To be vice admiral

Rear Adm. Lee F. Gunn, 4664.

(The above nominations were reported with the recommendation that they be confirmed.)

Mr. THURMOND. Mr. President, for the Committee on Armed Services, I report favorably 25 nomination lists in the Air Force, Army, Marine Corps and Navy which were printed in the CONGRESSIONAL RECORDS of January 7, 28, 30, February 5, 25, 27, March 5, 11, 21, and April 7, 1997, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORDS of January 7, 28, 30, February 5, 25, 27, March 5, 11, 21, and April 7, 1997, at the end of the Senate proceedings.)

In the Army there are 30 promotions to the grade of major (list begins with William M. Austin) (Reference No. 55).

In the Army there are 69 promotions to the grade of colonel (list begins with Richard H. Agosta) (Reference No. 65).

In the Army there are 9 appointments to the grade of colonel (list begins with Richard Cooper) (Reference No. 171).

In the Army there are 66 appointments to the grade of major (list begins with Ida F. Agamy) (Reference No. 178).

In the Navy there are 59 appointments to the grade of lieutenant commander (list begins with Cal D. Astrin) (Reference No. 195).

In the Air Force Reserve there are 83 appointments to the grade of colonel (list begins with Robert N. Agee) (Reference No. 218).

In the Army Reserve there is 1 appointment to the grade of colonel (George B. Garrett) (Reference No. 219).

In the Army Reserve there are 32 appointments to the grade of colonel (list begins with Vincent J. Albanese) (Reference No. 220).

In the Army Reserve there are 7 appointments to the grade of colonel (list begins with James M. Caldwell) (Reference No. 221).

In the Navy there are 29 appointments to the grade of lieutenant and below (list begins with Jason T. Baltimore) (Reference No. 222).

In the Army there are 170 appointments to the rank of lieutenant colonel (list begins with Bryant H. Aldstadt) (Reference No. 224).

In the Air Force there are 22 appointment to the grade of colonel and below (list begins with John L. Bush) (Reference No. 227).

In the Army Reserve there is 1 appointment to the grade of colonel (Larry W. Rascster) (Reference No. 228).

In the Air Force there are 517 appointments to the grade of colonel and below (list begins with Barry S. Abbott) (Reference No. 229).

In the Marine Corps there are 92 appointments to the grade of colonel (list begins with Dirk R. Ahle) (Reference No. 234).

In the Army there is 1 appointment to the grade of lieutenant colonel (Douglas R. Yates) (Reference No. 239).

In the Navy there are 3 appointments to the grade of captain and below (list begins with Edward H. Lundquist) (Reference No. 240).

In the Air Force there are 16 appointments to the grade of colonel and below (list begins with Christopher R. Kleinsmith) (Reference No. 261).

In the Army Reserve there are 18 appointments to the grade of colonel (list begins with Harry L. Bryan, Jr.) (Reference No. 262).

In the Army there is 1 appointment to the grade of major (Phuong T. Pierson) (Reference No. 263).

In the Air Force there are 364 appointments to the grade of colonel and below (list begins with Marilyn S. Abughusson) (Reference No. 264).

In the Air Force there are 11 appointments to the grade of lieutenant colonel and below (list begins with John M. Barker, Jr.) (Reference No. 269).

In the Marine Corps there is 1 appointment to the grade of colonel (Todd H. Griffis) (Reference No. 270).

In the Marine Corps there are 479 appointments to the grade of major (list begins with Roy P. Ackley, Jr.,) (Reference No. 272).

In the Marine Corps there are 326 appointments to the grade of lieutenant colonel (list begins with Robert J. Abblitt) (Reference No. 273).

In the Navy there is 1 appointment to the grade of lieutenant commander (Jamel B. Weatherspoon) (Reference No. 274).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. MCCAIN:

S. 641. A bill to require the Federal Communications Commission to eliminate from its regulations the restrictions on the cross-ownership of broadcasting stations and newspapers; to the Committee on Commerce, Science, and Transportation.

By Mr. TORRICELLI:

S. 642. A bill to amend section 842 of title 18, United States Code, relating to explosive materials; to the Committee on the Judiciary.

By Mr. DURBIN (for himself, Mr. GREGG, and Mr. LAUTENBERG):

S. 643. A bill to prohibit the Federal Government from providing insurance, reinsurance, or noninsured crop disaster assistance for tobacco; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. D'AMATO:

S. 644. A bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to establish standards for relationships between group health plans and health insurance issuers with enrollees, health professionals, and providers; to the Committee on Labor and Human Resources.

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

S. 645. A bill to amend the Federal Water Pollution Control Act to improve the enforcement and compliance programs; to the Committee on Environment and Public Works.

By Mr. FORD (for himself, Mr. HOLLINGS, Mr. HELMS, Mr. FAIRCLOTH, Mr. THURMOND, Mr. COCHRAN, Mr. ROBB, Mr. SESSIONS, Mr. WARNER, Mr. BYRD, Mr. BREAUX, Ms. COLLINS, Ms. LANDRIEU, Mr. MCCONNELL, and Mr. SHELBY):

S. 646. A bill to ensure the competitiveness of the United States textile and apparel industry; to the Committee on Finance.

By Mr. FEINGOLD:

S. 647. A bill to amend the Congressional Budget and Impeachment Control Act of 1974 to limit consideration of nonemergency matters in emergency legislation; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one Committee reports, the other Committee has thirty days to report or be discharged.

By Mr. GORTON (for himself, Mr. ASHCROFT, Mr. MCCAIN, and Mr. LOTT):

S. 648. A bill to establish legal standards and procedures for product liability litigation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. SNOWE (for herself, Mr. GRASSLEY, Mr. GLENN, Mr. D'AMATO, Mr. INOUYE, Mr. ROCKEFELLER, and Mr. MACK):

S. 649. A bill to amend title XVIII of the Social Security Act to provide for coverage of bone mass measurements for certain individuals under part B of the Medicare program; to the Committee on Finance.

By Mr. NICKLES:

S. 650. A bill to amend the Internal Revenue Code of 1986 to reduce estate taxes by providing a 20 percent rate of tax on estates exceeding $1,000,000, and a 30 percent rate of tax on estates exceeding $10,000,000, and for other purposes; to the Committee on Finance.

By Mr. ALLARD:

S.J. Res. 28. A joint resolution proposing an amendment to the Constitution of the United States granting the President the authority to exercise an item veto of individual appropriations in an appropriations bill; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. BURNS (for himself, Mr. BAUCUS, Ms. COLLINS, Mr. KEMPTHORNE, Mr. FAIRCLOTH, Mr. BINGAMAN, Mr. DEWINE, Mr. HATCH, Mr. GRASSLEY, Mr. WARNER, Mr. CLELAND, Mr. GORTON, Mr. ABRAHAM, Ms. LANDRIEU, Mr. REID, Mr. LIEBERMAN, Mr. DODD, Mr. MURKOWSKI, Mr. D'AMATO, Mr. KENNEDY, Mr. KERREY, Mr. LEVIN, Mr. GRAMM, Mr. KERRY, Mr. LUGAR, and Mr. MOYNIHAN):

S. Res. 78. A resolution to designate April 30, 1997, as ''National Erase the Hate and Eliminate Racism Day''; to the Committee on the Judiciary.

By Mr. MCCAIN:

S. Con. Res. 23. A concurrent resolution honoring the lifetime achievements of Jackie Robinson; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCAIN:

S. 641. A bill to require the Federal Communications Commission to eliminate from its regulations the restrictions on the cross-ownership of broadcasting stations and newspapers; to the Committee on Commerce, Science, and Transportation.

THE NEWSPAPER OWNERSHIP ACT

Mr. MCCAIN. Mr. President, I am pleased to introduce the Newspaper Ownership Act. This legislation would eliminate one of the most archaic provisions remaining in telecommunications law: that which prohibits a

newspaper from being co-owned with a local radio or television station.

Mr. President, at a time when the number of outlets for news, information, and entertainment has expanded exponentially, and at a time when other restrictions on ownership of mass media companies have been rethought and liberalized one fossil from the age of Walter Winchell and the Dumont Network remains—the law that keeps one entity from owning both a newspaper and a radio or TV station in the same market. It's time to finally get rid of this relic.

The newspaper/broadcast cross-ownership prohibition dates from a day when there was a realistic fear that common control of both media in the same locale could result in the public's receiving only one point of view on important issues.

Radio and television outlets abound. Many are supplemented by multichannel news and entertainment outlets like cable TV and satellite broadcasting. Even in the smallest markets, diversity of viewpoints is as close as clicking on the Internet.

It is not surprising that, in this era of media diversity, newspapers have found it tough going, their numbers steadily declining over the years. In this environment, the infusion of resources that would result from allowing them to be owned by local radio and TV station owners would be most beneficial. Moreover, is there any reason to think that an attempt to make a newspaper walk in the lock-step with a co-owned broadcast station would not be readily detected by the public, and rejected in favor of more diverse sources of information? It is difficult to believe that, given the almost bewildering variety in the numbers and types of information sources available in even the smallest markets, any seeker of information could be either so passive or so defenseless.

Mr. President, I introduce this bill in an effort to engage informed debate on this outdated restriction. I ask unanimous consent that the text of the bill be printed on the RECORD.

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

S. 641

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

SECTION 1. CROSS-OWNERSHIP OF BROADCASTING AND NEWSPAPERS.

(a) RULE CHANGES REQUIRED.—The Federal Communications Commission shall modify section 73.3555 of its regulations (47 C.F.R. 73.3555) by eliminating any provisions limiting the granting or renewal of an AM, FM, or TV broadcast station license to any party (including parties under common control) on the basis of the ownership, operation, or control by such party of a daily newspaper.

(b) DEADLINE FOR ACTION.—The Federal Communications Commission shall complete all action necessary to complete the modifications required by subsection (a) within 90 days after the date of enactment of this Act.

By Mr. TORRICELLI:

S. 642. A bill to amend section 842 of title 18, United States Code, relating to explosive materials; to the Committee on the Judiciary.

THE EXPLOSIVES PROTECTION ACT OF 1997

● Mr. TORRICELLI. Mr. President, I introduce the Explosives Protection Act of 1997. I do so just over two years after the tragic bombing of the federal building in Oklahoma City, because I hope that this bill will, in some small way, prevent future bombings—whether by terrorists of symbolic targets, malcontents of random ones, or even spouses involved in marital disputes.

This bill, while not directly related to the circumstances in Oklahoma City, is a first step towards protecting the American people from those who would use explosives to do them harm.

Not many people realize, Mr. President, just how few restrictions on the use and sale of explosives really exist. While we have increasingly restricted the number of people who can obtain and use a firearm, we have been lax in extending these prohibitions to explosives.

For instance, while we prohibit illegal aliens from obtaining a gun, we allow them to obtain explosives without restriction. And this same divergence applies to those who have been dishonorably discharged from the armed forces, those who have renounced U.S. citizenship, people who have acted in such a way as to have restraining orders issued against them, and those with domestic violence convictions. Each of these categories of persons are prohibited from obtaining firearms, but face no such prohibition on obtaining explosive material.

Additionally, while this Congress has been moving to prevent nonimmigrant legal aliens from obtaining a gun, in response to the recent shooting at the Empire State Building, we have neglected to work towards this same goal with regards to explosives.

Mr. President, many of these differences in the law are simply oversights—Congress has often acted to limit the use and sale of firearms, and has neglected to bring explosives law into line. And in so doing, we have made it all too easy for many of the most dangerous or least accountable members of society to obtain materials which can result in an equal or even greater loss of life.

Congress has already made the determination that certain members of society should not have access to firearms, and the same logic clearly applies to dangerous and destructive explosive materials. It is time to bring the explosives law into line with gun laws, and this is all my bill does.

Specifically, my bill would take the list of categories of people who cannot obtain firearms and would add any of those categories not currently covered under the explosives law. Additionally, my bill would insert the Durbin-Kennedy nonimmigrant provisions into the law to protect us from persons entering the country and quickly moving to purchase and use deadly explosive material.

Mr. President, this is a simple bill meant only to correct longstanding gaps and loopholes in current law. I urge my colleagues to support the bill, and I hope we can quickly move to get this passed and protect Americans from future acts of explosive destruction.

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. 642

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 ''Explosives Protection Act of 1997''.

SEC 2. PROHIBITIONS RELATING TO EXPLOSIVE MATERIALS.

(a) PROHIBITION OF SALE, DELIVERY, OR TRANSFER OF EXPLOSIVE MATERIALS TO CERTAIN INDIVIDUALS.—Section 842 of title 18, United States Code, is amended by striking subsection (d) and inserting the following:

''(d) PROHIBITION OF SALE, DELIVERY, OR TRANSFER OF EXPLOSIVE MATERIALS TO CERTAIN INDIVIDUALS.—It shall be unlawful for any licensee to knowingly sell, deliver, or transfer any explosive materials to any individual who—

''(1) is less than 21 years of age;

''(2) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

''(3) is a fugitive from justice;

''(4) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(5) has been adjudicated as a mental defective or has been committed to any mental institution;

''(6) being an alien—

''(A) is illegally or unlawfully in the United States; or

''(B) except as provided in subsection (*l*), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26));

''(7) has been discharged from the Armed Forces under dishonorable conditions;

''(8) having been a citizen of the United States, has renounced his citizenship;

''(9) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

''(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

''(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; and

''(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

''(10) has been convicted in any court of a misdemeanor crime of domestic violence.''.

