

''(D) hold the defendant in contempt; or

''(E) increase the sentence of the defendant to any sentence that might originally have been imposed under the applicable statute, without regard to the sentencing guidelines.

''(n) ENFORCEMENT OF ORDER OF RESTITUTION.—

''(1) IN GENERAL.—An order of restitution may be enforced—

''(A) through civil or administrative methods during the period that the restitution lien provided for in section 3613 of title 18, United States Code, is enforceable;

''(B) by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229;

''(C) by the United States regardless of whether for the benefit of the United States, in accordance with the procedures of chapter 176 of part VI of title 28, or in accordance with any other administrative or civil enforcement means available to the United States to enforce a debt due the United States; or

''(D) by any victim named in the restitution order as a lien under section 1962 of title 28.

''(2) ESTOPPEL.—A conviction of a defendant for an offense giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, regardless of any State law precluding estoppel for a lack of mutuality. The victim, in the subsequent proceeding, shall not be precluded from establishing a loss that is greater than the loss determined by the court in the earlier criminal proceeding.''.

SEC. 3. CIVIL REMEDIES.

Section 3613 of title 18, United States Code, is amended—

(1) in the section heading, by inserting ''or restitution'' after ''fine''; and

(2) in subsection (a)—

(A) by striking ''The United States'' and inserting the following:

''(1) FINES.—The United States'';

(B) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively, and indenting accordingly; and

(C) by adding at the end the following:

''(2) RESTITUTION.—

''(A) IN GENERAL.—

''(i) LIEN.—An order of restitution shall operate as a lien in favor of the United States for its benefit or for the benefit of any non-Federal victims against all property belonging to the defendant or defendants.

''(ii) TIMING.—The lien shall arise at the time of the entry of judgment or order and shall continue until the liability is satisfied, remitted, or set aside, or until it becomes otherwise unenforceable.

''(iii) PERSONS AGAINST WHOM LIEN APPLIES.—The lien shall apply against all property and property interests—

''(I) owned by the defendant or defendants at the time of arrest; and

''(II) subsequently acquired by the defendant or defendants.

''(B) ENTRY OF LIEN.—The lien shall be entered in the name of the United States on behalf of all ascertained victims, unascertained victims, victims entitled to restitution who choose not to participate in the restitution program and victims entitled to restitution who cannot assert their interests in the lien for any reason.

''(3) JOINTLY HELD PROPERTY.—

''(A) IN GENERAL.—

''(i) DIVISION AND SALE OF PROPERTY.—If the court enforcing an order of restitution under this section determines that the defendant has an interest in property with another, and that the defendant cannot satisfy the restitution order from his or her separate property or income, the court may, after considering all of the equities, order that jointly owned property be divided and sold, upon such conditions as the court deems just, notwithstanding any Federal or State law to the contrary.

''(ii) PROTECTION OF INNOCENT PARTIES.—The court shall take care to protect the reasonable and legitimate interests of the innocent spouse and minor children of the defendant, especially real property used as the actual home of that innocent spouse and minor children, except to the extent that the court determines that the interest of that innocent spouse and children is the product of the criminal activity of which the defendant has been convicted, or is the result of a fraudulent transfer.

''(B) FRAUDULENT TRANSFERS.—In determining whether there was a fraudulent transfer, the court shall consider whether the debtor made the transfer—

''(i) with actual intent to hinder, delay, or defraud the United States or other victim; or

''(ii) without receiving a reasonably equivalent value in exchange for the transfer.

''(C) CONSIDERATIONS FOR PROTECTION OF INNOCENT PARTIES.—In determining what portion of the jointly owned property shall be set aside for the innocent spouse or children of the defendant, or whether to have sold or divided the jointly held property, the court shall consider—

''(i) the contributions of the other joint owner to the value of the property;

''(ii) the reasonable expectation of the other joint owner to be able to enjoy the continued use of the property; and

''(iii) the economic circumstances and needs of the defendant and dependents of the defendant and the economic circumstances and needs of the victim and the dependents of the victim.''.

SEC. 4. FINES.

Section 3572(b) of title 18, United States Code, is amended to read as follows:

''(b) PAYMENTS; EFFECT OF INDIGENCY.—Any fine, special assessment, restitution, or cost shall be for a sum certain and shall be payable immediately. In no event shall a defendant incur any criminal penalty for failure to make a payment on a fine, special assessment, restitution, or cost as a result of the indigency of the defendant.''.

SEC. 5. RESENTENCING.

Section 3614(a) of title 18, United States Code, is amended by inserting before the period at the end the following: ''or may increase the sentence of the defendant to any sentence that might originally have been imposed under the applicable statute''.

NATIONAL VICTIM CENTER,
March 18, 1997.

Hon. SPENCER ABRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR ABRAHAM: The National Victim Center would like to express it strong support for your bill, the Victims Restitution Enforcement Act of 1997. Restitution is one of the most direct manifestations of justice that our criminal justice system can provide: requiring the convicted offender to pay for the harm caused by his criminal conduct. No other aspect of our system has a greater impact on the lives of crime victims, or on their satisfaction with the criminal justice process.

The provisions of this bill would greatly facilitate the ordering and collection of restitution for victims' of federal offenses, and would serve as a mode for state legislatures who are searching for a means to enhance their own restitution efforts. Adoption of this bill would fully implement the spirit of the Mandatory Victims' Restitution Act of 1996 (P.L. 104–132, §201 et seq.). It would provide courts the information necessary to issue meaningful restitution orders, would create a raft of mechanisms to enhance the enforcement of those orders.

Passage of the Victims Restitution Enforcement Act of 1997 would send a strong signal to the American people that the federal government will do everything in its power to provide justice to our nation's crime victims. We urge your fellow congress members to join in supporting this important legislation.

Yours truly,

DAVID BEATTY,
Acting Executive Director.

MICHIGAN COALITION,
April 8, 1997.

Hon. SPENCER ABRAHAM,
U.S. Senator,
Washington, DC.

DEAR SENATOR ABRAHAM: The Michigan Coalition Against Domestic and Sexual Violence (MCADSV) fully supports the Victim Restitution Enforcement Act that you introduce today. Perpetrators of domestic violence and sexual assault exact a devastating emotional toll on their victims, a price that many survivors pay for a lifetime. Additionally, there are often substantial financial costs borne by the victim. Obvious expenses are those for property damage and medical care. Often overlooked are the costs of counseling, lost work time, child care, and expenses related to preparing for and attending the trial.

While there is no legislative or other remedy to erase the pain and terror experienced as a result of violent crime, we can take greater measures to ensure that victims are not forced to pay, out of their own pockets, for the actions of criminals. This legislation is necessary both to empower victims and require more perpetrators to pay for the financial consequences of their crimes.

MCADSV greatly appreciates your advocacy efforts on behalf of crime victims by sponsoring this important initiative.

Sincerely yours,

KATHLEEN HAGENIAN,
Director,
Public Policy and Program Services.

By Mr. FEINGOLD:

S. 520. A bill to terminate the F/A–18 E/F aircraft program; to the Committee on Armed Services.

TERMINATING THE F/A–18 E/F SUPER HORNET LEGISLATION

Mr. FEINGOLD. Mr. President, I rise today to introduce legislation to terminate the U.S. Navy's F/A–18 E/F Super Hornet Program.

The basis for this legislation is contained in a 1996 General Accounting Office report entitled ''Navy Aviation: F/A–18 E/F Will Provide Marginal Operational Improvement at High Cost.'' In this report, GAO studied the rationale and need for the F/A–18 E/F in order to determine whether continued development of the aircraft is the most cost-effective approach to modernizing the Navy's tactical aircraft fleet. GAO concluded that the marginal improvements of the F/A–18 E/F are far outweighed by the high cost of the program.

Mr. President, in our current fiscal climate, I have serious concerns about authorizing funding for such a costly program, which according to GAO will deliver only marginal improvements over the current C/D version of the F/A–18.

As GAO noted in its report, at a projected total program cost of $89.15 billion, the F/A–18 E/F Program is one of the most costly aviation programs in the Department of Defense. The total program cost is comprised of $5.833 billion in development costs and $83.35 billion in procurement costs for 1,000 aircraft.

Mr. President, before I begin to describe GAO's findings in detail, I would first like to discuss briefly the role of the F/A–18 aircraft in our Nation's overall naval aviation force structure. The Navy performs its carrier-based missions with a mix of fighter (air-to-air combat), strike (air-to-ground combat), and strike/fighter (multicombat role) aircraft. Currently, carrier based F–14 fighter aircraft perform air-to-air missions; A6E's perform air-to-ground missions; and F/A–18's perform both air-to-air and air-to-ground missions. The F/A–18 E/F Super Hornet is the latest version of the Navy's carrier-based F/A–18 strike/fighter plane.

Mr. President, the F/A–18 E/F is just one of three costly new fighter programs the Department of Defense has on the drawing boards right now.

In addition to the F/A–18 E/F, there is the Air Force's F–22, which is intended to replace the A–10 and the venerable F–16 Falcon. The F–22 is also intended to either supplant or augment the Air Force's top fighter, the F–15. It will have stealth capabilities and will be able to survive in dense air-defense environments.

And of course, there is the Joint Strike Fighter, which I will discuss in greater detail in a few moments. The JSF is intended to perform virtually every type of mission that fighter aircraft perform in today's force structure, and is to be employed by the Navy, the Air Force, and Marine Corps in unprecedented fashion.

There are few who seriously believe that the Pentagon can afford to maintain all three tactical fighter programs. The General Accounting Office, the Congressional Budget Office and many others have maintained that the

likelihood that all three programs can be fully funded with the planned number of aircraft buys is virtually nil. In fact, many view the JSF as the only modernization program that should be continued. Given our fiscal constraints and Federal budget deficit, can we afford to finance three separate fighter programs with the caliber and costs of the F/A–18 E/F, the F–22, and the JSF?

The answer is unequivocally no. And that is why I am introducing legislation to terminate any further development or procurement of the program that appears to be most questionable, the E/F upgrade.

The Navy has based the need for development and procurement of the F/A–18 E/F on existing or projected operational deficiencies of the F/A–18C/D in the following key areas: strike range, carrier recovery payload and survivability. In addition, the Navy notes limitations of current C/D's with respect to avionics growth space and payload capacity. In its report, GAO concludes that the operational deficiencies in the C/D that the Navy cited in justifying the E/F either have not materialized as projected or such deficiencies can be corrected with nonstructural changes to the current C/D and additional upgrades made which would further improve its capabilities.

One of the primary reasons the Navy cites in justifying the E/F is the need for increased range and the C/D's inability to perform long-range unrefueled missions against high-value targets. However, GAO concludes that the Navy's F/A–18 strike range requirements can be met by either the F/A–18 E/F or F/A–18 C/D. Furthermore, it concludes that the increased range of the E/F is achieved at the expense of its aerial combat performance, and that even with increased range, both aircraft will still require aerial refueling for low-altitude missions.

The F/A–18 E/F specification requirements call for the aircraft to have a flight range of 390 nautical miles (nm) while performing low-altitude bombing missions. The F/A–18 E/F will achieve a strike range of 465 nm while performing low-altitude missions by carrying 2 external 480 gallon fuel tanks. While current C/D's achieve a flight range of 325 nm with 2–330 gallon fuel tanks while performing low-altitude missions—65 nm below the specification requirement of the E/F—when they are equipped with the 2–480 gallon external fuel tanks that are planned to be used on the E/F, the C/D can achieve a strike range of 393 nm on low-altitude missions.

Recent Navy range predictions show that the F/A–18 E/F is expected to have a 683 nm strike range when flying a more fuel-efficient, survivable, and lethal high-altitude mission profile rather than the specified low-altitude profile. Similarly, although F/A–18 E/F range will be greater than the F/A–18 C/D, the C/D could achieve strike ranges (566 nm with 3–330 gallon fuel tanks or 600 nm with 2–480 gallon tanks and 1–330 gallon tank) far greater than the target distances stipulated in the E/F's system specifications by flying the same high-altitude missions as the E/F. Additionally, according to GAO, the E/F's increased strike range is achieved at the expense of the aircraft's aerial combat performance as evidenced by its sustained turn rate, maneuvering, and acceleration which impact its ability to maneuver in either offensive or defensive modes.

One claim the Navy has made in response to the GAO report is that the C/D cannot be outfitted with 480-gallon external fuel tanks. GAO disputes this, citing contractor studies that concluded 480-gallon tanks can be carried on the C/D's inboard stations. GAO also points out that the Canadians have flown the F/A–18 C with the larger external fuel tanks.

Mr. President, another significant reason the Navy cites in support of the continued development of the E/F is an anticipated deficiency in F/A–18C carrier recovery payload—the amount of fuel, weapons and external equipment that an aircraft can carry when returning from a mission and landing on a carrier.

However, the deficiency in carrier recovery payload which the Navy anticipated of the F/A–18C simply has not materialized. When initially procured, F/A–18C's had a total carrier recovery payload of 6,300 pounds. Because of the Navy's decision to increase the F/A–18C's maximum allowable carrier landing weight and a lower aircraft operating weight resulting from technological improvements, the F/A–18C now has a carrier recovery payload of 7,113 pounds.

F/A–18C's operating in support of Bosnian operations are now routinely returning to carriers with operational loads of 7,166 pounds, which exceeds the Navy's stated carrier recovery payload capacity. This recovery payload is substantially greater than the Navy projected it would be and is even greater than when the F/A–18C was first introduced in 1988. In addition, GAO notes that while it is not necessary, upgrading F/A–18C's with stronger landing gear could allow them to recover carrier payloads of more than 10,000 pounds—greater than that sought for the F/A–18 E/F (9,000 pounds).