(b) PROHIBITION ON SHIPPING, TRANSPORTING, POSSESSION, OR RECEIPT OF EXPLOSIVES BY CERTAIN INDIVIDUALS.—Section 842 of title 18, United States Code, is amended by striking subsection (p) and inserting the following:

''(p) PROHIBITION ON SHIPPING, TRANSPORTING, POSSESSION, OR RECEIPT OF EXPLOSIVES BY CERTAIN INDIVIDUALS.—It shall be unlawful for any person to ship or transport in interstate or foreign commerce, or possess, in or affecting commerce, any explosive, or to receive any explosive that has been shipped or transported in interstate or foreign commerce, if that person—

''(1) is less than 21 years of age;

''(2) has been convicted in any court, of a crime punishable by imprisonment for a term exceeding 1 year;

''(3) is a fugitive from justice;

''(4) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

''(5) has been adjudicated as a mental defective or who has been committed to a mental institution;

''(6) being an alien—

''(A) is illegally or unlawfully in the United States; or

''(B) except as provided in subsection (*l*), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26));

''(7) has been discharged from the Armed Forces under dishonorable conditions;

''(8) having been a citizen of the United States, has renounced his citizenship; or

''(9) is subject to a court order that—

''(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

''(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

''(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; and

''(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

''(10) has been convicted in any court of a misdemeanor crime of domestic violence.''.

(c) EXCEPTIONS AND WAIVER FOR CERTAIN INDIVIDUALS.—Section 842 of title 18, United States Code, is amended by adding at the end the following:

''(*l*) EXCEPTIONS AND WAIVER FOR CERTAIN INDIVIDUALS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'alien' has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

''(B) the term 'nonimmigrant visa' has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

''(2) EXCEPTIONS.—Subsections (d)(5)(B) and (p)(5)(B) do not apply to any alien who has been lawfully admitted to the United States pursuant to a nonimmigrant visa, if that alien is—

''(A) admitted to the United States for lawful hunting or sporting purposes;

''(B) a foreign military personnel on official assignment to the United States;

''(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

''(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

''(3) WAIVER.—

''(A) IN GENERAL.—Any individual who has been admitted to the United States under a nonimmigrant visa and who is not described in paragraph (2), may receive a waiver from the applicability of subsection (d)(5)(B) or (p)(5)(B), if—

''(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (B); and

''(ii) the Attorney General approves the petition.

''(B) PETITIONS.—Each petition under subparagraph (A)(i) shall—

''(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

''(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to engage in any activity prohibited under subsection (d) or (p), as applicable, and certifying that the petitioner would not otherwise be prohibited from engaging in that activity under subsection (d) or (p), as applicable.''.●

By Mr. DURBIN (for himself, Mr. GREGG, and Mr. LAUTENBERG):

S. 643. A bill to prohibit the Federal Government from providing insurance, reinsurance, or noninsured crop disaster assistance for tobacco; to the Committee on Agriculture, Nutrition, and Forestry.

THE TOBACCO SUBSIDY REDUCTION ACT OF 1997

Mr. DURBIN. Mr. President, people often ask their elected officials, ''If smoking is so dangerous, why does Congress subsidize tobacco?'' Today, my colleagues Senator GREGG of New Hampshire and Senator LAUTENBERG of New Jersey are joining me in introducing legislation that will give my colleagues an answer to this question.

The Tobacco Subsidy Reduction Act of 1997 ends the largest direct federal subsidy of tobacco. Specifically, this legislation prohibits the federal government from offering crop insurance or providing crop insurance subsidies for tobacco. For consistency, it also prohibits payments for tobacco under the Non-Insured Disaster Assistance Program, an alternative risk management program created in the 1996 Farm Bill for crops not eligible for the crop insurance program. I ask that the full text of the legislation appear in the RECORD following my statement.

Tobacco growing and processing is one of the most lucrative industries in America. To protect their profits despite the health dangers of their product, tobacco growers created the ''no net cost'' price support program. But a variety of taxpayer subsidies to tobacco remain, including crop insurance, extension services, and other programs assisting tobacco production and sales.

Last year, the federal government spent $98 million on tobacco-related subsidies and programs. These costs include $68 million for crop insurance losses beyond the premiums tobacco farmers paid, and $11 million for overhead costs of administering the crop insurance program for tobacco crops. This year, federal tobacco-related subsidies are estimated to amount to $67 million, including $48 million related to crop insurance.

In an era of tight budgets, there are better uses for this money. It makes no budgetary sense to subsidize a crop that causes an enormous amount of disease, disability, and death.

This amendment will not affect the tobacco price support program, so it will not drive any tobacco farmers out of business. It will merely get the federal government out of the business of paying for these specific subsidies for this deadly crop.

Cigarettes and smokeless tobacco products kill more than 400,000 Americans every year of cancer, heart disease, and other illnesses. These products also disable hundreds of thousands of other Americans through emphysema and other respiratory illnesses. It's time to take another step toward getting the federal government out of this business.

I invite my colleagues to cosponsor the Tobacco Subsidy Reduction Act and tell their constituents that they are working to cut government tobacco subsidies.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 643

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 Subsidy Reduction Act of 1997''.

SEC. 2. PROHIBITION OF FEDERAL INSURANCE, REINSURANCE, OR NONINSURED CROP DISASTER ASSISTANCE FOR TOBACCO.

(a) CROP INSURANCE.—

(1) DEFINITION OF AGRICULTURAL COMMODITY.—Section 518 of the Federal Crop Insurance Act (7 U.S.C. 1518) is amended—

(A) by striking the section heading and all that follows through ''as used in this title, means'' and inserting the following:

''SEC. 518. DEFINITION OF AGRICULTURAL COMMODITY.

''(a) DEFINITION.—In this title, the term 'agricultural commodity' means'';

(B) by striking ''tobacco,''; and

(C) by adding at the end the following:

''(b) EXCEPTION.—In this title, the term 'agricultural commodity' does not include tobacco. The Corporation may not insure, provide reinsurance for insurers of, or pay any part of the premium related to the coverage of a crop of tobacco.''.

(2) CONFORMING AMENDMENTS.—Section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) is amended—

(A) in the first sentence of subsection (a)(2), by striking ''cases of tobacco and'' and inserting ''case of''; and

(B) in subsection (h)(9)(A), by inserting '', excluding tobacco,'' after ''commodity''.

(b) NONINSURED CROP DISASTER ASSISTANCE.—Section 196(a)(2) of Agricultural Market Transition Act (7 U.S.C. 7333(a)(2)) is amended by adding at the end the following:

''(C) CROPS SPECIFICALLY EXCLUDED.—The term 'eligible crop' does not include tobacco.

The Secretary may not make assistance available under this section to cover losses to a crop of tobacco.''.

(c) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this section shall apply with respect to the 1997 and subsequent crops of tobacco.

EXISTING CONTRACTS.—The amendments made by this section shall not apply to a contract of insurance of the Federal Crop Insurance Corporation, or a contract of insurance reinsured by the Corporation, in existence on the date of enactment of this Act.

By Mr. D'AMATO:

S. 644. A bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to establish standards for relationships between group health plans and health insurance issuers with enrollees, health professionals, and providers; to the Committee on Labor and Human Resources.

THE PATIENT ACCESS TO RESPONSIBLE CARE ACT

Mr. D'AMATO. Mr. President, I am introducing this bill in an effort to protect the vast majority of patients in this country. Currently, in order to control the cost of health care, managed care organizations often place limits on the delivery of necessary medical services. I believe American families must be guaranteed basic health rights when dealing with HMOs and managed care providers. The bottom line in medicine must be the health of the patient, not the profits of any given company. This legislation, the Patient Access to Responsible Care Act, will meet this obligation.

With this Act, I seek to establish basic protections for patients and health care providers in order to ensure the best medical care for patients. I envision these basic provisions giving Americans a set of health rights, in the form of a Patients' Bill of Rights, when dealing with HMOs and other health insurance plans. These rights include:

The Right to Choose Your Own Doctor. This bill will allow patients to select their own doctors within their plan and change their selection of doctor as the patient feels necessary. It also gives patients, who are in managed care-only health plans, the option to see doctors outside their HMOs for an additional fee.

The Right to Quality Health Care. This legislation will ensure that doctors are not prohibited or limited in any way from discussing a patient's health status, treatment options or any other medical communications. It also stops HMOs from using financial incentives for doctors to deny or limit care to patients. We must make sure that health care decisions are based on sound medical criteria and not the financial bottom line.

The Right to Justice. This Act closes loopholes in current law that allow the vast majority of health insurance plans to escape legal responsibility for decisions causing needless injury or death to a patient. Currently, self-insured managed care plans cannot be held liable for a patient's wrongful death or personal injuries resulting from plan policies even when those policies directly contributed to the patient's death or injury. This is wrong and this bill would guarantee that if HMO policies hurt patients, the HMO will be held accountable for their actions.

In addition, within a patient's health plan, this bill guarantees patients can quickly and easily appeal adverse decisions by their manage care plans. We've heard too many horror stories of patients who have been denied treatment by a health plans' policy. In addition, the appeals process is too bureaucratic and lengthy, sometimes resulting in tragic consequences. We must always put the quality of patient care first.

The Right to Full Disclosure. This bill also provides that health insurance plans make available to each patient a list of what health care is covered, what are the plans costs and profits, and how much is the plan spending on marketing and other non-medical costs. This is a sort of ''truth-in-lending'' statement for health plans.

When I first considered introducing this Patients' Bill of Rights, I was concerned about how prevalent a need there was for this type of legislation. I quickly found numerous instances where patients were suffering adverse outcomes from poor medical decisions made by managed care companies. The most publicized recent case is Corcoran versus United Health Care. In this case, Ms. Corcoran, a Louisiana woman with a high risk pregnancy, was admitted to a hospital under her physician's orders. She was discharged from the hospital after her health plan refused to pay for her care. The health plan would only authorize a visiting nurse to check on the woman at home. At one point, when the nurse was absent, the unborn child went into distress and died. The U.S. Court of Appeals for the 5th Circuit ruled that the woman had no right to sue the HMO for damages because the insurance plan was governed under ERISA laws. These laws preempt state insurance laws allowing patients to seek due process. Americans cannot expect health care with this type of managed health care.

As I said before, there are numerous instances where managed care is revealed to be ruled by a company's profits. In New York, a diabetic developed an infection in his foot that had become gangrenous and had spread all the way to his groin. Almost his entire leg was infected and the blood vessels clogged. His doctor, a cardio-vascular specialist, feared that the gentleman could lose his foot if treatment was not initiated immediately. So, as a responsible physician, he admitted his patient to the hospital where he was immediately treated with intravenous antibiotics to combat the infection. Once in the hospital, the gentleman's HMO contacted the doctor to find out how long he anticipated the hospital stay would be. Since the man had clogged blood vessels and had to undergo a vascular bypass in order to be treated, the doctor estimated a stay between 10 and 15 days.

Upon learning this, an HMO official went to the gentleman's hospital room, and without even notifying the doctor, told the man that ''he could watch Oprah and be treated as well from home with a visiting nurse.'' The gentleman's doctor repeatedly argued with the HMO that it was not medically safe to release his patient from the hospital. But, with fluid still draining from his wounds and the doctor still protesting against the early discharge, the gentleman was sent home just a week after being admitted. The next day, the HMO sent a nurse—not a cardiovascular specialist or even a doctor, but a nurse—to his home to evaluate his condition and to show his wife how to change the dressing covering his wounds. With this state of affairs, the man eventually required surgery. With the early discharge and the lack of responsible care on the part of the HMO, the surgery had to be postponed because the patient's blood had become too thin to safely perform surgery.

In Georgia, a 2-year old boy was suffering from a high fever which did not respond to medication. His parents followed the insurance company's instructions for pre-authorization of emergency room care and attempted to drive 42 miles to the preferred hospital. The couple passed five emergency rooms along the way. Before they could reach the preferred hospital, their son went into cardiac arrest and stopped breathing. The child slipped into a coma, developed gangrene in his extremities, and subsequently lost his arms and legs to amputation.

In California, a young girl was diagnosed with Wilm's tumor, a rare childhood kidney cancer. The families new HMO required that the girl's surgery be performed by a surgeon within the managed care plan. None of the plan's surgeons had any experience with Wilm's tumor. The family chose to use an expert surgeon outside of the plan who had a proven track record with this type of tumor. The surgery was a success and the child has fully recovered. However, the HMO denied coverage for going outside of their system causing the family to enter a 2 year legal battle with the plan. In the first ever enforcement action against an HMO for a patient complaint, the state imposed a $500,000 fine against the plan for denying appropriate medical care.

In Colorado, a 75-year old woman was diagnosed with Kidney Cancer, but her plan refused to authorize surgery to remove the kidney and tumor of such an elderly woman. The plan only relented and allowed the surgery to be performed when a Congressman finally intervened on her behalf. The lady's cancer is now in full remission.

In Texas, a 17-year old Texas girl was critically injured in a head-on car crash that left her with severe head trauma, a broken back, a crushed pelvis, and numerous other injuries. She

eventually pulled through, but her health plan refused to pay $40,000 of her hospital bill because her family had not received ''prior authorization'' for her emergency admission to the hospital—even though the hospital was a preferred provider for the plan.

These stories are not isolated incidents. They do not happen just in New York and Georgia, but across the nation. They speak for the thousands of patients across the country who have been denied access to the responsible care they need and deserve.

Mr. President, I believe it would be beneficial for my colleagues if I summarized what rights this bill will provide for patients across the country and how this bill meets those rights.

First of all, we are trying to increase patient access to plans and doctors. Patients, including those in under served inner-city and rural areas, are ensured their choice of doctor within the plan. The bill will ensure that health plans have enough doctors to guarantee this choice. Patients will also have access to any specialist required by their medical condition within the plan. In addition, patients are to have emergency health care without the burden of seeking prior approval from their health plan.

Also in this Act, patients will have an expanded choice of health care providers inside and outside of the network. People can either go through the network, or choose a plan that allows them to go out of the network, although at a higher cost. They will be allowed to select their own personal doctors within their plan and change their selection as the patient feels necessary. Patients will also be given the option to choose a health insurance plan that covers health care options not offered in the network. The managed care plan would reimburse the costs of these services based on rates consistent with those negotiated under the plan. Patients would be responsible for any remaining costs.

This bill will include a prohibition on gag rules. Patients are ensured that the health plan will not in any way limit doctors from discussing the patient's health status, treatment options or any other medical communication. Health plans can not offer any incentives, financial or otherwise, for doctors to deny or limit any health care.

In addition, this Bill of Rights forces HMOs to be responsible for their decisions. Currently, HMOs can not be held liable for wrongful death or personal injury suffered by the medical decision making policies of the plan, action may only be brought against the doctor and the hospital. Even if the HMO or the plan had in place a policy which directly contributed to death or injury of a patient, they are protected. This bill changes that by ensuring that managed care plans are held responsible for any medical decisions that they make. This bill says that if you make a medical decision, no matter who you are, you will be responsible for your actions. ERISA was never intended to be used as a shield for health plans providing negligent medical care. Also, there will be a provision providing due process on patient appeals claims made to their heath plans. Within the plan, patients will be guaranteed the ability to quickly and easily appeal adverse decisions.

The act will establish an information disclosure provision allowing patients to make informed decisions about which health plan would be best for them. This is a sort of ''Truth in Lending'' statement for HMO's. Every health plan will be required to disclose information about plan benefits, appeals procedures, plan performance measures, history of patient satisfaction, as well as the number and type of health care providers participating in the network. Based on this information, patients will be guaranteed the ability to make informed decisions about the quality of their health care and the managed care companies they choose from.

In addition, there will be doctor and patient protections from discrimination. The provision allows any doctor who meets a clear set of standards the opportunity to be a member of any managed care plan. In addition, patients will not be discriminated against based on their personal background or preexisting conditions, such as long-term and costly diseases.

Mr. President, we have an obligation to set minimum health care standards in the private sector to protect American families and ensure they have access to quality health care. We cannot allow the profits of the company to get in the way of patient health.

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. 644

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Patient Access to Responsible Care Act of 1997''.

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

SEC. 2. PATIENT PROTECTION STANDARDS UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) PATIENT PROTECTION STANDARDS.—Title XXVII of the Public Health Service Act is amended—

(1) by redesignating part C as part D, and

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

''PART C—PATIENT PROTECTION STANDARDS

''SEC. 2770. NOTICE; ADDITIONAL DEFINITIONS; CONSTRUCTION.

''(a) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 711(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this part as if such section applied to such issuer and such issuer were a group health plan.

''(b) ADDITIONAL DEFINITIONS.—For purposes of this part:

''(1) ENROLLEE.—The term 'enrollee' means, with respect to health insurance coverage offered by a health insurance issuer, an individual enrolled with the issuer to receive such coverage.

''(2) HEALTH PROFESSIONAL.—The term 'health professional' means a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with State law.

''(3) NETWORK.—The term 'network' means, with respect to a health insurance issuer offering health insurance coverage, the participating health professionals and providers through whom the plan or issuer provides health care items and services to enrollees.

''(4) NETWORK COVERAGE.—The term 'network coverage' means health insurance coverage offered by a health insurance issuer that provides or arranges for the provision of health care items and services to enrollees through participating health professionals and providers.

''(5) PARTICIPATING.—The term 'participating' means, with respect to a health professional or provider, a health professional or provider that provides health care items and services to enrollees under network coverage under an agreement with the health insurance issuer offering the coverage.

''(6) PRIOR AUTHORIZATION.—The term 'prior authorization' means the process of obtaining prior approval from a health insurance issuer as to the necessity or appropriateness of receiving medical or clinical services for treatment of a medical or clinical condition.

''(7) PROVIDER.—The term 'provider' means a health organization, health facility, or health agency that is licensed, accredited, or certified to provide health care items and services under applicable State law.

''(8) SERVICE AREA.—The term 'service area' means, with respect to a health insurance issuer with respect to health insurance coverage, the geographic area served by the issuer with respect to the coverage.

''(9) UTILIZATION REVIEW.—The term 'utilization review' means prospective, concurrent, or retrospective review of health care items and services for medical necessity, appropriateness, or quality of care that includes prior authorization requirements for coverage of such items and services.

''(c) NO REQUIREMENT FOR ANY WILLING PROVIDER.—Nothing in this part shall be construed as requiring a health insurance issuer that offers network coverage to include for participation every willing provider or health professional who meets the terms and conditions of the plan or issuer.

''SEC. 2771. ENROLLEE ACCESS TO CARE.

''(a) GENERAL ACCESS.—

''(1) IN GENERAL.—Subject to paragraphs (2), and (3), a health insurance issuer shall establish and maintain adequate arrangements, as defined by the applicable State authority, with a sufficient number, mix, and distribution of health professionals and providers to assure that covered items and services are available and accessible to each enrollee under health insurance coverage—

''(A) in the service area of the issuer;

''(B) in a variety of sites of service;

''(C) with reasonable promptness (including reasonable hours of operation and after-hours services);

''(D) with reasonable proximity to the residences and workplaces of enrollees; and

''(E) in a manner that—

''(i) takes into account the diverse needs of enrollees, and

''(ii) reasonably assures continuity of care.

For a health insurance issuer that serves a rural or medically underserved area, the issuer shall be treated as meeting the requirement of this subsection if the issuer has arrangements with a sufficient number, mix, and distribution of health professionals and providers having a history of serving such areas. The use of telemedicine and other innovative means to provide covered items and services by a health insurance issuer that serves a rural or medically underserved area shall also be considered in determining whether the requirement of this subsection is met.

''(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a health insurance issuer to have arrangements that conflict with its responsibilities to establish measures designed to maintain quality and control costs.

''(3) DEFINITIONS.—For purposes of paragraph (1):

''(A) MEDICALLY UNDERSERVED AREA.—The term 'medically underserved area' means an area that is designated as a health professional shortage area under section 332 of the Public Health Service Act or as a medically underserved area for purposes of section 330 or 1302(7) of such Act.

''(B) RURAL AREA.—The term 'rural area' means an area that is not within a Standard Metropolitan Statistical Area or a New England County Metropolitan Area (as defined by the Office of Management and Budget).

''(b) EMERGENCY AND URGENT CARE.—

''(1) IN GENERAL.—A health insurance issuer shall—

''(A) assure the availability and accessibility of medically or clinically necessary emergency services and urgent care services within the service area of the issuer 24 hours a day, 7 days a week;

''(B) require no prior authorization for items and services furnished in a hospital emergency department to an enrollee (without regard to whether the health professional or hospital has a contractual or other arrangement with the issuer) with symptoms that would reasonably suggest to a prudent layperson an emergency medical condition (including items and services described in subparagraph (C)(iii));

''(C) cover (and make reasonable payments for)—

''(i) emergency services,

''(ii) services that are not emergency services but are described in subparagraph (B),

''(iii) medical screening examinations and other ancillary services necessary to diagnose, treat, and stabilize an emergency medical condition, and

''(iv) urgent care services, without regard to whether the health professional or provider furnishing such services has a contractual (or other) arrangement with the issuer; and

''(D) make prior authorization determinations for—

''(i) services that are furnished in a hospital emergency department (other than services described in clauses (i) and (iii) of subparagraph (C)), and

''(ii) urgent care services, within the time periods specified in (or pursuant to) section 2776(a)(8).

''(2) DEFINITIONS.—For purposes of this subsection:

''(A) EMERGENCY MEDICAL CONDITION.—The term 'emergency medical condition' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention could reasonably be expected to result in—

''(i) placing the patient's health in serious jeopardy,

''(ii) serious impairment to bodily functions, or

''(iii) serious dysfunction of any bodily organ or part.

''(B) EMERGENCY SERVICES.—The term 'emergency services' means health care items and services that are necessary for the diagnosis, treatment, and stabilization of an emergency medical condition.

''(C) URGENT CARE SERVICES.—The term 'urgent care services' means health care items and services that are necessary for the treatment of a condition that—

''(i) is not an emergency medical condition,

''(ii) requires prompt medical or clinical treatment, and

''(iii) poses a danger to the patient if not treated in a timely manner, as defined by the applicable State authority in consultation with relevant treating health professionals or providers.

''(c) SPECIALIZED SERVICES.—

''(1) IN GENERAL.—A health insurance issuer offering network coverage shall demonstrate that enrollees have access to specialized treatment expertise when such treatment is medically or clinically indicated in the professional judgment of the treating health professional, in consultation with the enrollee.

''(2) DEFINITION.—For purposes of paragraph (1), the term 'specialized treatment expertise' means expertise in diagnosing or treating—

''(A) unusual diseases or conditions, or

''(B) diseases and conditions that are unusually difficult to diagnose or treat.

''(d) INCENTIVE PLANS.—

''(1) IN GENERAL.—In the case of a health insurance issuer that offers network coverage, any health professional or provider incentive plan operated by the issuer with respect to such coverage shall meet the following requirements:

''(A) No specific payment is made directly or indirectly under the plan to a professional or provider or group of professionals or providers as an inducement to reduce or limit medically necessary services provided with respect to a specific enrollee.

''(B) If the plan places such a professional, provider, or group at substantial financial risk (as determined by the Secretary) for services not provided by the professional, provider, or group, the issuer—

''(i) provides stop-loss protection for the professional, provider, or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of professionals or providers placed at such substantial financial risk in the group or under the coverage and the number of individuals enrolled with the issuer who receive services from the professional, provider, or group, and

''(ii) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the issuer to determine the degree of access of such individuals to services provided by the issuer and satisfaction with the quality of such services.

''(C) The issuer provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this paragraph.

''(2) In this subsection, the term 'health professional or provider incentive plan' means any compensation arrangement between a health insurance issuer and a health professional or provider or professional or provide group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the issuer.

''SEC. 2772. ENROLLEE CHOICE OF HEALTH PROFESSIONALS AND PROVIDERS.

''(a) CHOICE OF PERSONAL HEALTH PROFESSIONAL.—A health insurance issuer shall permit each enrollee under network coverage to—

''(1) select a personal health professional from among the participating health professionals of the issuer, and

''(2) change that selection as appropriate.

''(b) POINT-OF-SERVICE OPTION.—

''(1) IN GENERAL.—If a health insurance issuer offers to enrollees health insurance coverage which provides for coverage of services only if such services are furnished through health professionals and providers who are members of a network of health professionals and providers who have entered into a contract with the issuer to provide such services, the issuer shall also offer to such enrollees (at the time of enrollment) the option of health insurance coverage which provides for coverage of such services which are not furnished through health professionals and providers who are members of such a network.

''(2) FAIR PREMIUMS.—The amount of any additional premium required for the option described in paragraph (1) may not exceed an amount that is fair and reasonable, as established by the applicable State authority, in consultation with the National Association of Insurance Commissioners, based on the nature of the additional coverage provided.

''(3) COST-SHARING.—Under the option described in paragraph (1), the health insurance coverage shall provide for reimbursement rates for covered services offered by health professionals and providers who are not participating health professionals or providers that are not less than the reimbursement rates for covered services offered by participating health professionals and providers. Nothing in this paragraph shall be construed as protecting an enrollee against balance billing by a health professional or provider that is not a participating health professional or provider.

''(c) CONTINUITY OF CARE.—A health insurance issuer offering network coverage shall—

''(1) ensure that any process established by the issuer to coordinate care and control costs does not create an undue burden, as defined by the applicable State authority, for enrollees with special health care needs or chronic conditions;

''(2) ensure direct access to relevant specialists for the continued care of such enrollees when medically or clinically indicated in the judgment of the treating health professional, in consultation with the enrollee;

''(3) in the case of an enrollee with special health care needs or a chronic condition, determine whether, based on the judgment of the treating health professional, in consultation with the enrollee, it is medically or clinically necessary to use a specialist or a care coordinator from an interdisciplinary team to ensure continuity of care; and

''(4) in circumstances under which a change of health professional or provider might disrupt the continuity of care for an enrollee, such as—

''(A) hospitalization, or

''(B) dependency on high-technology home medical equipment,

provide for continued coverage of items and services furnished by the health professional or provider that was treating the enrollee before such change for a reasonable period of time.

For purposes of paragraph (4), a change of health professional or provider may be due to changes in the membership of an issuer's health professional and provider network, changes in the health coverage made available by an employer, or other similar circumstances.

''SEC. 2773. NONDISCRIMINATION AGAINST ENROLLEES AND IN THE SELECTION OF HEALTH PROFESSIONALS; EQUITABLE ACCESS TO NETWORKS.

''(a) NONDISCRIMINATION AGAINST ENROLLEES.—No health insurance issuer may discriminate (directly or through contractual arrangements) in any activity that has the effect of discriminating against an individual on the basis of race, national origin, gender, language, socioeconomic status, age, disability, health status, or anticipated need for health services.

''(b) NONDISCRIMINATION IN SELECTION OF NETWORK HEALTH PROFESSIONALS.—A health insurance issuer offering network coverage shall not discriminate in selecting the members of its health professional network (or in establishing the terms and conditions for membership in such network) on the basis of—

''(1) the race, national origin, gender, age, or disability (other than a disability that impairs the ability of an individual to provide health care services or that may threaten the health of enrollees) of the health professional; or

''(2) the health professional's lack of affiliation with, or admitting privileges at, a hospital (unless such lack of affiliation is a result of infractions of quality standards and is not due to a health professional's type of license).