While the Navy also cites a need to improve combat survivability in justifying the development of the F/A–18 E/F, the aircraft was not developed to counter a particular military threat that could not be met with existing or improved F/A–18 C/D's. Additional improvements have subsequently been made or are planned for the F/A–18 C/D to enhance its survivability including improvements to reduce its radar detectability, while survivability improvements of the F/A–18 E/F are questionable. For example, because the F/A–18 E/F will be carrying weapons and fuel externally, the radar signature reduction improvements derived from the structural design of the aircraft will be diminished and will only help the aircraft penetrate slightly deeper than the F/A–18 C/D into an integrated defensive system before being detected.

Mr. President, as we discuss survivability, it is relevant to highlight the outstanding performance of the F/A–18 C/D in the gulf war just a few short years ago. By the Navy's own account, the C/D performed extraordinarily well, dropping 18 million pounds of ordinance, recording all Navy MiG kills, and, in the Navy's own words, experiencing ''unprecedented survivability.''

In addition to noting the operational capability improvements in justifying the development of the F/A–18 E/F, the Navy also notes limitations of current C/D's with respect to avionics growth space and payload capacity. The Navy predicted that by the mid-1990's the F/A–18 C/D would not have growth space to accommodate additional new weapons and systems under development. Specifically, the Navy predicted that by fiscal year 1996 C/D's would only have 0.2 cubic feet of space available for future avionics growth; however, 5.3 cubic feet of available space have been identified for future system growth. Furthermore, technological advancements such as miniaturization, modularity and consolidation may result in additional growth space for future avionics.

The Navy also stated that the F/A–18 E/F will provide increased payload capacity as a result of two new outboard weapons stations; however, unless current problems concerning weapons release are resolved—air flow problems around the fuselage and weapons stations—the types and amounts of weapons the E/F can carry will be restricted and the possible payload increase may be negated. Also, while the E/F will provide a marginal increase in air-to-air capability by carrying two extra missiles, it will not increase its ability to carry the heavier, precision-guided, air-to-ground weapons that are capable of hitting fixed and mobile hard targets and the heavier stand-off weapons that will be used to increase aircraft survivability.

Understanding that the F/A–18 E/F may not deliver as significant operational capability improvements as originally expected, I would now like to focus on the cost of the F/A–18 E/F Program and possible alternatives to it. As previously mentioned, the total program cost of the F/A–18 E/F is projected to be $89.15 billion. These program costs are based on the procurement assumption of 1,000 aircraft—660 by the Navy and 340 by the Marine Corps—at an annual production rate of 72 aircraft per year. Mr. President, as the GAO report points out, these figures are overstated. According to Marine Corps officials and the Marine Corps Aviation Master Plan, the Marine Corps does not intend to buy any F/A–18 E/F's and, therefore, the projected 1,000 aircraft buy is overstated by 340 aircraft.

Although the Pentagon contends that the Navy had intended to purchase 1,000 aircraft all along, extensive documentation and testimony demonstrates this not to be the case and the 1,000 figure was the original complete buy.

I would also note the importance of the Marine Corps opting out of the E/F Program. Although the E/F was originally developed to service two branches with differing needs and requirements, the Marine Corps has chosen instead to invest in the Joint Strike Fighter program and use those aircraft to replace their AV–8B Harriers and F/A–18 C/D's.

Furthermore, the Congress has stated that an annual production rate of 72 E/F aircraft is probably not feasible due to funding limitations and directed the Navy to calculate costs based on more realistic production rates as 18, 36, and 54 aircraft per year. In fact, according to the Congressional Research Service: ''* * * no naval aircraft have been bought in such quantities in recent years, and it is unlikely that such annual buys will be funded in the 1990's, given expected force reductions and lower inventory requirements and the absence of consensus about future military threats.''

Using the Navy's overstated assumptions about the total number of planes procured and an estimated annual production rate of 72 aircraft per year, the Navy calculates the unit recurring flyaway cost of the F/A–18 E/F—costs related to the production of the basic aircraft—at $44 million. However, using GAO's more realistic assumptions of the procurement of 660 aircraft by the Navy, at a production rate of 36 aircraft per year, the unit recurring flyaway cost of the E/F balloons to $53 million. This is compared to the $28 million unit recurring flyaway cost of the F/A–18 C/D based on a production rate of 36 aircraft per year. Thus, GAO estimates that this cost difference in unit recurring flyaway would result in a savings of almost $17 billion if the Navy were to procure the F/A–18 C/D's rather than the E/F's.

Mr. President, this is certainly a significant amount of savings. Now I know that some of my colleagues will say that by halting production of the F/A–18 E/F and instead relying on the F/A–18 C/D, we will be mortgaging the future of our Naval aviation fleet. However, Mr. President, there is a far less costly program already being developed which may yield more significant returns in operational capability. This program is the Joint Strike Fighter or JSF Program.

The JSF Program office is currently developing technology for a family of affordable next generation multirole strike fighter aircraft for the Air Force, Marine Corps, and Navy. The JSF is expected to be a stealthy strike aircraft built on a single production line with a high degree of parts and cost commonality. The driving focus of the JSF is affordability achieved by triservice commonality. The Navy plans to procure 300 JSF's with a projected initial operational capability around 2007.

Contractor concept exploration and demonstration studies indicate that the JSF will have superior or comparable capabilities in all Navy tactical aircraft mission areas, especially range and survivability, at far less cost than the F/A–18 E/F. The JSF is expected to be a stand alone, stealthy, first-day-of-the-war, survivable aircraft. Overall, the JSF is expected to be more survivable and capable than any existing or planned tactical aircraft in strike and air-to-air missions, with the possible exception of the F–22 in air-to-air missions. The Navy's JSF variant is also expected to have longer ranges than the F/A–18 E/F to attack high-value targets without using external tanks or tanking. Unlike the F/A–18 E/F which would carry all of its weapons externally, the Navy's JSF will carry at least four weapons for both air-to-air and air-to-ground combat internally, thereby maximizing its stealthiness and increasing its survivability. Finally, the JSF would not require jamming support from EA–6B aircraft as does the F/A–18 E/F in carrying out its mission in the face of integrated air defense systems.

While the JSF is expected to have superior operational capabilities, it is expected to be developed and procured at far less expense than the F/A–18 E/F. In fact, the unit recurring flyaway cost of the Navy's JSF is estimated to range from $31–38 million depending on which contractor design is chosen for the aircraft, as compared to GAO's $53 million estimate for the F/A–18 E/F. Additional cost benefits of the JSF would result from having common aircraft spare parts, simplified technical specifications, and reduced support equipment variations, as well as reductions in aircrew and maintenance training requirements.

Mr. President, given the enormous cost and marginal improvement in operational capabilities the F/A–18 E/F would provide, it seems that the justification for the E/F is not as evident as once thought. Operational deficiencies in the C/D aircraft either have not materialized or can be corrected with nonstructural changes to the plane. As a result, proceeding with the E/F program may not be the most cost-effective approach to modernizing the Navy's tactical aircraft fleet. In the short term, the Navy can continue to procure the F/A–18 C/D aircraft, while upgrading it to improve further its operational capabilities. For the long term, the Navy can look toward the next generation strike fighter, the JSF, which will provide more operational capability at far less cost than the E/F.

Mr. President, succinctly put, the Navy needs an aircraft that will bridge between the current force and the new, superior JSF which will be operational around 2007. The question is whether the F/A–18 C/D can serve that function, as it has demonstrated its ability to exceed predicted capacity or whether we should proceed with an expensive, new plane for a marginal level of improvement. The $17 billion difference in projected costs does not appear to provide a significant return on our investment. In times of severe fiscal constraints and a need to look at all areas of the budget to identify more cost-effective approaches, the F/A–18 E/F is a project in need of reevaluation.

Last year, I offered an amendment to the fiscal year 1997 authorization bill for the Department of Defense that required the Pentagon to conduct a cost-benefit analysis of the F/A–18 E/F Program, and to report their findings to the Congress by March 30, 1997. This study was to include a review of the E/F program, an analysis and estimate of the production costs of the program for the total number of aircraft expected to be procured at several different production rates and a comparison of the costs and benefits of this program with the costs and benefits of the C/D Program. That analysis has not been forwarded to the Congress as of this date.

In addition to this report, the Quadrennial Defense Review [QDR], responsible for evaluating all weapon system programs, is also scheduled to be completed in the near future.

Unfortunately, I was enormously disappointed when the Secretary of Defense, rather than waiting for these reports to be completed and publicly released, announced on March 28 his decision to move forward with the E/F Program and procure 62 new F/A–18 E/F fighter planes at an initial cost of $48 million each.

I would have hoped that the Secretary, who I have tremendous respect and admiration for, would have waited until the mandated reports had been provided to Congress and until the results of the QDR—which could have a significant impact on the Pentagon's tactical aircraft modernization plans—had been made public. Instead, this perplexing decision to proceed with the procurement of 62 of these expensive planes precludes the Congress from offering any input on the Department's policy based on a review of the required reports. I am puzzled as to why the new Secretary did not await these reports before announcing this decision.

The 1996 GAO report concluded that we could achieve almost $17 billion in cost savings if the Navy elected to procure additional C/D versions of the F/A–18 rather than the costlier E/F model. Mr. President, by all accounts the F/A–18 C/D is a top quality aircraft that has served the Navy well over the last decade, and could be modified to meet every capacity the E/F is intended to fulfill over the course of the next decade at a substantially lower cost.

Therefore, considering the Department of Defense has clearly overextended itself in terms of supporting

three major multirole fighter programs, and given that the most promising tactical aviation program appears to be the triservice joint strike fighter which will likely outperform the F/A–18 E/F at a substantially lower cost, it is clear that we must discontinue the E/F Program before the American taxpayer is asked to fund yet another multibillion dollar duplicative program.

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. 520

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

SECTION 1. TERMINATION OF THE F/A–18E/F AIRCRAFT PROGRAM.

(a) TERMINATION OF PROGRAM.—The Secretary of Defense shall terminate the F/A–18E/F aircraft program.

(b) PAYMENT OF TERMINATION COSTS.—Funds available for procurement and for research, development, test, and evaluation that are available on or after the date of the enactment of this Act for obligation for the F/A–18E/F aircraft program may be obligated for that program only for payment of the costs associated with the termination of the program.

By Mr. COVERDELL (for himself, Mr. INHOFE, Mr. HUTCHINSON, Mr. HAGEL, and Mr. SHELBY):

S. 521. A bill to amend the Internal Revenue Code of 1986 to impose civil and criminal penalties for the unauthorized access of tax returns and tax return information by Federal employees and other persons, and for other purposes; to the Committee on Finance.

THE COVERDELL TAXPAYER PRIVACY PROTECTION ACT

Mr. COVERDELL. Mr. President, today I rise to offer legislation that will end one of the most pernicious offenses forced upon honest taxpayers. I am talking about file snooping. Others may call it browsing or scanning. Whatever the name, it is just plain wrong, and it ought to be stopped. That is why today I am introducing the Taxpayer Privacy Protection Act.

Too often, the Internal Revenue Service acts as a bully, enforcing the Tax Code through fear and intimidation. Even worse, legal loopholes have allowed certain IRS employees to violate the privacy of innocent citizens without punishment. Some of the most troubling abuses committed by employees of the IRS against innocent Americans include the practices of file snooping.

Recently in the Wall Street Journal, we learned of the case of Mr. Richard W. Czubinski of Boston, MA. He is a member of the Ku Klux Klan who used his IRS job to search the tax returns of political opponents and people he suspected of being Government informers. He was prosecuted and convicted by a jury, but his conviction was overturned in the Federal Court of Appeals. In making its decision, the appellate panel found Mr. Czubinski's browsing to be reprehensible, but also found no crime had been committed because prosecutors could not prove he had used the information or disclosed it.

In addition, a few years back, I was shocked to learn that in my home city of Atlanta, nearly 370 employees of the local IRS office were caught accessing the tax returns and return information of friends, neighbors, and celebrities without proper authorization.

Mr. President, the Taxpayer Privacy Protection Act would make it a crime to engage in file snooping, punishable by a fine of up to $1,000 and/or 1 year imprisonment. Further, a convicted offender would have to reimburse all costs of prosecution and face dismissal.

My legislation also requires notification of taxpayers who suffer this abuse. Unfortunately, what should seem to be a simple matter of decency must be required of the IRS. In response to suggestions taxpayers be notified when their privacy has been invaded by file snoopers, IRS Commissioner Margaret Richardson stated, ''I'm not sure there would be serious value to that in terms of protecting the taxpayers' rights.'' With all respect, such sentiment is typical of a Washington status quo mentality that is out-of-touch with the rest of America.

Finally, my proposal would provide taxpayers who have been victims of file snooping with the option of seeking civil action. Quite simply, it is the decent thing to do.

Taxpayer privacy is one of the most sacred trusts we place in the IRS. Unfortunately, this agency has not lived up to this trust. With passage of the Taxpayer Privacy Protection Act, honest, hardworking taxpayers can be assured their full privacy will be protected every April 15. They deserve no less.

By Mr. GLENN:

S. 523. A bill to amend the Internal Revenue Code of 1986 to prevent the unauthorized inspection of tax returns or tax return information; to the Committee on Finance.