''(c) NONDISCRIMINATION IN ACCESS TO HEALTH PLANS.—While nothing in this section shall be construed as an 'any willing provider' requirement (as referred to in section 2770(c)), a health insurance issuer shall not discriminate in participation, reimbursement, or indemnification against a health professional, who is acting within the scope of the health professional's license or certification under applicable State law, solely on the basis of such license or certification.

''SEC. 2774. PROHIBITION OF INTERFERENCE WITH CERTAIN MEDICAL COMMUNICATIONS.

''(a) IN GENERAL.—The provisions of any contract or agreement, or the operation of any contract or agreement, between a health insurance issuer and a health professional shall not prohibit or restrict the health professional from engaging in medical communications with his or her patient.

''(b) NULLIFICATION.—Any contract provision or agreement described in subsection (a) shall be null and void.

''(c) MEDICAL COMMUNICATION DEFINED.—For purposes of this section, the term 'medical communication' means a communication made by a health professional with a patient of the health professional (or the guardian or legal representative of the patient) with respect to—

''(1) the patient's health status, medical care, or legal treatment options;

''(2) any utilization review requirements that may affect treatment options for the patient; or

''(3) any financial incentives that may affect the treatment of the patient.

''SEC. 2775. DEVELOPMENT OF PLAN POLICIES.

''A health insurance issuer that offers network coverage shall establish mechanisms to consider the recommendations, suggestions, and views of enrollees and participating health professionals and providers regarding—

''(1) the medical policies of the issuer (including policies relating to coverage of new technologies, treatments, and procedures);

''(2) the utilization review criteria and procedures of the issuer;

''(3) the quality and credentialing criteria of the issuer; and

''(4) the medical management procedures of the issuer.

''SEC. 2776. DUE PROCESS FOR ENROLLEES.

''(a) UTILIZATION REVIEW.—The utilization review program of a health insurance issuer shall—

''(1) be developed (including any screening criteria used by such program) with the involvement of participating health professionals and providers;

''(2) to the extent consistent with the protection of proprietary business information (as defined for purposes of section 552 of title 5, United States Code) release, upon request, to affected health professionals, providers, and enrollees the screening criteria, weighting elements, and computer algorithms used in reviews and a description of the method by which they were developed;

''(3) uniformly apply review criteria that are based on sound scientific principles and the most recent medical evidence;

''(4) use licensed, accredited, or certified health professionals to make review determinations (and for services requiring specialized training for their delivery, use a health professional who is qualified through equivalent specialized training and experience);

''(5) subject to reasonable safeguards, disclose to health professionals and providers, upon request, the names and credentials of individuals conducting utilization review;

''(6) not compensate individuals conducting utilization review for denials of payment or coverage of benefits;

''(7) comply with the requirement of section 2771 that prior authorization not be required for emergency and related services furnished in a hospital emergency department;

''(8) make prior authorization determinations—

''(A) in the case of services that are urgent care services described in section 2771(b)(2)(C), within 30 minutes of a request for such determination, and

''(B) in the case of other services, within 24 hours after the time of a request for determination;

''(9) include in any notice of such determination an explanation of the basis of the determination and the right to an immediate appeal;

''(10) treat a favorable prior authorization review determination as a final determination for purposes of making payment for a claim submitted for the item or service involved unless such determination was based on false information knowingly supplied by the person requesting the determination;

''(11) provide timely access, as defined by the applicable State authority, to utilization review personnel and, if such personnel are not available, waives any prior authorization that would otherwise be required; and

''(12) provide notice of an initial determination on payment of a claim within 30 days after the date the claim is submitted for such item or service, and include in such notice an explanation of the reasons for such determination and of the right to an immediate appeal.

''(b) APPEALS PROCESS.—A health insurance issuer shall establish and maintain an accessible appeals process that—

''(1) reviews an adverse prior authorization determination—

''(A) for urgent care services, described in subsection (a)(8)(A), within 1 hour after the time of a request for such review, and

''(B) for other services, within 24 hours after the time of a request for such review;

''(2) reviews an initial determination on payment of claims described in subsection (a)(12) within 30 days after the date of a request for such review;

''(3) provides for review of determinations described in paragraphs (1) and (2) by an appropriate clinical peer professional who is in the same or similar specialty as would typically provide the item or service involved (or another licensed, accredited, or certified health professional acceptable to the plan and the person requesting such review); and

''(4) provides for review of—

''(A) the determinations described in paragraphs (1), (2), and (3), and

''(B) enrollee complaints about inadequate access to any category or type of health professional or provider in the network of the issuer or other matters specified by this part,

by an appropriate clinical peer professional who is in the same or similar specialty as would typically provide the item or service involved (or another licensed, accredited, or certified health professional acceptable to the issuer and the person requesting such review) that is not involved in the operation of the plan or in making the determination or policy being appealed.

The procedures specified in this subsection shall not be construed as preempting or superseding any other reviews or appeals an issuer is required by law to make available.

''SEC. 2777. DUE PROCESS FOR HEALTH PROFESSIONALS AND PROVIDERS.

''(a) IN GENERAL.—A health insurance issuer with respect to its offering of network coverage shall—

''(1) allow all health professionals and providers in its service area to apply to become a participating health professional or provider during at least one period in each calendar year;

''(2) provide reasonable notice to such health professionals and providers of the opportunity to apply and of the period during which applications are accepted;

''(3) provide for review of each application by a credentialing committee with appropriate representation of the category or type of health professional or provider;

''(4) select participating health professionals and providers based on objective standards of quality developed with the suggestions and advice of professional associations, health professionals, and providers;

''(5) make such selection standards available to—

''(A) those applying to become a participating provider or health professional;

''(B) health plan purchasers, and

''(C) enrollees;

''(6) when economic considerations are taken into account in selecting participating

health professionals and providers, use objective criteria that are available to those applying to become a participating provider or health professional and enrollees;

''(7) adjust any economic profiling to take into account patient characteristics (such as severity of illness) that may result in atypical utilization of services;

''(8) make the results of such profiling available to insurance purchasers, enrollees, and the health professional or provider involved;

''(9) notify any health professional or provider being reviewed under the process referred to in paragraph (3) of any information indicating that the health professional or provider fails to meet the standards of the issuer;

''(10) offer a health professional or provider receiving notice pursuant to the requirement of paragraph (9) with an opportunity to—

''(A) review the information referred to in such paragraph, and

''(B) submit supplemental or corrected information;

''(11) not include in its contracts with participating health professionals and providers a provision permitting the issuer to terminate the contract 'without cause';

''(12) provide a due process appeal that conforms to the process specified in section 412 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11112) for all determinations that are adverse to a health professional or provider; and

''(13) unless a health professional or provider poses an imminent harm to enrollees or an adverse action by a governmental agency effectively impairs the ability to provide health care items and services, provide—

''(A) reasonable notice of any decision to terminate a health professional or provider 'for cause' (including an explanation of the reasons for the determination),

''(B) an opportunity to review and discuss all of the information on which the determination is based, and

''(C) an opportunity to enter into a corrective action plan, before the determination becomes subject to appeal under the process referred to in paragraph (12).

''(b) RULE OF CONSTRUCTION.—The requirements of subsection (a) shall not be construed as preempting or superseding any other reviews and appeals a health insurance issuer is required by law to make available.

''SEC. 2778. INFORMATION REPORTING AND DISCLOSURE.

''(a) IN GENERAL.—A health insurance issuer offering health insurance coverage shall provide enrollees and prospective enrollees with information about—

''(1) coverage provisions, benefits, and any exclusions—

''(A) by category of service,

''(B) by category or type of health professional or provider, and

''(C) if applicable, by specific service, including experimental treatments;

''(2) the percentage of the premium charged by the issuer that is set aside for administration and marketing of the issuer;

''(3) the percentage of the premium charged by the issuer that is expended directly for patient care;

''(4) the number, mix, and distribution of participating health professionals and providers;

''(5) the ratio of enrollees to participating health professionals and providers by category and type of health professional and provider;

''(6) the expenditures and utilization per enrollee by category and type of health professional and provider;

''(7) the financial obligations of the enrollee and the issuer, including premiums, copayments, deductibles, and established aggregate maximums on out-of-pocket costs, for all items and services, including—

''(A) those furnished by health professionals and providers that are not participating health professionals and providers, and

''(B) those furnished to an enrollee who is outside the service area of the coverage;

''(8) utilization review requirements of the issuer (including prior authorization review, concurrent review, post-service review, post-payment review, and any other procedures that may lead to denial of coverage or payment for a service);

''(9) financial arrangements and incentives that may—

''(A) limit the items and services furnished to an enrollee,

''(B) restrict referral or treatment options, or

''(C) negatively affect the fiduciary responsibility of a health professional or provider to an enrollee;

''(10) other incentives for health professionals and providers to deny or limit needed items or services;

''(11) quality indicators for the issuer and participating health professionals and providers, including performance measures such as appropriate referrals and prevention of secondary complications following treatment;

''(12) grievance procedures and appeals rights under the coverage, and summary information about the number and disposition of grievances and appeals in the most recent period for which complete and accurate information is available; and

''(13) the percentage of utilization review determinations made by the issuer that disagree with the judgment of the treating health professional or provider and the percentage of such determinations that are reversed on appeal.

''(b) REGULATIONS.—The Secretary, in collaboration with the Secretary of Labor, shall issue regulations to establish—

''(1) the styles and sizes of type to be used with respect to the appearance of the publication of the information required under subsection (a);

''(2) standards for the publication of information to ensure that such publication is—

''(A) readily accessible, and

''(B) in common language easily understood,

by individuals with little or no connection to or understanding of the language employed by health professionals and providers, health insurance issuers, or other entities involved in the payment or delivery of health care services, and

''(3) the placement and positioning of information in health plan marketing materials.

''SEC. 2779. CONFIDENTIALITY; ADEQUATE RESERVES.

''(a) CONFIDENTIALITY.—

''(1) IN GENERAL.—A health insurance issuer shall establish mechanisms and procedures to ensure compliance with applicable Federal and State laws to protect the confidentiality of individually identifiable information held by the issuer with respect to an enrollee, health professional, or provider.

''(2) DEFINITION.—For purposes of paragraph (1), the term 'individually identifiable information' means, with respect to an enrollee, a health professional, or a provider, any information, whether oral or recorded in any medium or form, that identifies or can readily be associated with the identity of the enrollee, the health professional, or the provider.

''(b) FINANCIAL RESERVES; SOLVENCY.—A health insurance issuer shall—

''(1) meet such financial reserve or other solvency-related requirements as the applicable State authority may establish to assure the continued availability of (and appropriate payment for) covered items and services for enrollees; and

''(2) establish mechanisms specified by the applicable State authority to protect enrollees, health professionals, and providers in the event of failure of the issuer.

Such requirements shall not unduly impede the establishment of health insurance issuers owned and operated by health care professionals or providers or by non-profit community-based organizations.

''SEC. 2780. QUALITY IMPROVEMENT PROGRAM.

''(a) IN GENERAL.—A health insurance issuer shall establish a quality improvement program (consistent with subsection (b)) that systematically and continuously assesses and improves—

''(1) enrollee health status, patient outcomes, processes of care, and enrollee satisfaction associated with health care provided by the issuer; and

''(2) the administrative and funding capacity of the issuer to support and emphasize preventive care, utilization, access and availability, cost effectiveness, acceptable treatment modalities, specialists referrals, the peer review process, and the efficiency of the administrative process.

''(b) FUNCTIONS.—A quality improvement program established pursuant to subsection (a) shall—

''(1) assess the performance of the issuer and its participating health professionals and providers and report the results of such assessment to purchasers, participating health professionals and providers, and administrative personnel;

''(2) demonstrate measurable improvements in clinical outcomes and plan performance measured by identified criteria, including those specified in subsection (a)(1); and

''(3) analyze quality assessment data to determine specific interactions in the delivery system (both the design and funding of the health insurance coverage and the clinical provision of care) that have an adverse impact on the quality of care.''.

(b) APPLICATION TO GROUP HEALTH INSURANCE COVERAGE.—

(1) Subpart 2 of part A of title XXVII of the Public Health Service Act is amended by adding at the end the following new section:

''SEC. 2706. PATIENT PROTECTION STANDARDS.

''(a) IN GENERAL.—Each health insurance issuer shall comply with patient protection requirements under part C with respect to group health insurance coverage it offers.

''(b) ASSURING COORDINATION.—The Secretary of Health and Human Services and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding between such Secretaries, that—

''(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which such Secretaries have responsibility under part C (and this section) and section 713 of the Employee Retirement Income Security Act of 1974 are administered so as to have the same effect at all times; and

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

(2) Section 2792 of such Act (42 U.S.C. 300gg–92) is amended by inserting ''and section 2706(b)'' after ''of 1996''.

(c) APPLICATION TO INDIVIDUAL HEALTH INSURANCE COVERAGE.—Part B of title XXVII of the Public Health Service Act is amended by inserting after section 2751 the following new section:

''SEC. 2752. PATIENT PROTECTION STANDARDS.

''Each health insurance issuer shall comply with patient protection requirements under part C with respect to individual health insurance coverage it offers.''.