IRS SYSTEMS SECURITY LEGISLATION

Mr. GLENN. Mr. President, the date of April 15 is indelibly etched in the minds of most Americans. For it is on or by that day that honest, hard-working citizens voluntarily share their most personal and sensitive financial information with their Government.

All Americans should have unbridled faith that their tax returns will remain absolutely confidential and zealously safeguarded. That is the foundation of our taxpaying system. If this trust is breached, then the bonds that tie citizens with their Government may break, with disastrous consequences for us all.

In 1993 and 1994, as chairman of the Governmental Affairs Committee, I held hearings which first exposed that vulnerability. We found out that hundreds of IRS employees had been investigated for what I term ''computer voyeurism'', where they call up returns of friends, enemies, celebrities, relatives, or neighbors just to snoop and satisfy their own prurient interests. Even worse, in some cases, IRS employees either altered their own returns to get refunds, or conspired with other taxpayer friends to change their returns and get a kickback from those refunds.

My investigation revealed serious flaws in the IRS' ability to monitor, prevent, and detect browsing.

In response, the IRS Commissioner pledged a zero tolerance policy to protect taxpayer privacy and vigorously discipline those who abuse this trust. The Commissioner also implemented a new system called EARL—Electronic Audit Research Log—to help identify inappropriate and unauthorized access to taxpayer information stored in the IRS' main computer system.

That primary system, IDRS—Integrated Data Retrieval System—handles more than 100 million transactions per month and is used by over 55,000 IRS employees. At least one-third of those employees are authorized to input adjustments to tax account records.

I had asked the General Accounting Office [GAO] to review the progress made by the IRS in reducing computer security risks and in curbing browsing. Earlier this year, GAO produced that report. However, because some of the specific details could jeopardize IRS security, that report was designated for ''Limited Official Use'' with restricted access.

Due to my involvement in this important issue, and because I believe the public has a right to know, I requested that GAO issue a redacted version of the report suitable for public release. I would like to thank GAO for their hard work in this matter and also the IRS for their cooperation in making this possible.

The findings of GAO's report are disturbing. Even more important, their findings are reaffirmed by the IRS in a comprehensive internal report of their own compiled last fall.

Before I get to the specifics, I just want to say a couple of things.

Point One. The vast majority of IRS employees are dedicated and committed to their jobs, and labor in extremely difficult conditions with very outmoded systems. Unfortunately, in this day and age, they must also fear for their own personal safety.

Some 99.9 percent of them would never engage in such snooping or fraud. It is not as if every American has reason to believe that his or her privacy and tax return information has been compromised. But even just a single incidence of this behavior is one too many and cannot be tolerated.

Just last year, in Tennessee, a jury acquitted a former IRS employee who had been charged with 70 counts of improperly peeking at the tax returns of celebrities such as Elizabeth Taylor, Dolly Parton, Wynonna Judd, Michael

Jordan, Lucille Ball, Tom Cruise, President Clinton, and Elvis Presley.

More recently, just a few weeks ago, a Federal appeals court in Boston reversed the conviction of a former employee who had been found guilty of several counts of wire and computer fraud by improperly accessing the IRS taxpayer database. It was reported that he had browsed through several files, including those of a local politician who had beaten him in an election, and a woman he once had dated. The Government had alleged this worker was a member of a white-supremacist group and was collecting data on people he thought could be Government informers.

In both of these cases, because of a loophole in the law, no criminal penalties could be meted out. The reason? No disclosures had been made to third parties.

I doubt these kinds of decisions give great comfort to honest, law-abiding citizens. That is why today I am reintroducing my legislation—the Taxpayer Privacy Protection Act—to close this gap and ensure that any unauthorized access or inspection of return information, in whatever form, is punishable as a criminal offense and that employees so convicted are fired immediately.

I know that the chairman of the House Ways and Means Committee is interested in passing such a bill as are several of my Senate colleagues including Senator COVERDELL. I commend everyone for their interest and looking forward to making this bill—finally—a reality.

Let's pass this by April 15 and send a signal across the land that those who violate the privacy of tax paying Americans will be fined, will be fired, and will be jailed. The public rightfully expects no less.

Point Two. The IRS has recognized this serious issue and has undertaken some responsive actions. Warnings of possible prosecution for unauthorized use of the system appear whenever employees log onto the taxpayer account database. They have installed automated detection programs in some of their systems to monitor employee use and alert managers to possible misuse. And, the IRS has just created a new Office of Systems Standards and Evaluations to centralize and enforce IRS standards and policies for all major security programs. I have confidence that this Office, if given the proper resources, will be a positive force in this effort.

The problem, however, is that these efforts, while well-intentioned, have come too late and fall far short of the commitment, management, and determination sorely needed to confront this matter head-on.

The sad fact is that with 1 week to go until tax returns are due, one thing is clear: the IRS has flunked its own audit and has let down the American people.

The agency promised zero tolerance for browsing. Today's information suggests that they have failed to live up to that pledge—1,515 new cases of browsing have been identified since our last report. Of those only 27 have resulted in employees being fired. I don't know what kind of new math they may be using, but that doesn't sound like zero tolerance to me.

GAO even found that the 1,515 figure may drastically underestimate actual incidents because—and I quote—the agency's ''ability to detect browsing is limited''.

Overall, GAO found that IRS' approach to computer security is not effective. Serious weaknesses persist in security controls intended to safeguard IRS computer systems, data, and facilities and expose tax processing operations to the risk of disruption and taxpayer data to the risk of unauthorized use, modification, and destruction. Further, although IRS has taken some action to detect and prevent browsing, the fact remains that the IRS has no effective means for measuring the extent of the browsing problem, the damage being done by browsing, or the progress being made to deter browsing.

This finding is candidly confirmed in IRS' own internal report:

> progress in developing efficient prevention and detection programs has been painfully slow. The program has suffered from a lack of overall consistent, strong leadership and oversight.

Quite distressing to me is the finding, as stated in the IRS' own report, that employees, when confronted, indicate that they browsed because they do not believe it is wrong and that there will be little or no consequence to them if they are caught.

Before summarizing the major findings, I also want to point out another facet of this report. That is, the effectiveness of controls used to safeguard IRS systems, facilities, and taxpayer data. GAO found serious weaknesses in these efforts, especially in the areas of physical and logical security.

For example, the facilities visited by GAO could not account for about 6,400 units of magnetic storage media, such as tapes and cartridges, which might contain taxpayer data. Further, they found that printouts containing taxpayer data were left unprotected and unattended in open areas of two facilities where they could be compromised.

I really don't want to say much more on this portion of the report than I have already. Except that these matters, and the others referred to by GAO, must be dealt with swiftly and effectively.

I have summarized GAO's findings in a handout. Where appropriate, I have also included references from IRS' own recent internal report on their browsing deterrence and detection program. As I mentioned earlier, that report—[Electronic Audit Research Log (EARL) Executive Steering Committee Report, Sept. 30, 1996]—and I commend the IRS for its candid and frank evaluations in it—affirms most of GAO's findings, conclusions, and recommendations.

I will briefly highlight the major findings in these attachments:

THE IRS SYSTEM DESIGNED TO DETECT BROWSING [EARL] IS LIMITED

GAO found that the system used to monitor and detect browsing is ineffective because it can't distinguish between legitimate work activity and illegal browsing.

Moreover, EARL only monitors the main taxpayer database. There are several other systems used by employees to create, access, or modify data which, apparently, go unsupervised. This is something I have asked the GAO to look into further.

According to GAO:

> because IRS does not monitor the activities of all employees authorized to access taxpayer data . . . IRS has no assurance that these employees are not browsing taxpayer data and no analytical basis on which to estimate the extent of the browsing problem or any damage being done.

In fact, according to the IRS' EARL report:

> The current system of reports does not provide accurate and meaningful data about what the abuse detection programs are producing, the quality of the outputs, the efficiency of our abuse detection research efforts, or the level of functional management follow through and discipline. This impedes our ability to respond to critics and congressional oversight inquiries about our abuse detection efforts.

IRS PROGRESS IN REDUCING AND DISCIPLINING BROWSING CASES IS UNCLEAR

The systems used by the IRS cannot report on the total number of unauthorized browsing incidents. Nor do they contain sufficient information to determine, for each case investigated, how many taxpayer accounts were inappropriately accessed or how many times each account was accessed.

Consequently, for known incidents of browsing, IRS cannot efficiently determine how many and how often taxpayers' accounts were inappropriately accessed. Without such information, IRS cannot measure whether it is making progress from year to year in reducing browsing.

Internal IRS figures show a fluctuation in the number of browsing cases closed in the last few years: 521 cases in fiscal year 1991; 787 in fiscal year 1992; 522 in fiscal year 1993; 646 in fiscal year 1994, and; 869 in fiscal year 1995.

More distressing, however, is the fact that in spite of the Commissioner's announced zero tolerance policy, the percentages of cases resulting in discipline has remained constant from year to year, averaging 29 percent.

IRS itself reported that almost one-third of the cases detected were situations where an employee accessed their own account, which, according to the report, is ''generally attributable to trainee error''.

Their answer creates simply more questions, however. Why are employees accessing their own accounts? Is this a wise policy?

PENALTIES FOR BROWSING ARE INCONSISTENT ACROSS IRS

Despite IRS policy to ensure that browsing penalties are handled consistently across the agency, it appears

that there are disparities in how similar cases are decided among different offices.

For instance, the number of browsing cases resulting in employees being terminated in the last year surveyed ranged from 0 percent at one facility to a high of only 7 percent at another.

The percentage of browsing cases resulting in employee counseling ranged from 0 percent at one facility to 77 percent at another.

Even more incredible to me—and quite distressing—is the extremely low percentage of employees caught browsing each year who are fired for their offense, according to the IRS' own figures. Would you believe that, for all of the browsing cases detected and closed each year, the highest number of employees fired in 1 year has been 12. Between fiscal year 1991 and fiscal year 1995, only 43 employees were fired after browsing investigations. That is generally 1 percent of the total number of cases brought each year. Even if you include the category of resignation and retirement, the highest percentage of employees terminated through separation or resignation/retirement in any 1 year has been 6 percent.

I could go on and on, but I think you get the idea.

Taxpayer privacy is being jeapordized and the IRS is not doing enough to address it.

A new law to make browsing a crime will be an important tool and I have worked with the IRS and the Justice Department in crafting my legislation.

I will also be looking forward to Thursday's hearing of the Senate Governmental Affairs Committee when the IRS will be testifying and this issue is likely to come up.

In closing, I do not want to be standing up here again next year talking about browsing. Although the computer age makes guarding taxpayer privacy more difficult and complex, the fact remains: the IRS can and must do better. The American people expect and demand nothing less.

By Mr. DASCHLE (for himself and Mr. DORGAN):

S. 524. A bill to amend title XVIII of the Social Security Act to remove the requirement of an x ray as a condition of coverage of chiropractic services under the Medicare Program; to the Committee on Finance.

MEDICARE LEGISLATION

Mr. DASCHLE. Mr. President, today I am introducing legislation that makes a commonsense change to Medicare's outdated policy regarding chiropractic care. Specifically, my bill would eliminate the requirement that beneficiaries get an x ray before they are authorized to be reimbursed for chiropractic services under Medicare. This legislation accomplishes two important goals. First, it removes outdated vestiges of still pronounced discrimination against chiropractic practitioners in the Medicare Program. Second, this bill makes chiropractic services more accessible and affordable for beneficiaries. I encourage my colleagues to join me in supporting this measure, which is the Senate companion to legislation introduced in the House of Representatives on March 4, 1997 by Representative PHIL CRANE.

Existing Medicare law strictly limits reimbursement for chiropractic services to manual manipulation of the spine and only to correct a subluxation. However, before beneficiaries can be reimbursed for chiropractic care, Medicare requires that the patient get an x ray to confirm the need for these services. Beneficiaries must either pay for the x ray out of their own pockets, a cost that many cannot afford, or pass through the ''gateway'' controlled by other medical providers, whose x rays, typically far more expensive, are reimbursable under the program.

While x rays are often a useful diagnostic tool to verify a medical condition, most medical professionals and health analysts agree that there is no clinical justification for a blanket requirement that Medicare beneficiaries verify the need for chiropactic care through an x ray. Medicare's statutory x ray requirement results in unnecessary patient exposure to x rays and simply cannot be justified as an across-the-board requirement.

Representatives of the Health Care Financing Administration [HCFA] who have closely studied this issue reached the same conclusion that I did and recommended to the President that this provision be included in his Medicare reform plan. I am pleased that the President did include in his fiscal year 1998 balanced budget proposal a provision calling for the elimination of the x ray requirement for chiropractic care. I am cautiously optimistic that bipartisan support from within the Congress and the administration will help facilitate passage of this modest, but important, measure.

I grew up in a community where chiropractors perform a valuable service by providing an alternative to allopathic medicine. The nearly 200 chiropractors in South Dakota serve the State well. In rural States like mine, chiropractors are often an essential source of health care delivery. Sometimes they are the only health providers in the community. In rural States across the country, the chiropractic profession plays an integral role in the health care system.

But the issue is even larger than one of correcting inequities in the law and recognizing the contributions of chiropractors alone. We are constantly searching for ways to give more Americans greater access to quality health care, and to facilitate that availability of care in the most cost-effective manner. One proven way to make progress toward those goals is to exploit the talent and dedication represented in the diversity of practitioners increasingly involved in the delivery of health care services in the United States. Competition among different kinds of providers and access to less expensive forms of care have to be emphasized if we are to control escalating health care costs. Yet this competition is virtually impossible when programs like Medicare put up barriers to beneficiaries receiving care from a group of licensed professionals like chiropractors.