(d) MODIFICATION OF PREEMPTION STANDARDS.—

(1) GROUP HEALTH INSURANCE COVERAGE.—Section 2723 of such Act (42 U.S.C. 300gg–23) is amended—

(A) in subsection (a)(1), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)'';

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

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

''(c) SPECIAL RULES IN CASE OF PATIENT PROTECTION REQUIREMENTS.—Subject to subsection (a)(2), the provisions of section 2706 and part C, and part D insofar as it applies to section 2706 or part C, shall not be construed to preempt any State law, or the enactment or implementation of such a State law, that provides protections for individuals that are equivalent to or stricter than the protections provided under such provisions.''.

(2) INDIVIDUAL HEALTH INSURANCE COVERAGE.—Section 2762 of such Act (42 U.S.C. 300gg–62), as added by section 605(b)(3)(B) of Public Law 104–204, is amended—

(A) in subsection (a), by striking ''subsection (b), nothing in this part'' and inserting ''subsections (b) and (c)'', and

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

''(c) SPECIAL RULES IN CASE OF PATIENT PROTECTION REQUIREMENTS.—Subject to subsection (b), the provisions of section 2752 and part C, and part D insofar as it applies to section 2752 or part C, shall not be construed to preempt any State law, or the enactment or implementation of such a State law, that provides protections for individuals that are equivalent to or stricter than the protections provided under such provisions.''.

(e) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 2723(a)(1) of such Act (42 U.S.C. 300gg–23(a)(1)) is amended by striking ''part C'' and inserting ''parts C and D''.

(2) Section 2762(b)(1) of such Act (42 U.S.C. 300gg–62(b)(1)) is amended by striking ''part C'' and inserting ''part D''.

(f) EFFECTIVE DATES.—(1)(A) Subject to subparagraph (B), the amendments made by subsections (a), (b), (d)(1), and (e) shall apply with respect to group health insurance coverage for group health plan years beginning on or after July 1, 1998 (in this subsection referred to as the ''general effective date'') and also shall apply to portions of plan years occurring on and after January 1, 1999.

(B) In the case of group health insurance coverage provided pursuant to a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by subsections (a), (b), (d)(1), and (e) shall not apply to plan years beginning before the later of—

(i) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(ii) the general effective date.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) or (b) shall not be treated as a termination of such collective bargaining agreement.

(2) The amendments made by subsections (a), (c), (d)(2), and (e) shall apply with respect to individual health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the general effective date.

SEC. 3. PATIENT PROTECTION STANDARDS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new section:

''SEC. 713. PATIENT PROTECTION STANDARDS.

''(a) IN GENERAL.—Subject to subsection (b), a group health plan (and a health insurance issuer offering group health insurance coverage in connection with such a plan) shall comply with the requirements of part C of title XXVII of the Public Health Service Act.

''(b) REFERENCES IN APPLICATION.—In applying subsection (a) under this part, any reference in such part C—

''(1) to a health insurance issuer and health insurance coverage offered by such an issuer is deemed to include a reference to a group health plan and coverage under such plan, respectively;

''(2) to the Secretary is deemed a reference to the Secretary of Labor;

''(3) to an applicable State authority is deemed a reference to the Secretary of Labor; and

''(4) to an enrollee with respect to health insurance coverage is deemed to include a reference to a participant or beneficiary with respect to a group health plan.

''(c) ASSURING COORDINATION.—The Secretary of Health and Human Services and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding between such Secretaries, that—

''(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which such Secretaries have responsibility under such part C (and section 2706 of the Public Health Service Act) and this section are administered so as to have the same effect at all times; and

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

(b) MODIFICATION OF PREEMPTION STANDARDS.—Section 731 of such Act (42 U.S.C. 1191) is amended—

(1) in subsection (a)(1), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)'';

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

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

''(c) SPECIAL RULES IN CASE OF PATIENT PROTECTION REQUIREMENTS.—Subject to subsection (a)(2), the provisions of section 713 and part C of title XXVII of the Public Health Service Act, and subpart C insofar as it applies to section 713 or such part, shall not be construed to preempt any State law, or the enactment or implementation of such a State law, that provides protections for individuals that are equivalent to or stricter than the protections provided under such provisions.''.

(c) CONFORMING AMENDMENTS.—(1) Section 732(a) of such Act (29 U.S.C. 1185(a)) is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(2) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Patient protection standards.''.

(3) Section 734 of such Act (29 U.S.C. 1187) is amended by inserting ''and section 713(d)'' after ''of 1996''.

(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), the amendments made by this section shall apply with respect to group health plans for plan years beginning on or after July 1, 1998 (in this subsection referred to as the ''general effective date'') and also shall apply to portions of plan years occurring on and after January 1, 1999.

(2) In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) the general effective date.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

SEC. 4. NON-PREEMPTION OF STATE LAW RESPECTING LIABILITY OF GROUP HEALTH PLANS.

(a) IN GENERAL.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by redesignating paragraph (9) as paragraph (10) and inserting the following new paragraph:

''(9) Subsection (a) of this section shall not be construed to preclude any State cause of action to recover damages for personal injury or wrongful death against any person that provides insurance or administrative services to or for an employee welfare benefit plan maintained to provide health care benefits.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to causes of action arising on or after the date of the enactment of this Act.

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

S. 645. A bill to amend the Federal Water Pollution Control Act to improve and enforce compliance programs; to the Committee on Environment and Public Works.

THE CLEAN WATER ENFORCEMENT AND COMPLIANCE IMPROVEMENT ACT OF 1997

Mr. LAUTENBERG. Mr. President, I introduce the Clean Water Enforcement and Compliance Improvement Act of 1997. This important bill will put real teeth in the enforcement provisions of the Clean Water Act, and will help restore and preserve our Nation's already stressed lakes, rivers and coastal areas. I would like to commend my colleague from New Jersey, Congressman Pallone, for introducing similar legislation in the House of Representatives. Senator TORRICELLI has joined as a co-sponsor of our bill.

Mr. President, when Congress first enacted the Clean Water Act in 1972, we established lofty goals-to make our Nation's waters fishable and swimmable. And we mandated strict enforcement and provided for penalties to assure compliance with the act's provisions.

We were responding to strong public concern about pollution of our waterways. That concern is every bit as strong today because people understand that clean water is essential to human life. The American people want us to rid our waters of bacteria, toxins, and garbage.

Yet, as we approach the 25th anniversary of the Clean Water Act, and after several substantial revisions since its enactment, the act has failed to meet all of our goals. While the Act has resulted in significant progress and water quality is improving, our waters are not clean. In 1988, over one-third of our rivers, lakes and estuaries surveyed throughout the country were either failing to achieve designated water quality levels or were threatened with failing to achieve those levels. In my State of New Jersey, a survey of roughly 10 percent of the State's rivers showed that only 15 percent were safe for swimming.

One reason we haven't made more progress is that the Clean Water Act is not being adequately enforced.

Mr. President, effective enforcement is essential to achieving the goals of the act. Not only does effective enforcement deter violations, but it also helps ensure that appropriate corrective actions are taken in a timely manner when violations do occur. The Clean Water Enforcement and Compliance Improvement Act will strengthen enforcement efforts.

Mr. President, my bill will toughen penalties for polluters, improve enforcement by EPA and state water pollution agencies, and expand citizens' right-to-know about violations of the Clean Water Act.

It establishes mandatory minimum penalties for serious violations of the Clean Water Act.

It requires that civil penalties be no less than the economic benefit resulting from the violation.

It requires more frequent reporting of water discharges to identify violations more quickly.

And it requires EPA to publish annually a list of those facilities that are in significant noncompliance with the Clean Water Act.

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. 645

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 ''Clean Water Enforcement and Compliance Improvement Act of 1997''.

SEC. 2. FINDINGS.

(a) IN GENERAL.—Congress finds that—

(1) a significant number of persons who have been issued permits under section 402 of the Federal Water Pollution Control Act are in violation of such permits;

(2) current enforcement programs of the Administrator of the Environmental Protection Agency and the States fail to address violations of such permits in a timely and effective manner;

(3) full, accurate and prompt reporting of possible violations of the Federal Water Pollution Control Act is necessary for implementation and well served by assuring that good faith reporters of possible violations are protected against adverse personnel actions;

(4) often violations of such permits continue for a considerable period of time, yielding significant economic benefits for the violator and thus penalizing similar facilities which act lawfully;

(5) penalties assessed and collected by the Administrator from violators of such permits are often less than the economic benefit gained by the violator;

(6) swift and timely enforcement by the Administrator and the States of violations of such permits is necessary to increase levels of compliance with such permits; and

(7) actions of private citizens have been effective in enforcing such permits and directing funds to environmental mitigation projects with over $12.8 million in penalties and interest having been recovered and deposited with the Treasury of the United States over the fiscal years 1990 through 1994.

(b) FINDING WITH RESPECT TO HARM CAUSED BY VIOLATIONS.—Section 101 of the Federal Water Pollution Control Act (33 U.S.C. 1251) is amended by adding at the end the following:

''(h) FINDING WITH RESPECT TO HARM CAUSED BY VIOLATIONS.—Congress finds that a discharge which results in a violation of this Act or a regulation, standard, limitation, requirement, or order issued pursuant to this Act interferes with the restoration and maintenance of the chemical, physical, and biological integrity of any waters into which the discharge flows (either directly or through a publicly owned treatment works), including any waters into which the receiving waters flow, and, therefore, harms those who use or enjoy such waters and those who use or enjoy nearby lands or aquatic resources associated with those waters.

''(i) FINDING WITH RESPECT TO CITIZEN SUITS.—Congress finds that citizen suits are a valuable means of enforcement of this Act and urges the Administrator to take actions to encourage such suits, including providing information concerning violators to citizen groups to assist them in bringing suits, providing expert witnesses and other evidence with respect to such suits, and filing amicus curiae briefs on important issues related to such suits.''.

SEC. 3. VIOLATIONS OF REQUIREMENTS OF LOCAL CONTROL AUTHORITIES.

Section 307(d) of Federal Water Pollution Control Act (33 U.S.C. 1317(d)) is amended to read as follows:

''(d) VIOLATIONS.—After the date on which (1) any effluent standard or prohibition or pretreatment standard or requirement takes effect under this section, or (2) any requirement imposed in a pretreatment program under section 402(a)(3) or 402(b)(8) of this Act takes effect, it shall be unlawful for any owner or operator of any source to operate such source in violation of the effluent standard, prohibition, pretreatment standard, or requirement.''.

SEC. 4. INSPECTIONS, MONITORING, AND PROVIDING INFORMATION.

(a) APPLICABILITY OF REQUIREMENTS.—Section 308(a) of the Federal Water Pollution Control Act (33 U.S.C. 1318(a)) is amended by striking ''the owner or operator of any point source'' and inserting ''a person subject to a requirement of this Act''.

(b) PUBLIC ACCESS TO INFORMATION.—The first sentence of section 308(b) of such Act is amended—

(1) by inserting ''(including information contained in the Permit Compliance System of the Environmental Protection Agency)'' after ''obtained under this section'';

(2) by inserting ''made'' after ''shall be''; and

(3) by inserting ''by computer telecommunication and other means for a period of at least 10 years'' after ''public'' the first place it appears.

(c) PUBLIC INFORMATION.—Section 308 of such Act is further amended by adding at the end the following:

''(e) PUBLIC INFORMATION.—

''(1) POSTING OF NOTICE OF POLLUTED WATERS.—At each major point of public access (including, at a minimum, beaches, parks, recreation areas, marinas, and boat launching areas) to a body of navigable water that does not meet an applicable water quality standard or that is subject to a fishing and shell fishing ban, advisory, or consumption restriction (issued by a Federal, State, or local authority) due to fish or shellfish contamination, the State within which boundaries all or any part of such body of water lies shall, either directly or through local authorities, post and maintain a clearly visible sign which—

''(A) indicates the water quality standard that is being violated or the nature and extent of the restriction on fish or shellfish consumption, as the case may be;

''(B) includes (i) information on the environmental and health effects associated with the failure to meet such standard or with the consumption of fish or shellfish subject to the restriction, and (ii) a phone number for obtaining additional information relating to the violation and restriction; and

''(C) will be maintained until the body of water is in compliance with the water quality standard or until all fish and shellfish consumption restrictions are terminated with respect to the body of water, as the case may be.

''(2) NOTICE OF DISCHARGES TO NAVIGABLE WATERS.—Except for permits issued to municipalities for discharges composed entirely of stormwater under section 402 of this Act, each permit issued under section 402 by the Administrator or by a State shall ensure compliance with the following requirements:

''(A) Every permittee shall conspicuously maintain at all public entrances to the facility a clearly visible sign which indicates that the facility discharges pollutants into navigable waters and the location of such discharges; the name, business address, and phone number of the permittee; the permit number; and a location at which a copy of the permit and public information required by this paragraph is maintained and made available for inspection or a phone number for obtaining such information.

''(B) Each permittee which is a publicly owned treatment works shall include in each quarterly mailing of a bill to each customer of the treatment works information which indicates that the treatment works discharges pollutants into the navigable waters and the location of each of such discharges; the name, business address and phone number of the permittee; the permit number; a location at which a copy of the permit and public information required by this paragraph is maintained and made available for inspection or a phone number for obtaining such information; and a list of all violations of the requirements of the permit by the treatment works over the preceding 12-month period.

''(3) REGULATIONS.—

''(A) ISSUANCE.—The Administrator—

''(i) not later than 6 months after the date of the enactment of this subsection, shall

propose regulations to carry out this subsection; and

''(ii) not later than 18 months after such date of enactment, shall issue such regulations.

''(B) CONTENT.—The regulations issued to carry out this subsection shall establish—

''(i) uniform requirements and procedures for identifying and posting bodies of water under paragraph (1);

''(ii) minimum information to be included in signs posted and notices issued pursuant to this subsection;

''(iii) uniform requirements and procedures for fish and shellfish sampling and analysis;

''(iv) uniform requirements for determining the nature and extent of fish and shellfish bans, advisories, and consumption restrictions which—

''(I) address cancer and noncancer human health risks;

''(II) take into account the effects of all fish and shellfish contaminants, including the cumulative and synergistic effects;

''(III) assure the protection of subpopulations who consume higher than average amounts of fish and shellfish or are particularly susceptible to the effects of such contamination;

''(IV) address race, gender, ethnic composition, or social and economic factors, based on the latest available studies of national or regional consumption by and impacts on such subpopulations unless more reliable site-specific data is available;

''(V) are based on a margin of safety that takes into account the uncertainties in human health impacts from such contamination; and

''(VI) evaluate assessments of health risks of contaminated fish and shellfish that are used in pollution control programs developed by the Administrator under this Act.''.

(d) STATE REPORTS.—Section 305(b)(1) of such Act (33 U.S.C. 1315(b)(1)) is amended—

(1) by striking ''and'' at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting ''; and''; and

(3) by adding at the end the following:

''(F) a list identifying bodies of water for which signs were posted under section 308(e)(1) in the preceding year and the reason or reasons for such posting.''.

SEC. 5. CIVIL PENALTIES.

(a) ENFORCEMENT OF LOCAL PRETREATMENT REQUIREMENTS.—

(1) COMPLIANCE ORDERS.—

(A) INITIAL ACTION.—Section 309(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1319(a)(1)) is amended by inserting after ''404 of this Act,'' the following: ''or is in violation of any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act,''.

(B) ISSUANCE OF ORDERS.—Section 309(a)(3) of such Act is amended by inserting after ''404 of this Act by a State,'' the following: ''or is in violation of any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act,''.

(2) CRIMINAL PENALTIES.—Section 309(c)(3)(A) of such Act is amended by inserting after ''Army or by a State,'' the following: ''or knowingly violates any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act,''.

(3) ADMINISTRATIVE PENALTIES.—Section 309(g)(1)(A) of such Act is amended by inserting after ''404 by a State,'' the following: ''or has violated any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of this Act or an order issued by the Administrator under subsection (a) of this section,''.

(b) TREATMENT OF SINGLE OPERATIONAL UPSETS.—

(1) CRIMINAL PENALTIES.—Section 309(c) of such Act is amended by striking paragraph (5) and redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(2) CIVIL PENALTIES.—Section 309(d) of such Act is amended by striking the last sentence.

(3) ADMINISTRATIVE PENALTIES.—Section 309(g)(3) of such Act is amended by striking the last sentence.

(c) USE OF CIVIL PENALTIES FOR MITIGATION PROJECTS.—

(1) IN GENERAL.—Section 309(d) of such Act is amended by inserting after the second sentence the following: ''The court may, in the court's discretion, order that a civil penalty be used for carrying out mitigation projects which are consistent with the purposes of this Act and which enhance the public health or environment.''.

(2) CONFORMING AMENDMENT.—Section 505(a) of such Act (33 U.S.C. 1365(a)) is amended by inserting before the period at the end of the last sentence the following: '', including ordering the use of a civil penalty for carrying out mitigation projects in accordance with such section 309(d)''.

(d) DETERMINATION OF AMOUNT OF PENALTIES.—

(1) CIVIL PENALTIES.—The second sentence of section 309(d) of such Act (33 U.S.C. 1319(d)) is amended by inserting ''the amount of any penalty previously imposed on the violator by a court or administrative agency for the same violation or violations,'' after ''economic impact of the penalty on the violator,''.

(2) ADMINISTRATIVE PENALTIES.—Section 309(g)(3) of such Act is amended—

(A) by striking ''or savings''; or

(B) by inserting ''the amount of any penalty previously imposed on the violator by a court or administrative agency for the same violation or violations,'' after ''resulting from the violation,''.

(e) LIMITATION ON DEFENSES.—Section 309(g)(1) of such Act is amended by adding at the end the following: ''In a proceeding to assess or review a penalty under this subsection, the adequacy of consultation between the Administrator or the Secretary, as the case may be, and the State shall not be a defense to assessment or enforcement of such penalty.''.

(f) AMOUNTS OF ADMINISTRATIVE CIVIL PENALTIES.—

(1) GENERAL RULE.—Section 309(g)(2) of such Act is amended to read as follows:

''(2) AMOUNT OF PENALTIES; NOTICE; HEARING.—

''(A) MAXIMUM AMOUNT OF PENALTIES.—The amount of a civil penalty under paragraph (1) may not exceed $25,000 per violation per day for each day during which the violation continues.

''(B) WRITTEN NOTICE.—Before issuing an order assessing a civil penalty under this subsection, the Administrator or the Secretary, as the case may be, shall give to the person to be assessed the penalty written notice of the Administrator's or Secretary's proposal to issue the order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed order.

''(C) HEARINGS NOT ON THE RECORD.—If the proposed penalty does not exceed $25,000, the hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

''(D) HEARINGS ON THE RECORD.—If the proposed penalty exceeds $25,000, the hearing shall be on the record in accordance with section 554 of title 5, United States Code. The Administrator and the Secretary may issue rules for discovery procedures for hearings under this subparagraph.''.

(2) CONFORMING AMENDMENTS.—Section 309(g) of such Act is amended—

(A) in paragraph (1) by striking ''class I civil penalty or a class II'';

(B) in the second sentence of paragraph (4)(C) by striking ''(2)(A) in the case of a class I civil penalty and paragraph (2)(B) in the case of a class II civil penalty'' and inserting ''(2)''; and

(C) in the first sentence of paragraph (8) by striking ''assessment—'' and all that follows through ''by filing'' and inserting ''assessment in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred by filing''.

(g) STATE ENFORCEMENT ACTIONS AS BAR TO FEDERAL ENFORCEMENT ACTIONS.—Section 309(g)(6)(A) of such Act is amended—

(1) by inserting ''or'' after the comma at the end of clause (i);

(2) by striking clause (ii); and

(3) by redesignating clause (iii) as clause (ii) and in such clause—

(A) by striking '', the Secretary, or the State'' and inserting ''or the Secretary''; and

(B) by striking ''or such comparable State law, as the case may be,''.

(h) RECOVERY OF ECONOMIC BENEFIT.—Section 309 of such Act is amended by adding at the end the following:

''(h) RECOVERY OF ECONOMIC BENEFIT.—

''(1) GENERAL RULE.—Notwithstanding any other provision of this section, any civil penalty assessed and collected under this section must be in an amount which is not less than the amount of the economic benefit (if any) resulting from the violation for which the penalty is assessed.

''(2) REGULATIONS.—Not later than 2 years after the date of the enactment of this subsection, the Administrator shall issue regulations establishing a methodology for calculating the economic benefits or savings resulting from violations of this Act. Pending issuance of such regulations, this subsection shall be in effect and economic benefits shall be calculated for purposes of paragraph (1) on a case-by-case basis.''.

(i) LIMITATION ON COMPROMISES.—Such section 309 is further amended by adding at the end the following:

''(i) LIMITATION ON COMPROMISES OF CIVIL PENALTIES.—Notwithstanding any other provision of this section, the amount of a civil penalty assessed under this section may not be compromised below the amount determined by adding—

''(1) the minimum amount required for recovery of economic benefit under subsection (h), to

''(2) 50 percent of the difference between the amount of the civil penalty assessed and such minimum amount.''.

(j) MINIMUM AMOUNT FOR SERIOUS VIOLATIONS.—Such section 309 is further amended by adding at the end the following:

''(j) MINIMUM CIVIL PENALTIES FOR SERIOUS VIOLATIONS AND SIGNIFICANT NONCOMPLIERS.—

''(1) SERIOUS VIOLATIONS.—Notwithstanding any other provision of this section (other than paragraph (2)), the minimum civil penalty which shall be assessed and collected under this section from a person—

''(A) for a discharge from a point source of a hazardous pollutant which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 20 percent or more, or

''(B) for a discharge from a point source of a pollutant (other than a hazardous pollutant) which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 40 percent or more,

shall be $1,000 for the first such violation in a 180-day period.

''(2) SIGNIFICANT NONCOMPLIERS.—Notwithstanding any other provision of this section, the minimum civil penalty which shall be assessed and collected under this section from a person—

''(A) for the second or more discharge in a 180-day period from a point source of a hazardous pollutant which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 20 percent or more,

''(B) for the second or more discharge in a 180-day period from a point source of a pollutant (other than a hazardous pollutant) which exceeds or otherwise violates any applicable effluent limitation established by or under this Act by 40 percent or more,

''(C) for the fourth or more discharge in a 180-day period from a point source of any pollutant which exceeds or otherwise violates the same effluent limitation, or

''(D) for not filing in a 180-day period 2 or more reports in accordance with section 402(r)(1),

shall be $5,000 for each of such violations.

''(3) MANDATORY INSPECTIONS FOR SIGNIFICANT NONCOMPLIERS.—The Administrator shall identify any person described in paragraph (2) as a significant noncomplier and shall conduct an inspection described in section 402(q) of this Act of the facility at which the violations were committed. Such inspections shall be conducted at least once in the 180-day period following the date of the most recent violation which resulted in such person being identified as a significant noncomplier.

''(4) ANNUAL REPORTING.—The Administrator shall transmit to Congress and to the Governors of the States, and shall publish in the Federal Register, on an annual basis a list of all persons identified as significant noncompliers under paragraph (3) in the preceding calendar year and the violations which resulted in such classifications.

''(5) HAZARDOUS POLLUTANT DEFINED.—For purposes of this subsection, the term 'hazardous pollutant' has the meaning the term 'hazardous substance' has under subsection (c)(6) of this section.''.

(k) STATE PROGRAM.—Section 402(b)(7) of such Act (33 U.S.C. 1342(b)(7)) is amended to read as follows:

''(7) To abate violations of the permit or the permit program which shall include, beginning on the last day of the 2-year period beginning on the date of the enactment of the Clean Water Compliance and Enforcement Improvement Amendments Act of 1995, a penalty program comparable to the Federal penalty program under section 309 of this Act and which shall include at a minimum criminal, civil, and civil administrative penalties, and may include other ways and means of enforcement, which the State demonstrates to the satisfaction of the Administrator are equally effective as the Federal penalty program;''.

(l) FEDERAL PROCUREMENT COMPLIANCE INCENTIVE.—Section 508(a) of such Act (33 U.S.C. 1368(a)) is amended by inserting after the second comma ''or who is identified under section 309(j)(3) of this Act,''.

SEC. 6. NATIONAL POLLUTANT DISCHARGE ELIMINATION PERMITS.

(a) WITHDRAWAL OF STATE PROGRAM APPROVAL.—Section 402(b) of the Federal Water Pollution Control Act (33 U.S.C. 1342(b)) is amended by striking ''unless he determines that adequate authority does not exist:'' and inserting the following: ''only when he determines that adequate authority exists and shall withdraw program approval whenever he determines that adequate authority no longer exists:''.

(b) JUDICIAL REVIEW OF RULINGS ON APPLICATIONS FOR STATE PERMITS.—Section 402(b)(3) of such Act is amended by inserting ''and to ensure that any interested person who participated in the public comment process and any other person who could obtain judicial review of that action under any other applicable law has the right to judicial review of such ruling'' before the semicolon at the end.

(c) INSPECTIONS FOR MAJOR INDUSTRIAL AND MUNICIPAL DISCHARGERS.—Section 402(b) of such Act is amended—

(1) by striking ''and'' at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting a semicolon; and

(3) by adding at the end the following:

''(10) To ensure that any permit for a discharge from a major industrial or municipal facility, as defined by the Administrator by regulation, includes conditions under which such facility will be subject to at least annual inspections by the State in accordance with subsection (q) of this section;''.

(d) MONTHLY REPORTS FOR SIGNIFICANT INDUSTRIAL USERS OF POTWS.—Section 402(b) of such Act is further amended by adding at the end the following:

''(11) To ensure that any permit for a discharge from a publicly owned treatment works in the State includes conditions under which the treatment works will require any significant industrial user of the treatment works, as defined by the Administrator by regulation, to prepare and submit to the Administrator, the State, and the treatment works a monthly discharge monitoring report as a condition to using the treatment works;''.

(e) PERMITS REQUIRED FOR INTRODUCTION OF POLLUTANTS INTO POTWS.—Section 402(b) of such Act is further amended by adding at the end the following:

''(12) To ensure that, after the last day of the 2-year period beginning on the date of the enactment of this paragraph, any significant industrial user, or other source designated by the Administrator, introducing a pollutant into a publicly owned treatment works has, and operates in accordance with, a permit issued by the treatment works or the State for introduction of such pollutant; and''.

(f) GRANTING OF AUTHORITY TO POTWS FOR INSPECTIONS AND PENALTIES.—Section 402(b) of such Act is further amended by adding at the end the following:

''(13) To ensure that the State will grant to publicly owned treatment works in the State, not later than 3 years after the date of the enactment of this paragraph, authority, power, and responsibility to conduct inspections under subsection (q) of this section and to assess and collect civil penalties and civil administrative penalties under paragraph (7) of this subsection.''.

(g) INSPECTION.—Section 402 of such Act is amended by adding at the end the following:

''(q) INSPECTION.—

''(1) GENERAL RULE.—Each permit for a discharge into the navigable waters or introduction of pollutants into a publicly owned treatment works issued under this section shall include conditions under which the effluent being discharged will be subject to random inspections in accordance with this subsection by the Administrator or the State, in the case of a State permit program under this section.