As health care cost increases continue to threaten both the quality and economic stability of our national health care delivery system, the cost savings potential of chiropractic care should be fully explored. The bill I am introducing today will help provide access to quality care at a reasonable cost. I urge my colleagues in the Senate to support this measure to ensure Medicare patients have appropriate access to the benefits of chiropractic care.

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. 524

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

SECTION 1. REMOVAL OF REQUIREMENT FOR X-RAY AS A CONDITION OF COVERAGE OF CHIROPRACTIC SERVICES UNDER THE MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1861(r)(5) of the Social Security Act (42 U.S.C. 1395x(r)(5)) is amended by striking ''demonstrated by X-ray to exist''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1998.

By Mr. HATCH (for himself, Mr. KENNEDY, Ms. SNOWE, Mr. KERRY, Mr. JEFFORDS, Mr. DODD, Mr. STEVENS, Mr. ROCKEFELLER, Mr. BENNETT, Mr. DASCHLE, Ms. COLLINS, Mr. WELLSTONE, Mr. SMITH of Oregon, Mr. BINGAMAN, Mr. CAMPBELL, Mrs. MURRAY, Mr. REED, Mrs. BOXER, Mr. LAUTENBERG, Mr. DURBIN, and Mr. REID):

S. 525. A bill to amend the Public Health Service Act to provide access to health care insurance coverage for children; to the Committee on Labor and Human Resources.

CHILD HEALTH INSURANCE AND LOWER DEFICIT ACT

Mr. HATCH. Mr. President, today, Senator KENNEDY, I, and a number of others, are introducing the Hatch-Kennedy child health insurance and lower deficit bill, or the CHILD Act, S. 525. We will also introduce a companion measure, S. 526, which contains a tobacco excise tax increase to pay for the program established in the CHILD bill.

The CHILD bill has been negotiated over a long period of time in intensive and sometimes heated negotiations. As anybody can understand, it is difficult to get the two sides together on matters like this. So we have worked very, very hard to try and bring both sides together.

It is no secret that Senator KENNEDY and I have worked together in the past. And, we have fought each other in the past. But today is a time of unity, for I believe we have written a bill that really makes sense, a bill that will work and that will help one of the most vulnerable segments of our society, children without health insurance.

Of the 40 million people who are uninsured in this country, 10 million of them are children. Of those 10 million, about 3 million do qualify for Medicaid, but are not enrolled.

While it has its problems, Medicaid is an excellent program overall, a program that does assist the poorest of the poor children and families. But those above the Medicaid eligibility poverty levels, comprise about 7 million children, most of whom are often called the near poor, or the working poor.

Mr. President, as a recent study has made abundantly clear, about one out of three children in this country lacks health insurance. It is a pathetic situation.

As my colleagues are aware, Senator KENNEDY and Senator KERRY introduced a bill last year which addressed the child health insurance problem from a considerably different perspective than the bill we are finally going to introduce today.

I think it is important to point out the differences for the edification of my colleagues.

The bill we will file today is a bill that is a straight block grant to the States. The States have flexibility to determine their own eligibility standards with minimal Federal requirements.

The proposal is not an entitlement program. It is a fully funded program. It is a 5-year authorization.

The mechanism for funding the CHILD program authorization is an increase in the tobacco excise tax, amounting to 43 cents per package for cigarettes and proportionate increases on other tobacco products. Some have analogized this to a user fee on those who use tobacco products.

We think this excise tax is justified. In 1955, a package of cigarettes cost about 23 cents. Of that amount, 8 cents consisted of a Federal excise tax on the cigarettes.

Today, a package of cigarettes costs almost $2, at least $1.82 in most States, but we have only a 24-cent Federal excise tax on the utilization of those cigarettes.

We think this provision is also justified from a public health perspective.

Smoking is the largest preventable cause of premature death in the United States.

Thirty percent of all cancer patients develop their diseases from smoking. Almost all lung cancer comes from smoking. And much of the cardiovascular disease that we have in our society comes from smoking—including passive smoking as well.

It should be no secret to my colleagues that it was a difficult decision for me to submit a bill which will increase taxes, but after considerable study I concluded in this case it is a just and a right thing to do.

And if we increase the cigarette tax by 43 cents, we will still be below the percentage the excise tax was back in 1955 when a package of cigarettes cost 23 cents and the excise tax was 8 cents of that.

It is important to note that two-thirds of the revenue raised from this bill over the next 5 years will be used for the new child health insurance. The States will be able to negotiate with private health insurance companies to provide coverage, and they will be able to utilize the community health centers which are giving low-cost but high-quality health care in America today.

I am one of the strongest advocate for community health centers, and, I must say, they have done a superlative job of delivering health care in general in our society.

In Utah, we have what is known as the Caring Foundation. For every dollar we raise in charity, Blue Cross/Blue Shield matches that dollar with $1, making $2 for child health insurance. I believe that can be duplicated across this country in the best interest of children and families.

When someone inquires about why I am sponsoring the CHILD Act, my thoughts turn to scores of constituents who have brought their concerns about the cost and availability of health insurance to my attention.

It is heart rending to me when I have uninsured families come into my office—many of whom are young and who have children. These families are frantic; they don't know where to turn when a child gets sick.

Two young women from Provo in my home State came in to visit me recently. Both had six children. They both work part time. Their husbands work full time, but neither family makes more than $20,000 a year. They are hard-working people. They are the working people of our society who are the poorest of the poor not on Medicaid, who cannot afford health insurance and, frankly, who do not know where to turn.

I think that it behooves us to solve this problem for them, and the best way to do it is with a straight block grant to the States.

The grant approach has a lot of benefits. There should be minimal new bureaucracy, because the IRS already collects excise taxes on cigarettes. There should be minimal bureaucracy because HHS will distribute the funds based on a simple formula reflecting the number of uninsured in a State.

We provide a safeguard so there is no incentive for businesses to drop the lower paid people off their health insurance. In this bill, if a company wishes to drop any employee from the company health plan, then they will have to drop all their employees, from the top executives on down.

We are trying to help those who cannot help themselves, which I think is the most conservative thing we can do in this society. We are not trying to help those who can help themselves but refuse to. People who can help themselves ought to help themselves.

What I am saying, Mr. President, is that it is time. It is time for this Congress to get down to business.

Mr. President, it is time.

It is time for us to get down to business.

It is time for the Congress to focus on how to make a great country greater on how to set aside partisan differences and help the people we were elected to help.

It is time to focus on what truly needs to be done in this country not on deadlock or gridlock or shutdown.

It is time to wake up and realize that—in this great land of incredible riches and abundance—in the greatest country of the world—there are still children being left behind.

Who cannot be disturbed, even frightened, by the statistics?

Drug use among our young people is dramatically on the rise. In its ninth annual survey of students in grades 6–12, the National Parents' Resource Institute for Drug Education [PRIDE] reported that annual use of most drugs was at the highest level since the survey began 10 years ago. Record use was reported for cigarettes, marijuana, cocaine, uppers, downers, inhalants, and hallucinogens.

Serious questions have been raised about our children's ability to learn. Our children rank pitifully behind other countries in educational scores. One survey of international test scores for math and science, found Americans to rank dead last and South Koreans ranking the best. And, who could not be disturbed by this? A 1991 National Assessment of Education Progress survey, revealed that only 5 percent of high school seniors demonstrated enough understanding of geometry and algebra to be prepared for college-level math.

Violence is rapidly becoming a way of life for today's children. Over the past decade, the rate of homicide committed by teenagers aged 14–17 has more than doubled, increasing 172 percent from 1985 to 1994. In fact, 35 percent of all violent crime is committed by offenders less than 20 years of age.

And here's another astounding fact. Two years ago, a survey of 1,000 teachers showed that 11 percent had been assaulted in school. Teachers have been robbed, vandalized, slashed by razors, physically assaulted, shot, and set on fire in the schools. What kind of learning environment is that for our children?

And, let's look at child health. How many Senators are aware that almost one out of three children have no health insurance?

Ten million children have no health insurance at all. That is more children than the entire populations of Maine,

Rhode Island, Alaska, Delaware, Georgia, Hawaii, Montana, Nebraska, South Dakota, and Vermont—10 States—combined.

Did anyone know this? Over 500,000 American infants are uninsured, infants who need such critical services as immunizations to grow up healthy.

Mr. President, these are astounding statistics. Terrifying predictors of our world as we head into the 21st century.

And I, for one, am going to put my foot down. I will do everything I can to reverse this trend.

I challenge each Senator in this body to work with me on what must be the top agenda item for the 105th Congress: Making this world a better place for our children.

I will make this a top priority in the Judiciary Committee.

We will look at such issues as the Federal Gang Violence Act, violence in the schools, and, importantly, a strong national antidrug abuse strategy.

Already the committee has approved—only to suffer the most narrow of defeats on the floor—the Balanced Budget Act, passage of which is perhaps the most important legacy we can leave for our children, each of whom is born saddled with $20,000 in debt.

And I hope other committees will be working as well.

For no effort to improve this world for our children can be complete without measures to improve their ability to grow up healthy.

That is why I have united with my good friend and sometimes adversary, Senator KENNEDY, to draft the bill we are introducing today: the Child Health Insurance and Lower Deficit Act. We call it the CHILD bill. The CHILD bill will be accompanied by additional legislation we also introduce today which provides the funding offset for the CHILD Program through an increase in the tobacco excise tax.

Introduction today of S. 525, and the companion bill to increase the tobacco excise tax, completes 3 months of intense negotiations between myself and Senator KENNEDY.

Our discussions were sometimes heated, sometimes acrimonious, but always well intentioned. They have resulted in a bill, the adoption of which I think will make this country a better place.

And so, today, Senator KENNEDY and I have found a solid center—we have compromised from the left and from the right. We are doing this to help the 10 million children in the United States who are without health insurance. We are doing it because it is the right thing to do.

The child health insurance and services bill Senator KENNEDY and I will introduce today is targeted to the near poor, primarily working families, who are not covered by existing Government programs. Two-thirds of the uninsured children come from low-income working families with annual incomes of $25,000 or less; 86 percent are from families where at least one parent is employed.

I think any honest examination of this would show that these statistics are deplorable. Children are our most precious natural resource. If we had a vote on that today, it would pass 100 to 0. And if you agree on that, the next step is simple. I can't think of a more appropriate role for the Federal Government than helping the most vulnerable in our society. It has become a cliche, but children are our future.

Already I have taken criticism for this bill and for uniting with a Democrat to sponsor the CHILD Act. It is true that Senator KENNEDY and I represent the most divergent philosophies in the U.S. Congress. It is for that very reason we are proposing S. 525 today. United, we can provide the basis for a consensus position we hope all our colleagues will endorse.

It is true that Senator KENNEDY and I do not often agree on public policy. I can't even count the number of times I have stood on this floor to oppose—even filibuster—legislation he has sponsored. But with respect to health care—when it comes to helping people—we both have a strong commitment to doing the right thing regardless of politics. And this legislation is the right thing to do.

Joining Senator KENNEDY and me today in cosponsorship of the CHILD bill, S. 525, are 19 Senators, for a total of 21. Those Senators are: SNOWE, KERRY, JEFFORDS, DODD, STEVENS, ROCKEFELLER, BENNETT, DASCHLE, COLLINS, WELLSTONE, SMITH (OR), BINGAMAN, CAMPBELL, MURRAY, REED, BOXER, LAUTENBERG, DURBIN, and REID.

Joining us in cosponsorship of the tobacco tax bill, S. 525, are Senators BENNETT, BINGAMAN, BOXER, DODD, DURBIN, JEFFORDS, KERRY, LAUTENBERG, MURRAY, REED, REID, ROCKEFELLER, SNOWE, and WELLSTONE.

What are the major features of the CHILD bill?

Our proposal sets up a voluntary State grant program—I repeat, voluntary State grant program. The funds will be used by States to subsidize the cost, or part of the cost, of private health insurance for needy children. States will also be able to use Community and Migrant Health Centers to provide services directly to children.

We hope our program will be a catalyst to improve health care for kids. It is a Federal/State/private partnership. Any State that wishes to participate must contribute to the program. States may require individuals or their employers to contribute as well.

We have designed an approach which we believe is fiscally responsible. The bill authorizes program expenditures for each of 5 years, and it is fully financed with a 43-cent increase in tobacco excise taxes. Two-thirds of the revenues will be used for program services, and one-third for deficit reduction.

In drafting S. 525, we have worked very hard to make certain that no large, new bureaucracy will be needed to implement the CHILD Program. The idea of a huge new Federal involvement in health care frightens most Americans, as was so amply evidenced by the resounding defeat of the Clinton health care bill in 1994.

I was one of the loudest objectors to that legislation as a member of both the Finance and Labor Committees at the time it was considered. I want to assure my colleagues that we are not replicating that exercise here today.

HHS will disburse the grant money according to existing Medicaid formulas and the number of uninsured children in the State. The Treasury Department already collects an excise tax.

The States will set eligibility levels, which presumably they could do very easily based on their experiences with Medicaid and other State programs to help the poor and near poor. The States will use their current Medicaid benefits packages to negotiate contracts for insurance coverage. These are not complex calculations. They should be easily achievable.

We also worked very hard to allay any concerns that we were establishing a new entitlement program.

We are not.

The bill does not establish any individual entitlement to benefits. It is a 5-year authorization which is fully funded. It is not like Medicare where we guarantee we will pay for the services of every eligible beneficiary. It is not like Medicaid where we pay an open-ended amount, which is appropriated annually.