''(2) MINIMUM STANDARDS.—Not later than 6 months after the date of enactment of this subsection, the Administrator shall establish minimum standards for inspections under this subsection. Such standards shall require, at a minimum, the following:

''(A) An annual representative sampling by the Administrator or the State, in the case of a State permit program under this section, of the effluent being discharged; except that if the discharge is not from a major industrial or municipal facility such sampling shall be conducted at least once every 3 years.

''(B) An analysis of all samples collected under subparagraph (A) by a Federal or State owned and operated laboratory or a State approved laboratory, other than one that is being used by the permittee or that is directly or indirectly owned, operated, or managed by the permittee.

''(C) An evaluation of the maintenance record of any treatment equipment of the permittee.

''(D) An evaluation of the sampling techniques used by the permittee.

''(E) A random check of discharge monitoring reports of the permittee for each 12-month period for the purpose of determining whether or not such reports are consistent with the applicable analyses conducted under subparagraph (B).

''(F) An inspection of the sample storage facilities and techniques of the permittee.''.

(h) REPORTING.—Section 402 of such Act is further amended by adding at the end the following:

''(r) REPORTING.—

''(1) GENERAL RULE.—Each person holding a permit issued under this section which is determined by the Administrator to be a major industrial or municipal discharger of pollutants into the navigable waters shall prepare and submit to the Administrator a monthly discharge monitoring report. Any other person holding a permit issued under this section shall prepare and submit to the Administrator quarterly discharge monitoring reports or more frequent discharge monitoring reports if the Administrator requires. Such reports shall contain, at a minimum, such information as the Administrator shall require by regulation.

''(2) REPORTING OF HAZARDOUS DISCHARGES.—

''(A) GENERAL RULE.—If a discharge from a point source for which a permit is issued under this section exceeds an effluent limitation contained in such permit which is based on an acute water quality standard or any other discharge which may cause an exceedance of an acute water quality standard or otherwise is likely to cause injury to persons or damage to the environment or to pose a threat to human health and the environment, the person holding such permit shall notify the Administrator and the affected States and municipalities, in writing, of such discharge not later than 2 hours after the later of the time at which such discharge commenced or the time at which the permittee knew or had reason to know of such discharge.

''(B) SPECIAL RULE FOR HAZARDOUS POLLUTANTS.—If a discharge described in subparagraph (A) is of a hazardous pollutant (as defined in section 309(j) of this Act), the person holding such permit shall provide the Administrator with such additional information on the discharge as may be required by the Administrator. Such additional information shall be provided to the Administrator within 24 hours after the later of the time at which such discharge commenced or the time at which the permittee became aware of such discharge. Such additional information shall include, at a minimum, an estimate of the danger posed by the discharge to the environment, whether the discharge is continuing, and the measures taken or being taken (i) to remediate the problem caused by the discharge and any damage to the environment, and (ii) to avoid a repetition of the discharge.

''(3) SIGNATURE.—All reports filed under paragraph (1) must be signed and dated by the highest ranking official having day-to-

day managerial and operational responsibility for the facility at which the discharge occurs or, in the absence of such person, by another responsible high ranking official at such facility. Such highest ranking official shall be responsible for the accuracy of all information contained in such reports; except that such highest ranking official may file with the Administrator amendments to any such report if the report was signed in the absence of the highest ranking official by another high ranking official and if such amendments are filed within 7 days of the return of the highest ranking official.''.

(i) LIMITATION ON ISSUANCE OF PERMITS TO SIGNIFICANT NONCOMPLIERS.—Section 402 of such Act is further amended by adding at the end the following:

''(s) SIGNIFICANT NONCOMPLIERS.—No permit may be issued under this section to any person (other than a publicly owned treatment works) identified under section 309(j)(3) of this Act or to any other person owned or controlled by the identified person, owning or controlling the identified person, or under common control with the identified person, until the Administrator or the State or States in which the violation or violations occur determines that the condition or conditions giving rise to such violation or violations have been corrected. No permit application submitted after the date of the enactment of this subsection may be approved unless the application includes a list of all violations of this Act by a person identified under section 309(j) of this Act during the 3-year period preceding the date of submission of the application and evidence indicating whether the underlying cause of each such violation has been corrected.''.

(j) APPLICABILITY.—The amendments made by this section shall apply to permits issued before, on, or after the date of the enactment of this Act; except that—

(1) with respect to permits issued before such date of enactment to a major industrial or municipal discharger, such amendments shall take effect on the last day of the 1-year period beginning on such date of enactment; and

(2) with respect to all other permits issued before such date of enactment, such amendments shall take effect on the last day of the 2-year period beginning on such date of enactment.

SEC. 7. EXPIRED STATE PERMITS.

Section 402(d) of the Federal Water Pollution Control Act (33 U.S.C. 1342(d)) is amended by adding at the end the following:

''(5) EXPIRED STATE PERMITS.—In any case in which—

''(A) a permit issued by a State for a discharge has expired,

''(B) the permittee has submitted an application to the State for a new permit for the discharge, and

''(C) the State has not acted on the application before the last day of the 18-month period beginning on the date the permit expired,

the Administrator may issue a permit for the discharge under subsection (a).''.

SEC. 8. COMPLIANCE SCHEDULE.

Section 302(b)(2)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1312(b)(2)(B)) is amended by adding at the end the following: ''The Administrator may only issue a permit pursuant to this subparagraph for a period exceeding 2 years if the Administrator makes the findings described in clauses (i) and (ii) of this subparagraph on the basis of a public hearing.''.

SEC. 9. EMERGENCY POWERS.

Section 504 of the Federal Water Pollution Control Act (33 U.S.C. 1364) is amended to read as follows:

''SEC. 504. COMMUNITY PROTECTION.

''(a) ISSUANCE OF ORDERS; COURT ACTION.—Notwithstanding any other provision of this Act, whenever the Administrator finds that, because of an actual or threatened direct or indirect discharge of a pollutant, there may be an imminent and substantial endangerment to the public health or welfare (including the livelihood of persons) or the environment, the Administrator may issue such orders or take such action as may be necessary to protect public health or welfare or the environment and commence a suit (or cause it to be commenced) in the United States district court for the district where the discharge or threat occurs. Such court may grant such relief to abate the threat and to protect against the endangerment as the public interest and the equities require, enforce, and adjudge penalties for disobedience to orders of the Administrator issued under this section, and grant other relief according to the public interest and the equities of the case.

''(b) ENFORCEMENT OF ORDERS.—Any person who, without sufficient cause, violates or fails to comply with an order of the Administrator issued under this section, shall be liable for civil penalties to the United States in an amount not to exceed $25,000 per day for each day on which such violation or failure occurs or continues.''.

SEC. 10. CITIZEN SUITS.

(a) SUITS FOR PAST VIOLATIONS.—Section 505 of the Federal Water Pollution Control Act (33 U.S.C. 1365) is amended—

(1) in subsection (a)(1) by inserting ''to have violated (if there is evidence that the alleged violations has been repeated) or'' after ''who is alleged'';

(2) in subsection (b)(1)(A)(ii) by striking ''occurs'' and inserting ''has occurred or is occurring''; and

(3) in subsection (f)(6) by inserting ''has been or'' after ''which''.

(b) TIME LIMIT.—Section 505(b)(1)(A) of such Act is amended by striking ''60 days'' and inserting ''30 days''.

(c) EFFECT OF JUDGMENTS ON CITIZEN SUITS.—Section 505(b) of such Act is further amended—

(1) in paragraph (1)(B)—

(A) by striking '', or a State''; and

(B) by striking ''right.'' and inserting ''right and may obtain costs of litigation under subsection (d), or''; and

(2) by adding at the end the following: ''The notice under paragraph (1)(A) need set forth only violations which have been specifically identified in the discharge monitoring reports of the alleged violator. An action by a State under subsection (a)(1) may be brought at any time. No judicial action by the Administrator or a State shall bar an action for the same violation under subsection (a)(1) unless the action is by the Administrator and meets the requirements of this paragraph. No administrative action by the Administrator or a State shall bar a pending action commenced after February 4, 1987, for the same violation under subsection (a)(1) unless the action by the Administrator or a State meets the requirements of section 309(g)(6) of this Act.''.

(d) CONSENT JUDGMENTS.—Section 505(c)(3) of such Act is amended by adding at the end the following: ''Consent judgments entered under this section may provide that the civil penalties included in the consent judgment be used for carrying out mitigation projects in accordance with section 309(d).''.

(e) PRETREATMENT REQUIREMENTS.—Section 505(f)(4) of such Act is amended by striking ''or pretreatment standards'' and inserting ''or pretreatment standard or requirement described in section 307(d)''.

(f) EFFLUENT STANDARD DEFINITION.—Section 505(f)(6) of such Act is amended by inserting ''narrative or mathematical'' before ''condition''.

(g) OFFERS OF JUDGMENT.—Section 505 of such Act is further amended by adding at the end the following:

''(g) APPLICABILITY OF OFFERS OF JUDGMENT.—Offers of judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure shall not be applicable to actions brought under subsection (a)(1) of this section.''.

SEC. 11. EMPLOYEE PROTECTION.

Section 507 of the Federal Water Pollution Control Act (33 U.S.C. 1367) is amended—

(1) in subsection (e) by inserting ''CONTINUING EVALUATIONS'' after ''(e)'';

(2) by redesignating subsection (e) as subsection (f); and

(3) by striking subsections (a), (b), (c), and (d) and inserting the following:

''(a) IN GENERAL.—No employer or other person may harass, prosecute, hold liable, or discriminate against any employee or other person because the person—

''(1) is assisting or demonstrating an intent to assist in achieving compliance with any provision of this Act (including a rule or regulation issued to carry out this Act);

''(2) is refusing to violate or assist in the violation of any provision of this Act (including a rule or regulation issued to carry out this Act);

''(3) has commenced, caused to be commenced, or is about to commence a proceeding, has testified or is about to testify at a proceeding, or has assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act.

''(b) FILING COMPLAINTS AND PROCEDURES.—

''(1) FILING DEADLINE.—An employee alleging a violation of subsection (a), or another person at the employee's request, may file a complaint with the Secretary of Labor not later than 365 days after the alleged violation occurred.

''(2) PROCEDURES.—

''(A) INVESTIGATION; PRELIMINARY ORDERS.—Not later than 60 days after receiving a complaint, the Secretary shall conduct an investigation, decide whether it is reasonable to believe the complaint has merit, and notify the complainant and the person alleged to have committed the violation of the findings. If the Secretary decides it is reasonable to believe a violation occurred, the Secretary shall include with the decision findings and a preliminary order for the relief provided under paragraph (3).

''(B) OBJECTIONS TO PRELIMINARY ORDER.—Not later than 30 days after the notice under subparagraph (A) of this paragraph, the complainant and the person alleged to have committed the violation may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of objections does not stay a reinstatement ordered in the preliminary order. If a hearing is not requested within the 30 days, the preliminary order is final and not subject to judicial review.

''(C) HEARING; FINAL ORDER; SETTLEMENT AGREEMENT.—A hearing shall be conducted expeditiously. Not later than 120 days after the end of the hearing, the Secretary shall issue a final order. Before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation.

''(3) ORDER.—

''(A) PENALTIES.—If the Secretary decides, on the basis of a complaint, a person violated subsection (a), the Secretary shall order the person to—

''(i) take affirmative action to abate the violation;

''(ii) reinstate the complainant to the former position with the same pay and terms and privileges of employment; and

''(iii) pay compensatory damages, including back pay.

''(B) COSTS.—If the Secretary issues an order under subparagraph (A) and the complainant requests, the Secretary may assess against the person against whom the order is issued the costs (including attorney's fees) reasonably incurred by the complainant in bringing the complaint. The Secretary shall determine the costs that reasonably were incurred.

''(4) JUDICIAL REVIEW AND VENUE.—A person adversely affected by an order issued after a hearing under this subsection may file a petition for review, not later than 60 days after the order is issued, in the court of appeals of the United States for the circuit in which the violation occurred or the person resided on the date of the violation. The review shall be heard and decided expeditiously. An order of the Secretary subject to review under this paragraph is not subject to judicial review in a criminal or other civil proceeding.

''(5) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an order issued under this subsection, the Secretary shall bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

''(c) BURDENS OF PROOF.—The legal burdens of proof with respect to a violation of subsection (a) shall be governed by the applicable provisions of sections 1214 and 1221 of title 5, United States Code.

''(d) SUBPOENA AUTHORITY.—With respect to an alleged violation of subsection (a), the Secretary of Labor may issue a subpoena for the attendance and testimony of any person and the production of documentary or other evidence from any person if the testimony or production requested is not unduly burdensome and appears reasonably calculated to lead to the discovery of admissible evidence.

''(e) POSTING REQUIREMENT.—The provisions of this section shall be prominently posted in any place of employment to which this section applies.''.

SEC. 12. ISSUANCE OF SUBPOENAS.

Section 509(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1369(a)(1)) is amended by striking ''obtaining information under section 305 of this Act, or carrying out section 507(e) of this Act,'' and inserting ''carrying out this Act,''.

SEC. 13. JUDICIAL REVIEW OF EPA ACTIONS.