What we are really talking about doing with this bill is finding cost-effective ways to get quality health care services to children. Our bill recognizes and strengthens the important role that community, migrant and homeless centers play in caring for the Nation's uninsured children and their families. Community and rural health centers already exist. We are not creating them or remaking them in this bill.

They are located in medically underserved communities where many uninsured children live. Over 940 health centers in every State serve one out of six low-income American children, over 4.5 million children. They are currently the family doctor for one out of seven uninsured children, totaling 1.3 million children. Last year, health center professionals delivered one of every 10 babies born in the United States, and one out of every five low income babies. They are experts in providing quality, comprehensive primary and preventive care to uninsured children—the very type of care we are trying to get to children with this bill.

Our bill permits these children to continue to choose health centers as their primary care provider and to make the choice of a health center available to other uninsured children. In each area currently served by a health center, a direct service option will be available to children who are served by a health center. Families choosing the direct service option will

get the same comprehensive Medicaid package of services as do those who opt for a children's policy. Under the direct service option, children will receive their primary and preventive care at the health center they select and will receive specialty and inpatient care through networks of providers certified by the State or through a wrap-around insurance policy.

We believe that the direct service option will be as cost effective as an insurance policy and may even be less expensive. Several studies which compared the total annual cost of health care for Medicaid patients served by health centers—including primary and specialty care and inpatient care—to the total annual cost of care for Medicaid patients served by other types of providers—including health maintenance organizations and private physicians—found that health center care was the least expensive.

The reason? Health centers prevent illness because of the primary and preventive care they provide. Based on these studies, the cost of all care—primary, specialty, and inpatient—under the direct service option is expected to be lower than the cost for a child cared for by another type of provider.

As the chief sponsor of the balanced budget amendment, I could not support the creation of any new entitlement program.

Indeed, I believe this proposal is fully consistent with the BBA. First, our bill is fully financed by the proposed tobacco products tax. Second, for every $2 of program cost the Hatch-Kennedy bill dedicates $1 to deficit reduction.

When all is said and done, this bill would help to bring the budget in balance—which I believe will be nearly as essential to children in the long-run as necessary health care is in the short-run.

Let me underscore that the net cost to the Federal Government of the CHILD Act is zero, because it is fully funded. In fact, the bill literally saves money, because it provides at least $10 billion in funds for deficit reduction over the next 5 years.

We cap Federal expenditures at $20 billion over 5 years for services, with $10 billion for deficit reduction. Over the 5-year period, the ratio of services to deficit reduction will be 2 to 1.

For services, we will provide the following amounts: 1998: $3 billion, 1999: $3 billion, 2000: $4 billion, 2001: $5 billion, 2002: $5 billion.

For deficit reduction, we provide the following amounts: 1998: $3 billion, 1999: $3 billion, 2000: $2 billion, 2001: $1 billion, and 2002: $1 billion.

Let me make perfectly clear that the size of this program is capped each year. In fact, if not enough revenue is generated, then the size of the program will be lowered accordingly.

Let me take a moment to address other potential concerns about this bill.

Many have asked why we need a new program. Indeed, we have the Medicaid Program, which helps the poorest of the poor. Even so, there are 10 million children without coverage. In fact, 3 million uninsured children are eligible for Medicaid, but are not enrolled.

There is no program for the remaining 7 million children, most of whom come from near poor families. Those families are faced with two very unattractive options: a choice between dropping out of the labor force in order to get Medicaid eligibility, or keeping their jobs with no health care coverage at all.

It might be logical to assume that Medicaid would provide the basis for a program to increase child health coverage. And we did examine that idea. But, Medicaid is an open-ended entitlement—and an expensive one at that. Both the States and the Federal Government are seriously concerned about the runaway costs of Medicaid.

In contrast, our capped program is not an entitlement. It is a targeted approach which allows States considerable flexibility in design and administration.

Others have suggested that we use a tax-based approach. I would be willing to consider a tax credit approach, if we could design one that really works. But I foresee two problems in developing such an approach.

The first is that a tax credit could really amount to an open-ended entitlement, whereas the size of our program is capped each year. The second is that poor and near-poor families, who we are trying to help with this bill, simply cannot afford to buy insurance coverage during the year, and wait until the next April to get the money back.

For the benefit of my colleagues, I want to respond to two other concerns.

First, I must emphasize that S. 525 is not the Kerry-Kennedy bill from last year, S. 2186. It is a new proposal that Senator KENNEDY and I wrote together. Senator KENNEDY and I have both moved considerable distances to write this compromise legislation.

This bill is not an open-ended, permanent entitlement; it is a capped 5-year program, run by the States and, as such, is very similar to a proposal former House Republican Leader Bob Michel authored in 1995.

Second is the assertion that this bill is part of the Clinton agenda on health care. If helping the needy is crime, then I plead guilty. But I hope I have convinced those here today that there is a big difference between Clintoncare and the Hatch-Kennedy bill.

Indeed, I am aware that some believe there is a hidden Clinton agenda to enact health care reform piece by piece, starting with kids care.

I think that is a red herring. This argument suggests to me that we should never do anything worthwhile because of the possibility that it may evolve into something bad. I agree that we do not want the huge Clinton health care mandate proposed and debated during the 103d Congress. But, this bill is not that bill—it is not even a look-alike bill.

I have tried to design a Reaganesque block grant tailored to meet a specific problem with a wide degree of flexibility for the States. Unlike the Clinton program, the CHILD Act is focused. It is fully financed; it does not establish a new Federal bureaucracy; and it does not create any new entitlements. There are no price controls and no regional alliances and no global budgets.

Another difference is that we are trying to make this a bipartisan approach right from the beginning. We have the wisdom of that national debate 2 years ago and are far wiser for it.

Let me next turn to the issue of the tobacco tax as a source of revenue for the Children's Health Insurance and Lower Deficit Act. There can be no doubt that smoking and tobacco use is a major public health problem. By any measure, it is also costly.

Smoking is our Nation's No. 1 preventable health threat. There are about 48 million Americans who smoke. About 2 million Americans use other tobacco products like chewing tobacco.

Consider these facts.

Tobacco kills an estimated 419,000 Americans each year.

An additional 2.5 million more people throughout the world die from smoking each year.

Smoking accounts for about 1 in 5 deaths in the United States.

Tobacco accounts for more deaths than homicide, car and airplane accidents, alcohol, heroin, crack, and AIDS—combined. In fact, cigarettes are also a major cause of fire fatalities in the United States. In 1990, cigarettes were responsible for about one-quarter of all deaths associated with residential fires; this represented over 1,000 deaths.

Each day nearly 3,000 young Americans become regular smokers. Eventually, 1,000 will die early from tobacco-related diseases.

Unfortunately, cigarette smoking is on the rise among the young: According to the Centers for Disease Control and Prevention [CDC], the number of high school students reporting that they smoked in the last month rose about one-third between 1991 and 1995, from 27.5 percent in 1991 to 34.8 percent in 1995.

Among black high school age males the jump in smoking was even more alarming, doubling from 14 percent in 1991 to 28 in 1995.

About 8 in 10 smokers begin to use tobacco before age 18 and about one-half of all smokers started at age 14 or earlier.

In 1964, Surgeon General Luther Terry reported that smoking causes lung cancer in men.

In 1988, the Surgeon General C. Everett Koop reported that smoking was an addictive behavior—the same as for heroin or cocaine.

Each year, the estimated 1 million youngsters who become smokers add

about $9 to $10 billion to the Nation's health care costs over their lifetimes.

According to a 1994 CDC report, tobacco cost an estimated $50 billion in direct health care costs in 1993. Of this total, CDC estimated that $26.9 billion went for hospital expenditures, $15.5 billion for physician expenditures, $4.9 billion for nursing home expenditures, $1.8 billion for prescription drugs, and $900 million for home health care expenditures.

The 1994 CDC report notes: ''The findings in this report indicate that cigarette smoking accounts for a substantial and preventable portion of all medical-care costs in the United States.''

According to CDC projections, in 1993 approximately 24 billion packages of cigarettes were sold in the United States and for each of these packages about $2.06 was spent on medical care attributable to smoking. Of this $2.06 per pack estimated societal medical care cost, CDC estimated that $0.89 was paid through public sources.

The CDC study estimated that there was a twofold increase in estimated direct medical care costs attributable to smoking between 1987 and 1993.

Extrapolating the 1987 survey data reported by CDC, it can be estimated that, in 1993, about $10 billion in Medicare costs and $5 billion in Medicaid costs were attributable to smoking.

It has been estimated that smoking cost $4.75 billion to other Federal health care programs, $1.6 billion to other State health programs, and over $16.7 billion in higher premiums paid to private health insurance companies.

In addition to the direct cost of about $50 billion annually, experts agree that a similar amount of costs are borne by society through lost productivity—that is, the foregone earnings of those dying prematurely.

Researchers at the University of California at San Francisco, Drs. Wendy Max and Dorothy Rice, estimate that the 1993 mortality costs due to smoking were $47 billion.

Overall, smoking costs society over $100 billion annually. This is simply too high a price to pay.

It is estimated by the Joint Tax Committee that a 43 cent per pack increase in the cigarette tax, coupled with proportionate tax increases for other tobacco products, would yield about $6 billion in new revenues.

Another point that I want to make today is that the tobacco tax simply has not kept up with inflation. As a matter of fact, the relative component of the price of cigarettes devoted toward taxes has slipped over the last three decades and, even with the increase we propose today, will actually be lower proportionately once this bill is enacted than it was in 1964 when Surgeon General Luther Terry reported that smoking causes cancer.

In 1964, the average total price of a pack of cigarettes was about 30.5 cents per pack. Of this total, 8 cents went to pay the Federal tax and another 8.5 cents per pack were levied in State cigarette and sales tax. In sum, in 1964, about 50.5 percent of the cost of a pack of cigarettes went to taxes.

Currently, the average price per pack of cigarettes is about $1.94. Of this total, 24 cents represents the Federal tax and an additional 31.7 cents per pack is levied by the States together with an additional 9.3 cents per pack in sales taxes. All in all, the share of the per pack price of cigarettes devoted to taxes has dropped to about 33.5 percent today from the 1964 level of 50.5 percent.

If the CHILD Act were signed into law and the new 43 cents per pack tax were added, and if this new tax were passed on directly to the consumer to increase the per pack price to $2.37 per pack, the share of the total price devoted to taxes—45.6 percent—would still be lower than it was in 1964.

Even when this new tax is factored in, the United States would still have a relatively modest tax component built into the price of cigarettes compared with other industrialized countries. For example, in Canada 64 percent of the price of cigarettes is devoted to taxes. In Great Britain, the comparable figure is 82 percent.

As a conservative, I am generally opposed to tax increases. I firmly believe that the Federal Government should spend less, and the American people should keep more of the money that is earned in our economy.

As a conservative, I believe in a balanced budget. That is why I spent the better part of February managing the floor debate for the balanced-budget amendment. That is why I worked hard to convince Senator KENNEDY to earmark one-third of the revenues raised by the proposed increase in the cigarette tax for deficit reduction.

Yet, the statistics about tobacco use and cost that I cited above, I believe, make the case that tobacco products are imposing external costs onto society that are not adequately reflected in the price of these inherently dangerous products. Simply stated, the producers and consumers of tobacco products are not paying the full costs of this product.

When I balance the opportunity that we have in terms of helping to provide health insurance and services to children, coupled with a significant deficit reduction component, against my natural aversion to raising taxes, I come down in favor of this financing mechanism with this tobacco tax—or, as I call it, a user fee. I believe that both the public health and economics reasons are unique and compelling.

I believe that when my colleagues in Congress have the opportunity to fully consider these issues that they will agree with the cosponsors of this legislation and support the CHILD Act.

In closing, Mr. President, let me state my intention to work with all interested parties to improve this bill as it moves through the legislative process.

Indeed, as I have stated, there are some provisions contained within this bill that I believe could be improved through a thorough public discussion.

In particular, I would like to hear from the Governors about how this bill meets their needs with respect to the uninsured population.

I am aware that they may have a few concerns about the bill, such as using the Medicaid benefits package as the model for the private insurance contracts.

Senator KENNEDY and I inserted that provision in the bill for two reasons. We knew that the Governors would be familiar with it and, most importantly, it would obviate the need at either the Federal or State levels to undertake the onerous task of creating a benefits package.

Our Utah Governor, Mike Leavitt, has stated on more than one occasion that he believes the Medicaid benefit package is too ''rich;'' in other words, a more efficient package would be less costly and still provide needed care. I look forward to working with him and the leaders of other States to address this issue.

Another issue of critical concern is the interrelationship of this program with the employer community. We were very careful to design a program that would complement existing employer efforts to insure their employees without a costly Federal mandate. On the other hand, though, we wanted to make sure that there was no incentive for employers to ''dump'' employees into the new program in order to relieve themselves of a benefit cost.

That is why we inserted a provision that states that any employer who makes health insurance contributions for an employee cannot vary such contributions based on an individual's eligibility under the CHILD Act. The only way an employer could put a currently insured employee into the CHILD program would be to eliminate coverage for all employees in the company plan. We think this is highly unlikely to happen.

Again, let me state that we were very sensitive to the concerns about a mandate on employers, and we look forward to a very careful examination of this issue as the legislation progresses.

Let me also discuss for a moment the issue that Senator LOTT has already mentioned, that of making certain that the 3 million children who are currently eligible for Medicaid, but not participating, become enrolled. While our bill does not address that issue, it is something we need to do. I hope to work with Senator JEFFORDS and Senator DEWINE who have indicated in interest to me in working to make certain that those who are eligible for Medicaid can participate.

But let me hasten to add that only 3 million out of the 10 million uninsured children are eligible for Medicaid. So, Senator LOTT's idea—which is a good one—would still leave 70 percent of the problem untouched.

Mr. President, in closing I want to reiterate my commitment to working

with Senator KENNEDY and all 98 of my other colleagues to enact a bill this year which will improve child health insurance coverage in the United States.

It is time, and I hope the majority of this body will agree.

The PRESIDING OFFICER. Under the previous unanimous-consent request, the 15 minutes allocated to the Senator from Utah has expired.

Mr. HATCH. Will my friend yield me 30 seconds?

Mr. KENNEDY. Sure.

Mr. HATCH. I want to compliment my friend for the remaining 30 seconds. I wish I could spend more time.

Development of these bills has not been an easy thing for him to do, or for me. But I am convinced we have drafted a program that will work.

I have to suggest that if Senator KENNEDY and Senator HATCH—who have such widespread differences of philosophy—can unite to propose a program like this, then anybody can get together. Despite our philosophical differences, which are wide, we both have a great deal of friendship and caring for each other. We are working as hard as we can to do what is right here.

I want to thank my colleague for his great work in this effort.

I yield the floor.

Mr. KENNEDY. Mr. President, I want to thank Senator HATCH for his leadership on this important issue affecting our Nation's children.

Those of us in the Senate have noted that Senator HATCH was instrumental a number of years ago, working with Senator DODD and myself, on the child care block grant program, which still is in existence. It has been evaluated as an extremely effective program for providing child care for the working poor.

A number of years ago we also worked closely together in the summer jobs initiative that included continuing education programs.

In the area of children, I think Senator HATCH and I as well as many others understand that this is neither a Democratic issue nor a Republican issue. Nor is it a North or South issue. It is an American family issue.

For every American family children come first, as well they should. They are our greatest asset and they represent our Nation's future. When we invest in our children, we are investing in America's future. That is why this effort is of such importance and why Senator HATCH and I are now working closely together to make sure that this legislation becomes law.

Mr. President, it is reasonable to ask, why now? Why children?

The fact of the matter is 3,000 children every single day lose their health insurance. Nine out of ten of those who are losing their health insurance in this country are children.

The number of uninsured children is growing. It will rise to 5 million by the year 2000, making it increasingly urgent that we address the fact that more and more children are becoming uninsured.

We are talking about the sons and daughters of working families—families that are working 52 weeks of the year, 40 hours a week, trying to make ends meet and play by the rules. One of the things they are unable to do is provide health care coverage for their children.

Their children require this coverage, which is why Senator HATCH and I and many others want to make health insurance accessible and affordable for all of America's children. We know the number of children who have ear infections and never see a primary care doctor. We know the number of children who are in school at this very hour and have difficulty seeing the blackboard or reading a book and are humiliated in their classroom because they have not had their eyes tested.

This crisis is occuring all over the country. It is happening in urban areas and in rural communities. But we can do something about it, and that is why the legislation is of such importance.

Ten million children are uninsured. Their parents are working hard trying to make ends meet, and the one thing they cannot afford are the premiums to provide health care coverage for their children.

As Senator HATCH has pointed out, our legislation will build on existing programs in the States, and the States by and large are overwhelmingly using the voucher system. I know there are those who favor a tax credit program, but it has been tried and did not work in the past.

We are also building on the private sector because the insurance that will be provided and distributed is going to be as a result of competition in the States.

Finally, we are paying for the program with a 43-cents-per-pack increase in the Federal tobacco tax.

Some say, isn't this unfair and unjustified? We say that tobacco costs the Nation $50 billion a year in direct medical costs—$50 billion a year. By adding 43 cents on a pack of cigarettes, we will have even less than the proportion of tax—Federal, State, and sales tax—for a pack of cigarettes than we had in the early 1960's.

When we look at where we are in comparison to where other countries around the world—our cigarette taxes are well below every other industrial country in the world. With our 43-cents-per-pack increase in the Federal cigarette tax, it will still be among the lowest of all industrial nations.

Mr. President, we strongly support this increase in the cigarette tax because it can do more to stop children from smoking than any other action we could possibly undertake. This will have a dramatic impact on reducing addiction among teenagers, who have less income than adults to spend on cigarettes. That is when the smoking really starts and where the child becomes addicted.

We say that not only because that has been the history of pricing over the period of the last 30 years, but it is there in the documents and statements of the tobacco companies as we have seen in the Liggett story recently.

Mr. President, this is legislation which the American people support. It makes sense from a health point of view. It makes sense from their family point of view. It makes sense for the future in terms of having children who are going to have good quality health care. It makes sense because it will save the lives of over 800,000 children who would otherwise have died from a smoking-caused illness. And it will also provide a modest reduction in terms of the deficit.

This is a win-win-win for the American people. It should be a bipartisan effort. I want to commend Senator HATCH for his leadership and I thank all of our Democratic colleagues for joining in our efforts.

I am honored to join Senator HATCH in introducing the Child Health Insurance and Lower Deficit Act of 1997, which will be a major step toward making health insurance accessible and affordable for all of America's children. I am hopeful that the legislation we are introducing today will be approved by this Congress, and signed by President Clinton. It shows that Democrats and Republicans can work together to solve this national problem.

One of the most urgent needs of children is health insurance coverage. Insurance is the best possible ticket to adequate health care—and every child deserves such care.

Today, however, more than 10 million children have no health insurance—1 child in every 7—and the number has been increasing in recent years. Every day, 3,000 more children lose their private health insurance. If the total continues to rise at the current rate, 13 million children will have no insurance coverage by the year 2000.

Almost 90 percent of these uninsured children are members of working families. Two-thirds are in two-parent families. Most of these families have incomes above the Medicaid eligibility line, but well below the income level it takes to afford private health insurance today.

The children's health care crisis begins at the beginning—with inadequate prenatal care. Some 17 industrial countries have lower infant mortality rates than the United States. Every day, 636 infants are born to mothers in this country who did not have proper prenatal care; 56 die before they are 1 month old. And 110 die before the age of 1. Many more grow up with permanent disabilities that could have been avoided with prenatal care. Uninsured pregnant mothers have sicker babies, and these babies are at greater risk—low birth weight, miscarriage, and infant mortality.

Too many young children are not receiving the preventive medical care they need. Uninsured children are twice as likely to go without medical care for conditions such as asthma,

sore throats, ear infections, and injuries. One child in four is not receiving basic childhood vaccines on a timely basis. Periodic physical examinations are out of reach for millions of children, even though such exams can identify and correct conditions before they cause a lifetime of pain and disability.

Preventive care is the key to a healthy childhood, and it also is a cost-effective investment for society. Every dollar invested in childhood immunizations saves $10 in later hospital and other treatment costs.

Some say there is no health care crisis for children. But I reply, tell that to the hard-working parents who cannot afford coverage for their families or whose employers won't provide it.

Tell it to the hospital emergency room physicians who are often the only family doctor these children know, and who have to treat them for heart-breaking conditions that could have been prevented or easily cured with timely care.

Tell it to school teachers struggling to teach children too sick to learn. Tell it to children's advocates across the country, who see children every day with health care needs neglected for too long. Between 30 and 40 percent of children in the child protective system suffer from significant health problems.

For all these reasons and many more—10 million more—the children's health care crisis is real, and the time to address it is now. Every child deserves a healthy start in life. No family should have to fear that the loss of a job, or an employer's decision to drop coverage or hike the insurance premium will leave their children without health care.

The current neglect is all the more unconscionable, because children and adolescents are so inexpensive to cover. That is why we can and must cover them this year—in this Congress. The cost is affordable—and the benefits for children are undeniable.

The legislation that Senator HATCH and I are introducing will make health insurance coverage more affordable for every working family with uninsured children. It does so without imposing new Government mandates. It encourages family responsibility, by offering parents the help they need to purchase affordable health insurance for their children.

Under our plan, $20 billion over the next 5 years will be available to expand health insurance coverage for children, and $10 billion will be available for deficit reduction. I share Senator HATCH's commitment to balancing the Federal budget by the year 2002. As our plan today suggests, we believe we can do it, and do it fairly.

When fully phased in, our legislation will provide direct financial assistance to approximately 5 million children annually. Every family with an uninsured child will have access to more affordable coverage. Combined with efforts to enroll more eligible children in Medicaid, this plan is a giant step toward the day when every American child has health insurance coverage. This bill is the most important single step the Congress can take this year to provide a better life for every American child.

States choosing to participate in the program will contract with private insurers to provide child-only private coverage. These subsidies will be available to help eligible families purchase coverage for their children, or participate in employment-based health plans. Coverage will be available for every child, including children in families not eligible for financial assistance. The program also allows States to allocate up to 5 percent of total program costs to provide preventive care and primary care to pregnant women. Participating States must contribute to the cost of the program, and must maintain their current levels of Medicaid coverage for children.

The basic principles of this proposal are neither novel nor untested. Fourteen States already have similar programs for children. In Massachusetts, an existing program was expanded last year, so that families up to 400 percent of the poverty level are now eligible for financial assistance to buy insurance. In 17 additional States, Blue Cross/Blue Shield offers children's-only coverage, with subsidies for low-income families. These State initiatives provide a solid base on which to build an effective Federal-State-private partnership to get the job done for all children.

Senator HATCH and I propose to pay for this program of children's health insurance and deficit reduction with an increase of 43 cents a pack in the Federal cigarette tax, from its current level of 24 cents. It makes sense to finance the coverage this way, because of the higher costs for health care and premature deaths caused by smoking.

Smoking is the leading preventable cause of death in the United States. It kills more than 400,000 Americans a year. It costs the Nation $50 billion a year in direct health costs, and another $50 billion in lost productivity. A cigarette pack sold for $1.80 costs the Nation $3.90 cents in smoking-related expenses.

Even with our proposed increase, cigarette taxes as a percent of the product price will still be lower than they were in 1965 and will be far below the levels in almost every other industrialized country.

A higher cigarette tax will have the added benefit of reducing smoking among teenagers. If we do nothing to reduce such smoking, 5 million deaths from smoking-related diseases will occur over the lifetime of the current generation of children.

Raising tobacco taxes to finance health insurance for children has the support of an overwhelming 73 percent of the public. If the tobacco tax is raised, an even higher 87 percent support using the revenue to expand health services for children.

I look forward to early action by Congress on this issue. Every day we delay means more children fail to get the healthy start in life they need. When we fail our children, we also fail our country and its future.

I yield the remaining time to the Senator from Connecticut, Senator DODD.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me thank my colleague from Massachusetts for yielding.

Let me begin these brief remarks by commending him and, of course, our good friend and colleague from Utah, Senator HATCH, who is the lead sponsor of this legislation, for his efforts here, along with our colleague from Massachusetts who historically, of course, has taken the leadership role over the last number of decades on health-care-related issues.

Our colleague from Utah and I have had the pleasure and privilege of working together on major legislation. When he says, if you have a bill with ORRIN HATCH's name on it, there is a good chance it is going to become law, I can testify to that, having worked with him on the act for better child care. Today millions of people have accidental health care and decent child care because of his efforts. So I commend, Mr. President, both of our colleagues.

I offered the first child health care package almost 4 years ago to deal with children's health. As both of our colleagues have pointed out, Mr. President, we have about 10 to 10.5 million children in the country who do not have any health care at all. In my State of Connecticut, about 110,000 children are without any health care coverage at all.

What makes this so ironic in many ways, Mr. President—as we have gone through a debate on welfare reform fairly recently—is that 88 percent of the parents of these children without health care are working. The assumption I think a lot of people must have is that children without health care are the children of parents who are living on public assistance. Nothing could be further from the truth. If you are on public assistance, you get health care, you get Medicaid. If you are out of work on welfare, you get Medicaid. If you are in jail, you get health care in this country. But God help you if you are a working family out there working at the lower income levels trying to provide for your family when we have a seen a dramatic increase in the reduction of private health care coverage.

Mr. President, I asked for a General Accounting Office study a number of months ago, the results of which came back about a few weeks ago on what has happened to private health insurance for working families. We have seen about a 4.5 to 5 percent increase nationwide in the number of families who have dropped or been dropped from private health insurance. In 1993, 29

million families lost their health care coverage in this country. And the premium costs went up. Small employers decided to drop it altogether.

So we have watched a tremendous increase in the number of families, working families, with children without any kind of health care coverage at all.

Many of our State laws, Mr. President, require, under law, that you insure your automobile. Many of our State laws, if not all of them, require that if you have a home mortgage, there be insurance on your house. All that we are suggesting here today is that if you have a child, there ought to be health care coverage or insurance for that child.

If it is mandatory that your home be insured, if it is mandatory your car be insured, if you are out of work and on public assistance you get health care, if you are in prison you get health care, what our colleagues from Massachusetts and Utah, and those of us who are supporting them, are suggesting, is that if you are a working family in this country, your children—your children—also ought to have a safety net for health care. So this proposal does just that.

Mr. President, I will just conclude with a story. We had a press conference announcing this GAO study a few days ago. I brought with me a woman from Connecticut. Both she and her husband work. Her husband is in construction. She works for a nonprofit organization in the State of Connecticut. They have two children. Their oldest boy has a serious mental health problem. It is a serious mental health illness with a cost of over $1,000 a month, on average, for medication. They have run out of support from the State program. There is not going to be any more. They were left with this choice—until someone stepped in and made an exception in their case—but left with this choice: Either they could quit their jobs and go on public assistance and get health care for that child, that is one option, or the other was to take their child and turn him over to the State, give up custody and let him become a ward of the State, so that then the child could get health care coverage.

We hear people talking of family values and families staying together all the time. But somehow, in this situation, this family wants desperately to keep custody of their child, and they keep working and they get no help whatever. There is something fundamentally erroneous about the situation that presently exists that if you work and want to keep your children, you run the risk of losing the health care, whereas if you go on public assistance or give up the custody of your child, you can get health care coverage.

Mr. President, the suggestion of both of our colleagues is to fill in this gap that exists for these 10½ million children today that are without any health care coverage. The numbers are growing, by the way. This is not a number that is declining, but is a number that is growing.

They have come up with a funding scheme that I think most people will support in this country. It is controversial. Obviously, some will object to how this is paid for. I think it is a very sound idea to come up with this funding scheme and also to allocate some of the resources for deficit reduction.

Again, Mr. President, if we can insure our cars by law, our homes by law, if you are on welfare or in prison and you get health care coverage, at the very least, we ought to do the same for America's children. This legislation allows us to do that. I commend both of our colleagues and look forward to adoption of the law.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 5 minutes.

Mr. KERRY. Mr. President, I am delighted to join with my colleague, Senator KENNEDY, with Senator HATCH, and others, in introducing today legislation to provide health care to the 10 million children in the United States who today do not have that care.

Last year, Senator KENNEDY and I joined together with other Senators to introduce legislation to similarly provide health care to these children. Since the time that we introduced legislation a year ago, over 750,000 children under the age of 18 have lost health insurance. One child loses health insurance every 35 seconds in the United States. We are the only industrial country on the face of this planet that does not insure our children, or that does not insure, even, many of our adults.

What is extraordinary about this situation is that we are not talking about the poorest of our poor in America. The poorest of the poor get help. They have health insurance. They get Medicaid. The fact is that we are talking about 10 million children who are the children of working Americans, fully three-fifths of whom work full-time jobs, and 90 percent of whom are working at some job or another.

I visited recently at the Children's Hospital in Boston and I listened to the story of two parents who are working, both of whom are just not earning enough money in their full-time jobs to be able to pay the premiums for the expensive insurance that their sick child needs.

The fact is that over one-half of all the children in the United States who have asthma never see a doctor. One-third of all the children in the United States who have an ear problem never see a doctor. Similarly, for eye problems: As we have learned from medical experts, those problems, often undiagnosed, become chronic ailments and many times become lifetime impairments. We then pick up the cost of those impairments with special education needs, and at the back end of often substance abuse or other kinds of highly intensive, labor-intensive interventions which we could have avoided early on.

Just take the case of neonatal/prenatal care. It costs $1,000 for a year of covering a pregnant woman with early nutrition, early intervention, for pregnancy. But if a child is born underweight as a consequence of the lack of that kind of intervention, it costs $1,100 a day.

I have talked to teachers in schools who have told me the stories of young students who come into the school; they are in the classroom and they are disruptive, not because they want to be disruptive, but because they have a problem. In one particular case, a teacher told me of a child who chronically disrupted the entire class. They could not figure it out. They finally got the child to a clinic because the child had not been examined by a doctor, and they found the child had a chronic earache problem as a consequence of an infection. Antibiotics were given, the infection was cleared up, and the child became a full participant in the classroom.

Mr. President, there are countless stories like these. I want to congratulate Senator KENNEDY and Senator HATCH for working together in helping to come up with a scheme to fund this, that clearly addresses other health needs of the country. When we consider the costs of our various wings of hospitals that are dedicated to pulmonary disease, to emphysema, to cancer as a consequence of smoking, we are spending billions upon billions of dollars, far in excess of the cost of this kind of program, to provide preventive care at the early outset.

So this is really an investment, not an expenditure. This will repay itself many times over. We know that the health care expenditure in early prevention will save anywhere from $3.40 to $16 by virtue of $1 invested.

Mr. President, it is time in America for us for catch up to the rest of the industrialized world and provide insurance to the young children of this Nation who desperately need it.

By Mr. LAUTENBERG (for himself, Mr. DURBIN, Mr. HARKIN, Mr. WELLSTONE and Mr. KENNEDY):

S. 527. A bill to prescribe labels for packages and advertising for tobacco products, to provide for the disclosure of certain information relating to tobacco products, and for other purposes; to the Committee on Commerce, Science, and Transportation.

TOBACCO DISCLOSURE AND WARNING ACT OF 1997

Mr. LAUTENBERG. Mr. President, I rise today to introduce a bill we are calling the Tobacco Disclosure and Warning Act of 1997. Frankly, I hope we are going to be able to look back at this day and say this was a great day for America's children, that this was a great day for the future well-being of coming generations.

I am joined by my Senate colleague from Illinois, Senator DICK DURBIN,

who worked with me in the past on establishing a ban on smoking in airplanes, he was a Member of the House before, and Senator HARKIN from Iowa, and Senator WELLSTONE from Minnesota. They joined me this morning in declaring that we are interested this day in the health of our children. We want to warn them that a habit that they could be induced—if I may use the term more crudely, seduced—into, if they join in the tobacco addiction group, that they may be jeopardizing their health very seriously.

Our bill will force tobacco companies to tell the truth, finally, to the American people. As witnessed by the Liggett & Myers' settlement, which wiped away the secrecy and deception perpetrated by the industry, truth is one of the few items in short supply in the tobacco industry. This bill will require tobacco manufacturers to disclose the ingredients of their product to the public.

Actually, it is a modest step. Of the hundreds of products on sale in America that go into the human body, tobacco products are the only ones—the only ones—for which manufacturers do not have to disclose the ingredients. Take a company like Coca-Cola, one of the world's great companies. They have a proud tradition of keeping their formula secret. They have to list Coke's ingredients on every can.

There is a major difference, of course, between Coca-Cola and cigarettes. Coca-Cola does not kill anybody and cigarettes kill 400,000 people a year—more than 400,000. That is one out of every three new users that the industry is trying to recruit. That is according to the Centers for Disease Control.

Manufacturers of every food product and every over-the-counter drug disclose their contents. Cigarette manufacturers do not. Can we wonder why? Yet, of any consumable product for sale in the United States, it is by far among the most deadly.

When you think about the materials that are in cigarettes, carcinogens—43. Should not America know that when you inhale you are going to get some arsenic, going to get some benzine, materials that are very dangerous to health?

Lead, we fight all over the place to take lead out of gasoline, take lead out of paint. But we sell it to the kids. That is what the tobacco industry wants to do. Cadmium, nickel—you would not let your child go near these things, yet everyday this industry, these companies, get tax deductions to advertise their addictive, health-damaging product—maybe lethal.

Our bill also is going to replace the warnings. We ask, A, they list the ingredients. B, we ask also that health warnings on the side of a cigarette package be significant, with larger warnings on the front and back that are simple and direct, saying: ''Cigarettes kill. Smoking can kill you. Cigarettes are addictive. Cigarettes cause heart attacks and stroke.''

It is pretty simple. But maybe, just maybe, then we will be able to stop the industry from targeting its recruits for the day. Mr. President, 3,000 children, young people, a day, are attracted and start smoking. And then they cannot quit.

These kinds of warnings exist all around the world. Cigarettes kill one out of every three, again, I repeat, of its users. Over 400,000 Americans every year die from smoking and lots more get sick: Emphysema, heart attacks, cannot conduct their normal activity, cannot associate with their families, cannot show the kids how to hit a ball, run a base or go skating or skiing. We should disclose information on the ingredients of cigarettes to the public and provide it with realistic warnings about the health risks that cigarettes cause. It may seem that most smokers know a single cigarette may have hundreds of dangerous ingredients, but I doubt it. When a smoker lights a cigarette, some of these ingredients burn to create other chemicals, and some of these are carcinogenic.

A Surgeon General's report in 1989 reported that cigarettes contain 43 carcinogens. The list is here, over 43. I did not know it until recently. But the public certainly has a right to know. Do most smokers realize that one of these chemicals is arsenic? I do not think so. Our bill would disclose that, as well as the other chemical carcinogens in cigarettes.

With all these known dangers about smoking, we should not hide health warning labels in small type on the side of a cigarette pack. Other countries, countries like Canada, Australia, Thailand, put large labels on the front of each pack and they put it, of course, in their native language. The United States should provide equal protection to consumers. The warnings should be stark, brutal if necessary, and easily seen. When cigarettes get in the hands of kids, and 3,000 of them take up smoking every day, they ought to be looking at something that says: Smoking can kill you. Smoking is addictive. Smoking harms athletic performance.

That is a lot more graphic and descriptive than the small print that appears today. We should have no beating around the bush because this bush kills you. With large and honest warnings, more children will get the message and perhaps some will put down that pack rather than lighting it up.

Mr. President, the 105th Congress should enact this legislation. It should not be a partisan issue. In the coming weeks I expect this bill will attract cosponsors from both sides of the aisle. The public has a right to know. They have a right to know the truth. Unless Congress forces the industry's hand, it will never fully disclose to customers what it puts in its product, what it puts in their products.

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. 527

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 Disclosure and Warning Act of 1997''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Tobacco products are the largest preventable cause of illness and premature death, responsible for one of every 5 deaths in the United States.

(2) Tobacco is a uniquely harmful product in that it is the only product which kills when used as intended.

(3) Cigarettes and spit tobacco products are powerfully addictive because they contain nicotine which is a poisonous, addictive drug.

(4) Tobacco-related addiction is a pediatric disease. The vast majority of new smokers are teenagers or younger and children are beginning to smoke today at a younger age than ever before.

(5) The United States health care system spends an estimated $50 billion a year to treat diseases caused by tobacco use. In addition, the United States economy loses $50 billion a year from lost productivity due to tobacco-related illnesses and premature death.

(6) The nicotine in tobacco products is responsible for the addiction of up to one half of all children who experiment with tobacco.

(7) More than 3,000 children begin smoking each day. An estimated 1,000 of them will die from a tobacco-related illness.

(8) Tobacco manufacturers manipulate the levels and presence of the drug nicotine in their products with the intent to cause and sustain addiction in consumers.

(9) In 1997 the tobacco industry will spend over $5 billion on advertising and promotion to attract new users, retain current users, increase current consumption, and generate favorable long-term attitudes toward smoking and tobacco use.

(10) The Federal Government has a substantial interest in ensuring that those who do not use tobacco products are not encouraged to use them and those who use tobacco products are discouraged from continuing their use.

(11) A failure to provide adequate and complete health warnings and labeling information to fully inform consumers about the risks and dangers of tobacco use is misleading.

(12) Health warnings on cigarette packages have not been updated since 1984 and do not fully reflect current scientific knowledge on the adverse health effects of tobacco use.

(13) The display format of tobacco health warnings can be more effective as a vehicle for promoting public knowledge of the health risks.

(14) Health warnings are most effective when directed at those people who are tempted to try smoking, who are experimenting with smoking, or who are considering a decision to quit smoking.

(15) Health warnings will be most effective when they are present each time the opportunity to use a tobacco product occurs and each time tobacco products are promoted and advertised.

(16) Changes in warning format and revisions in the text of health warnings further the Federal government's commitment to reduce tobacco-related disease and are a low cost means of enhancing the effectiveness of other tobacco reduction programs.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) The term ''advertisement'' means—

(A) all newspapers and magazine advertisements and advertising inserts, billboards, posters, signs, decals, banners, matchbook advertising, point-of-purchase display material and all other written or other material used for promoting the sale or consumption of tobacco products to consumers,

(B) advertising at an internet site,

(C) advertising promotion allowances,

(D) the appearance on any item (other than cigarettes or other tobacco products) of the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or other tobacco products,

(E) any other means used to promote the identification or purchase of tobacco products.

(2) The term ''brand'' means a variety of tobacco products distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the tobacco product, filtration, or packaging.

(3) The term ''cigarette'' means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco which is to be burned,

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to, or purchased by consumers as a cigarette described in subparagraph (A),

(C) little cigars which are any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subparagraph (A)) and as to which one thousand units weigh not more than 3 pounds, and

(D) loose rolling tobacco and papers or tubes used to contain such tobacco.

(4) The term ''constituent'' means any element of tobacco or cigarette mainstream or sidestream smoke, including tar, the components of the tar, nicotine, and carbon monoxide or any other component designated by the Secretary.

(5) The term ''distributor'' does not include a retailer and the term ''distribute'' does not include retail distribution.

(6) The term ''ingredient'' means any substance the use of which results, or may reasonably be expected to result, directly or indirectly, in its becoming a component of any tobacco product, including any component of the paper or filter of such product.

(7) The term ''package'' means a pack, box, carton, or other container of any kind in which cigarettes or other tobacco products are offered for sale, sold, or otherwise distributed to customers.

(8) The term ''Secretary'' means the Secretary of Health and Human Services.

(9) The term ''spit tobacco'' means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity.

(10) The term ''tar'' means the particulate matter from tobacco smoke minus water and nicotine.

(11) The term ''tobacco product'' means—

(A) cigarettes,

(B) little cigars,

(C) cigars as defined in section 5702 of the Internal Revenue Code of 1954,

(D) pipe tobacco,

(E) loose rolling tobacco and papers used to contain such tobacco,

(F) products referred to as spit tobacco, and

(G) any other form of tobacco intended for human consumption.

(12) The term ''trademark'' means any word, name, symbol, logo, or device or any combination thereof used by a person to identify or distinguish such person's goods from those manufactured or sold by another person and to indicate the source of the goods.

(13) The term ''United States'' includes the States and installations of the Armed Forces of the United States located outside a State.

(14) The term ''State'' includes, in addition to the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

SEC. 4. PRODUCT PACKAGE LABELING.

(a) IN GENERAL.—

(1) CIGARETTES.—

(A) WARNINGS.—It shall be unlawful for any person to manufacture, import, package, or distribute for sale within the United States any cigarettes unless the cigarette package bears, in accordance with the requirements of this section, one of the following warning labels:

WARNING: Cigarettes Kill

WARNING: Cigarettes Cause Lung Cancer and Emphysema

WARNING: Cigarettes Cause Infant Death

WARNING: Cigarettes Cause Heart Attacks and Stroke

WARNING: Cigarettes Are Addictive

WARNING: Nicotine Is An Addictive Drug

WARNING: Cigarette Smoking Harms Athletic Performance

WARNING: Smoking During Pregnancy Can Harm Your Baby

WARNING: Cigarette Smoke Is Harmful to Children

WARNING: Smoke From * Cigarettes Can Cause Cancer in Nonsmokers.

For purposes of the last warning in the preceding sentence, * denotes the name of the brand of cigarettes required to bear such label.

(B) INGREDIENTS AND CONSTITUENTS.—It shall be unlawful for any person to manufacture, import, package, or distribute for sale within the United States any cigarettes unless the cigarette package contains a package insert, in accordance with the requirements of this section, the ingredients and constituents of the cigarettes which were reported to the Secretary under section 7 and which the Secretary determines should be made public.

(C) PACKAGE INSERT.—

(i) IN GENERAL.—It shall be unlawful for any person to manufacture, import, package, or distribute for sale within the United States any cigarettes unless the cigarette package includes a package insert, prepared in accordance with guidelines established by the Secretary by regulation, on the carcinogens and other substances posing a risk to human health contained in the ingredients and constituents of the cigarettes in such package.

(ii) REGULATIONS.—The Secretary shall issue regulations requiring the package insert required by clause (i) to provide the information required by such clause (including carcinogens and other dangerous substances) in a prominent, clear fashion and a detailed list of the ingredients and constituents.

(2) SPIT TOBACCO PRODUCT.—

(A) WARNINGS.—It shall be unlawful for any person to manufacture, import, package, or distribute for sale within the United States any spit tobacco product unless the product package bears, in accordance with the requirements of this section, one of the following warning labels:

WARNING: Spit Tobacco Causes Mouth Cancer

WARNING: Spit Tobacco Is Not a Safe Alternative to Cigarettes

WARNING: Spit Tobacco Is Addictive

WARNING: Nicotine Is An Addictive Drug

WARNING: Use of * Spit Tobacco Can Cause Gum Disease

WARNING: Use of * Spit Tobacco Can Cause Tooth Loss

For purposes of the last warning in the preceding sentence, * denotes the name of the brand of spit tobacco required to bear such label.

(B) INGREDIENTS AND CONSTITUENTS.—It shall be unlawful for any person to manufacture, import, package, or distribute for sale within the United States any spit tobacco unless the spit tobacco package bears, in accordance with the requirements of this section, the ingredients and constituents of the spit tobacco which were reported to the Secretary under section 7 and which the Secretary determines should be made public.

(3) OTHER TOBACCO PRODUCTS.—

(A) WARNINGS.—It shall be unlawful for any person to manufacture, import, package, or distribute for sale within the United States any tobacco product, other than cigarettes or spit tobacco, unless the product package bears, in accordance with the requirements of this section, one of the following warning labels:

WARNING: Tobacco Kills

WARNING: Tobacco Causes Lung Cancer and Emphysema

WARNING: Tobacco Causes Infant Death

WARNING: Tobacco Causes Heart Attacks and Stroke

WARNING: Tobacco Is Addictive

WARNING: Nicotine Is An Addictive Drug

WARNING: Tobacco Harms Athletic Performance

WARNING: Tobacco Use During Pregnancy Can Harm Your Baby

WARNING: Tobacco Smoke Is Harmful to Children

WARNING: Tobacco Smoke Can Cause Cancer in Nonsmokers

(B) INGREDIENTS AND CONSTITUENTS.—It shall be unlawful for any person to manufacture, import, package, or distribute for sale within the United States any tobacco product subject to subparagraph (A) unless the tobacco product package bears, in accordance with the requirements of this section, the ingredients and constituents of the tobacco product which were reported to the Secretary under section 7 and which the Secretary determines should be made public.

(b) LABEL FORMAT.—

(1) IN GENERAL.—The warning labels required by paragraphs (1)(A), (2), and (3) of subsection (a) shall—

(A) appear on the top of the 2 most prominent sides of the product package on which the label is required and 1 label shall be in Spanish,

(B) be in a size which is not less than 33 percent of the side on which the label is placed,

(C) appear in white letters on black backing or in black letters on white backing, whichever is more conspicuous and prominent in contrast to the color of the package, except that the words ''WARNING'' shall appear in bright red letters and if the package does not have any color, the words ''WARNING'' shall be in black or white as prescribed by this subparagraph and shall be boldly underlined with a black or white underlining,

(D) be in a rectangular shape enclosed in a border of color contrasting to the color of the backing prescribed by subparagraph (C) and to the predominant color of the package, and

(E) include letters in a height, thickness, and type face which assures that the letters in the space provided for the statement will

be no less legible, prominent, and conspicuous than the most legible, prominent, and conspicuous typeface, typography, and size of other matter printed on the side of the package on which the label statement appears.

(2) FORMAT FOR OTHER CIGARETTE LABELS.—The label required by paragraph (1)(B) of subsection (a) shall appear on the package in such style and format as the Secretary may by regulation prescribe.

(c) ROTATION.—The warning labels required by paragraphs (1)(A) and (2) of subsection (a) shall be rotated by each manufacturer of cigarettes and spit tobacco products on each brand of cigarettes and spit tobacco products in accordance with a plan approved for the manufacturer by the Secretary. Each such plan shall provide for an approximately even distribution of the labels among the packages of a brand of the cigarettes and spit tobacco products of each manufacturer each year.

SEC. 5. LABELING IN ADVERTISING.

(a) IN GENERAL.—

(1) CIGARETTE ADVERTISING.—It shall be unlawful for any person to manufacture, import, package, or distribute for sale within the United States any brand of cigarettes unless the advertising for such brand bears the warning label required for cigarettes by section 4(a)(1)(A).

(2) SPIT TOBACCO.—It shall be unlawful for any person to manufacture, import, package, or distribute for sale within the United States any spit tobacco product unless the advertising for such product bears the warning label required for spit tobacco products by section 4(a)(2)).

(3) OTHER TOBACCO PRODUCTS.—It shall be unlawful for any person to manufacture, import, package, or distribute for sale within the United States any tobacco product, other than cigarettes or spit tobacco, unless the advertising for such product bears the warning label required for such product by section 4(a)(3)).

(b) FORMAT.—

(1) WARNING LABELS.—The warning label required by subsection (a) for advertising shall—

(A) appear in white letters on black backing or in black letters on white backing, whichever is most prominent relative to the color of the advertisement, except that the word ''WARNING'' shall appear in bright red letters and in a advertisement without color ''WARNING'' shall be in black or white as prescribed by this subparagraph and shall be boldly underlined with a black or white underlining,

(B) be in a rectangular shape which occupies 33 percent of the space of each advertisement and which is located at the top of the advertisement and enclosed in a border of color contrasting to the color of the backing prescribed by subparagraph (A) and to the predominant color of the advertisement of the tobacco product being advertised,

(C) include letters in a type face and size which, within the space limitation prescribed by subparagraph (B), assure that the letters in the statement will be no less legible, prominent, or conspicuous than the most legible, prominent, and conspicuous typeface, typography, and size of other matter printed on the advertisement, and

(D) be in the same language as the text of the advertising in which it appears.

(2) BILLBOARDS WITH LIGHTING.—The warning label on billboards which use artificial lighting shall be no less visible than other printed matter on the billboard when the lighting is in use.

(c) ROTATION.—

(1) NON-BILLBOARD ADVERTISING.—Warning labels on advertising (other than billboard advertising) shall be rotated quarterly in alternating sequence for each brand of cigarettes or spit tobacco product manufactured by the manufacturer or imported by the importer in accordance with a plan submitted by the manufacturer or importer and approved by the Secretary.

(2) BILLBOARDS.—Warning labels on advertising displayed on billboards shall be rotated annually or whenever the advertisement is changed, whichever occurs first.

SEC. 6. AUTHORITY TO REVISE HEALTH WARNINGS.

The Secretary may by regulation revise any health warning required by section 4(a)(1)(A), 4(a)(2), or 4(a)(3) and the format for the display of such warning if the Secretary finds that such revision would promote greater understanding of the risks of tobacco.

SEC. 7. TOBACCO PRODUCT INGREDIENTS AND CONSTITUENTS.

(a) GENERAL RULE.—Each person which manufactures, packages, or imports into the United States any tobacco product shall annually report, in a form and at a time specified by the Secretary by regulation—

(1) the identity of any added constituent of the tobacco product other than tobacco, water, or reconstituted tobacco sheet made wholly from tobacco, and

(2) the nicotine, tar, and carbon monoxide yield ratings which shall accurately predict the nicotine, tar, and carbon monoxide intake from such tobacco product for average consumers based on standards established by the Secretary by regulation,

if such information is not information which the Secretary determines to be trade secret or confidential information subject to section 552(b)(4) of title 5, United States Code, and section 1905 of title 18, United States Code. The constituents identified under paragraph (1) shall be listed in descending order according to weight, measure, or numerical count. If any of such constituents is carcinogenic or otherwise poses a risk to human health, as determined by the Secretary, such information shall be included in the report.

(b) PUBLIC DISSEMINATION.—The Secretary shall review the information contained in each report submitted under subsection (a) and if the Secretary determines that such information directly affects the public health, the Secretary shall require that such information be included in a label under sections 4(a)(1)(B), 4(a)(2)(B), and 4(a)(3)(B).

(c) OTHER SOURCES OF INFORMATION.—The Secretary shall establish a toll-free telephone number and a site on the Internet which shall make available additional information on the ingredients of tobacco products, except information which the Secretary determines to be trade secret or confidential information subject to section 552(b)(4) of title 5, United States Code, and section 1905 of title 18, United States Code.

SEC. 8. ENFORCEMENT.

(a) IN GENERAL.—

(1) The Secretary shall carry out the Secretary's duties under this Act through the Commissioner of Food and Drugs.

(2) The Secretary shall issue such regulations as may be appropriate for the implementation of this Act. The Secretary shall issue proposed regulations for such implementation within 180 days of the date of the enactment of this Act. Not later than 180 days after the date of the publication of such proposed regulations, the Secretary shall issue final regulations for such implementation. If the Secretary does not issue such final regulations before the expiration of such 180 days, the proposed regulations shall become final and the Secretary shall publish a notice in the Federal Register about the new status of the proposed regulations.

(3) In carrying out the Secretary's duties under this Act, the Secretary shall, as appropriate, consult with such experts as may have appropriate training and experience in the matters subject to such duties.

(4) The Secretary shall monitor compliance with the requirements of this Act.

(5) The Secretary shall recommend to the Attorney General such enforcement actions as may be appropriate.

(b) INJUNCTION.—

(1) The district courts of the United States shall have jurisdiction over civil actions brought to restrain violations of sections 4 and 5. Such a civil action may be brought in the United States district court for the judicial district in which any substantial portion of the violation occurred or in which the defendant is found or transacts business. In such a civil action, process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas requiring attendance of witnesses in any such action may be served in any judicial district.

(2) Any interested organization may bring a civil action described in paragraph (1). If such an organization substantially prevails in such an action, the court may award it reasonable attorney's fees and expenses. For purposes of this paragraph, the term ''interested organization'' means any nonprofit organization one of whose purposes, and a substantial part of its activities, include the promotion of public health through reduction in the use of tobacco products.

(c) CIVIL PENALTY.—Any person who manufactures, packages, distributes, or advertises a tobacco product in violation of section 4 or 5 shall be subject to a civil penalty of not more than $100,000 for each violation per day.

SEC. 9. LIABILITY.

Compliance with any requirement of this Act, the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 et seq.), or the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq.) shall not relieve any person from liability to any other person at common law or under State statutory law.

SEC. 10. EFFECTIVE DATES AND CONFORMING AMENDMENTS.

(a) EFFECTIVE DATES.—This Act shall take effect on the date of the enactment of this Act, except that

(1) sections 4, 5, and 7 shall take effect one year after the date of the enactment of this Act,

(2) section 6 shall take effect 3 years after the date of the enactment of this Act.

(b) CONFORMING AMENDMENTS.—Effective one year from the date of the enactment of this Act, the Federal Cigarette Labeling and Advertising Act (other than sections 6, 9, 10, and 11) (15 U.S.C. 1331 et seq.) and the Comprehensive Smokeless Tobacco Health Education Act of 1986 (other than sections 1, 2, 3(f), and 8) (15 U.S.C. 4401 et seq.) are repealed.

ADDITIONAL COSPONSORS

S. 18

At the request of Mr. LAUTENBERG, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 18, a bill to assist the States and local governments in assessing and remediating brownfield sites and encouraging environmental cleanup programs, and for other purposes.

S. 28

At the request of Mr. THURMOND, the names of the Senator from New Mexico [Mr. DOMENICI] and the Senator from