Section 509(b)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1369(b)(1)) is amended—

(1) by inserting after the comma at the end of clause (D) ''including a decision to deny a petition by interested person to veto an individual permit issued by a State,'';

(2) by inserting after the comma at the end of clause (E) ''including a decision not to include any pollutant in such effluent limitation or other limitation if the Administrator has or is made aware of information indicating that such pollutant is present in any discharge subject to such limitation,''; and

(3) by striking ''and (G)'' and inserting the following: ''(G) in issuing or approving any water quality standard under section 303(c) or 303(d), (H) in issuing any water quality criterion under section 304(a), including a decision not to address any effect of the pollutant subject to such criterion if the Administrator has or is made aware of information indicating that such effect may occur, and (J)''.

SEC. 14. NATIONAL CLEAN WATER TRUST FUND.

(a) IN GENERAL.—Title V of the Federal Water Pollution Control Act (33 U.S.C. 1361–1377) is amended by redesignating section 519 as section 520 and by inserting after section 518 the following new section:

''SEC. 519. NATIONAL CLEAN WATER TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Clean Water Trust Fund'.

''(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Clean Water Trust Fund amounts equivalent to the penalties collected under section 309 of this Act and the penalties collected under section 505(a) of this Act (excluding any amounts ordered to be used to carry out mitigation projects under section 309 or 505(a), as the case may be).

''(c) ADMINISTRATION OF TRUST FUND.—The Administrator shall administer the Clean Water Trust Fund. The Administrator may use moneys in the Fund to carry out inspections and enforcement activities pursuant to this Act. In addition, the Administrator may make such amounts of money in the Fund as the Administrator determines appropriate available to carry out title VI of this Act.''.

(b) CONFORMING AMENDMENT TO STATE REVOLVING FUND PROGRAM.—Section 607 of such Act (33 U.S.C. 1387) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''There is''; and

(2) by adding at the end the following:

''(b) TREATMENT OF TRANSFERS FROM CLEAN WATER TRUST FUND.—For purposes of this title, amounts made available from the Clean Water Trust Fund under section 519 of this Act to carry out this title shall be treated as funds authorized to be appropriated to carry out this title and as funds made available under this title.''.

SEC. 15. APPLICABILITY.

Sections 101(h), 309(g)(6)(A), 505(a)(1), 505(b), 505(g), and 505(i) of the Federal Water Pollution Control Act, as inserted or amended by this Act, shall be applicable to all cases pending under such Act on the date of the enactment of this Act and all cases brought on or after such date of enactment relating to violations which occurred before such date of enactment.

By Mr. FEINGOLD:

S. 647. A bill to amend the Congressional Budget and Impeachment Control Act of 1974 to limit consideration of nonemergency matters in emergency legislation; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one committee reports, the other committee have 30 days to report or be discharged.

THE EMERGENCY SPENDING CONTROL ACT OF 1997

● Mr. FEINGOLD. Mr. President, I am pleased to re-introduce a measure designed to limit consideration of nonemergency matters in emergency legislation. This bill, S. 647, the Emergency Spending Control Act of 1997, passed the Senate during the last Congress as part of the Senate's version of the line-item veto act, though it was later dropped in conference. Identical language passed the other body during the 103d Congress with overwhelming bipartisan support, first as a substitute amendment by a vote of 322 to 99, and then, as amended, by a vote of 406 to 6.

Mr. President, the support this measure has received in both Houses is a reflection of the keen awareness Members have of the abuses of the emergency appropriations process that have taken place. This measure helps address one aspect of that abuse by limiting emergency spending bills solely to emergencies by establishing a new point of order against nonemergency matters, other than rescissions of budget authority or reductions in direct spending, in any bill that contains an emergency measure, or an amendment to an emergency measure, or a conference report that contains an emergency measure.

As an additional enforcement mechanism, the legislation adds further protection by prohibiting the Office of Management and Budget from adjusting the caps on discretionary spending, or from adjusting the sequester process for direct spending and receipts measures, for any emergency appropriations bill if the bill includes extraneous items other than rescissions of budget authority or reductions in direct spending.

Mr. President, though this proposal relates to shoring up our budget rules, I want to stress that the rules themselves do not solve the deficit problem. No rule can—whether it is a procedural rule of the Senate, a statute, or a constitutional amendment. The only way we will balance the budget is through specific spending cuts and exercising fiscal restraint.

However, we have made some progress over the past 4 years, and that progress, as well as the continued work we need to do, can be sustained through the budget rules we impose on ourselves by ensuring the sacrifices that have been made, and that we will ask in the future, will not be hollow or futile.

The rules that have been developed over the past twenty years have proven useful in this regard, though it bears repeating that the deficit has begun to come down only as a result of our willingness to vote for tough measures.

In general, the rules require that new spending, whether through direct spending, tax expenditures, or discretionary programs, be offset with spending cuts or revenue increases. However, the rules provide for exceptions in the event of true emergencies.

The deliberate review through the federal budget process, weighing one priority against another, may not permit a timely response to an international crisis, a natural disaster, or some other emergency. We do not ask that earthquake victims find a funding source before we send them aid. But that should not, even in dire circumstances, be read to imply we must not find ways to pay for emergencies, rather than simply add their costs to the deficit.

But, Mr. President, the emergency exception to our budget rules, designed to expedite a response to an urgent need, has become a loophole, abused by those trying to circumvent the scrutiny of the budget process, in particular, by adding non-emergency matters to emergency legislation that is receiving special, accelerated consideration.

Mr. President, the measure I introduce today targets that abuse by helping to keep emergency measures clean of extraneous matters on which there is no emergency designation.

When the appropriations bill to provide relief for the Los Angeles earthquake was introduced in the 103rd Congress, it initially did four things: provided $7.8 billion for the Los Angeles quake, $1.2 billion for the Department of Defense peacekeeping operations; $436 million for Midwest flood relief, and $315 million more for the 1989 California earthquake.

But, Mr. President, by the time the Los Angeles earthquake bill became law, it also provided $1.4 million to fight potato fungus, $2.3 million for FDA pay raises, $14.4 million for the National Park Service, $12.4 million for the Bureau of Indian Affairs, $10 million for a new Amtrak station in New York, $40 million for the space shuttle, $20 million for a fingerprint lab, $500,000 for United States Trade Representative travel office, and $5.2 million for the Bureau of Public Debt.

Though non-emergency matters attached to emergency bills are still subject to the spending caps established in the concurrent budget resolution, as long as total spending remains under those caps, these unrelated spending matters are not required to be offset with spending cuts. In the case of the LA earthquake bill, because the caps had been reached the new spending was offset by rescissions, but those rescissions might otherwise have been used for deficit reduction. Moreover, by using emergency appropriations bills as a vehicle, these extraneous proposals avoid the examination through which legislative proposals must go to justify Federal spending. If there is truly a need to shift funds to these programs, an alternative vehicle—a regular supplemental appropriations bill, not an emergency spending bill—should be used.

The measure I am introducing today will restrict that kind of misuse of the emergency appropriations process. Adding non-emergency, extraneous matters to emergency appropriations not only is an attempt to avoid the legitimate scrutiny of our normal budget process, it can also jeopardize our ability to provide relief to those who are suffering from the disaster to which we are responding.

Just as importantly, adding superfluous material to emergency appropriations bills degrades those budget rules on which we rely to impose fiscal discipline, and that only encourages further erosion of our efforts to reduce the deficit.

Mr. President, as I noted earlier, this legislation has passed both Houses in recent years—in the Senate during the 104th Congress as the amendment I offered to the Line Item Veto Act, and in the other body, during the 103rd Congress, by a vote of 406 to 6. I urge my colleagues to join in this effort to pass this measure through both Houses during this Congress, and help end this abusive practice.

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

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

S. 647

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 ''Emergency Spending Control Act of 1997''.

SEC. 2. TREATMENT OF EMERGENCY SPENDING.

(a) EMERGENCY APPROPRIATIONS.—Secton 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence: ''However, OMB shall not adjust any discretionary spending limit under this clause for any statute that designates appropriations as emergency requirements if that statute contains an appropriation for any other matter, event, or occurrence, but that statute may contain rescissions of budget authority.''.

(b) EMERGENCY LEGISLATION.—Section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new sentence: ''However, OMB shall not designate any such amounts of new budget authority, outlays, or receipts as emergency requirements in the report required under subsection (d) if that statute contains any other provisions that are not so designated, but that statute may contain provisions that reduce direct spending.''.

(c) NEW POINT OF ORDER.—Title IV of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

''POINT OF ORDER REGARDING EMERGENCIES

''SEC. 408. It shall not be in order in the House of Representatives or the Senate to consider any bill or joint resolution, or amendment thereto or conference report thereon, containing an emergency designation for purposes of section 251(b)(2)(D) or 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 if it also provides an appropriation or direct spending for any other item or contains any other matter, but that bill or joint resolution, amendment, or conference report may contain rescissions of budget authority or reductions of direct spending, or that amendment may reduce amounts for that emergency.''.

(d) CONFORMING AMENDMENT.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 407 the following new item:

''Sec. 408. Point of order regarding emergencies.''.●

By Mr. GORTON (for himself, Mr. ASHCROFT, Mr. MCCAIN, and Mr. LOTT:

S. 648. A bill to establish legal standards and procedures for product liability litigation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE PRODUCT LIABILITY REFORM ACT OF 1997

Mr. GORTON. Mr. President, I am introducing this evening, along with Senators ASHCROFT, MCCAIN, and LOTT, a bill to reform and rationalize our product liability system.

At the beginning of this session, Senator ASHCROFT and others introduced S.5, another measure to address product liability. Although I agreed with the substance of S.5, which was identical to the conference report on Product Liability that the President vetoed in the 104th Congress, I did not cosponsor S.5 because I knew that that particular bill would not be enacted into law and because I wanted to craft another bill that would obtain bi-partisan support in the Senate, address the President's legitimate concerns with the conference report, and accomplish meaningful reform.

Mr. President, I cannot say that the measure I am introducing tonight fully accomplishes that. But it comes very close. I introduce this measure without the co-sponsorship of my good friend and long-time companion on this worthy mission, Senator ROCKEFELLER, but I introduce it with the sincere belief that we will continue to work together to enact product liability reform in 1997.

I introduce this measure to get the process started. It is a good measure that I believe goes a long way toward meeting the goals I described above. But as I said, the process is just starting. I welcome input from my Republican and Democratic colleagues.

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. 648

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Product Liability Reform Act of 1997''.

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

TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 2. FINDINGS AND PURPOSES.

(A) FINDINGS.—The Congress finds that—

(1) our Nation is overly litigious, the civil justice system is overcrowded, sluggish, and excessively costly and the costs of lawsuits, both direct and indirect, are inflicting serious and unnecessary injury on the national economy;

(2) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability have a direct and undesirable effect on interstate commerce by increasing the cost and decreasing the availability of goods and services;

(3) the rules of law governing product liability actions, damage awards, and allocations of liability have evolved inconsistently within and among the States, resulting in a complex, contradictory, and uncertain regime that is inequitable to both plaintiffs and defendants and unduly burdens interstate commerce.

(4) as a result of excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability, consumers have been adversely affected through the withdrawal of products, producers, services, and service providers from the marketplace, and from excessive liability costs passed on to them through higher prices;

(5) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability jeopardize the financial well-being of many individuals as well as entire industries, particularly the Nation's small businesses and adversely affects government and taxpayers;

(6) the excessive costs of the civil justice system undermine the ability of American companies to compete internationally, and serve to decrease the number of jobs and the amount of productive capital in the national economy;

(7) the unpredictability of damage awards is inequitable to both plaintiffs and defendants and has added considerably to the high cost of liability insurance, making it difficult for producers, consumers, volunteers, and nonprofit organizations to protect themselves from liability with any degree of confidence and at a reasonable cost;

(8) because of the national scope of the problems created by the defects in the civil justice system, it is not possible for the States to enact laws that fully and effectively respond to those problems;

(9) it is the constitutional role of the national government to remove barriers to interstate commerce and to protect due process rights; and

(10) there is a need to restore rationality, certainty, and fairness to the civil justice system in order to protect against excessive, arbitrary, and uncertain damage awards and to reduce the volume, costs, and delay of litigation.

(b) PURPOSES.—Based upon the powers contained in Article I, Section 8, Clause 3 and the Fourteenth Amendment of the United States Constitution, the purposes of this Act are to promote the free flow of goods and services and to lessen burdens on interstate commerce and to uphold constitutionally protected due process rights by—

(1) establishing certain uniform legal principles of product liability which provide a fair balance among the interests of product users, manufacturers, and product sellers;

(2) placing reasonable limits on damages over and above the actual damages suffered by a claimant;

(3) ensuring the fair allocation of liability in civil actions;

(4) reducing the unacceptable costs and delays of our civil justice system caused by excessive litigation which harm both plaintiffs and defendants; and

(5) establishing greater fairness, rationality, and predictability in the civil justice system.

TITLE I—TITLE PRODUCT LIABILITY REFORM

SEC. 101. DEFINITIONS.

For purposes of this title—

(1) ACTUAL MALICE.—The term ''actual malice'' means specific intent to cause serious physical injury, illness, disease, death, or damage to property.

(2) CLAIMANT.—The term ''claimant'' means any person who brings an action covered by this title and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(3) CLEAR AND CONVINCING EVIDENCE.—The term ''clear and convincing evidence'' is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(4) COMMERCIAL LOSS.—The term ''commercial loss'' means any loss or damage solely to a product itself, loss relating to a dispute over its value, or consequential economic loss, the recovery of which is governed by the Uniform Commercial Code or analogous State commercial or contract law.

(5) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means damages awarded for economic and non-economic loss.

(6) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(7) HARM.—The term ''harm'' means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss.

(8) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who (i) designs or formulates the product (or component part of the product), or (ii) has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes or constructs and designs, or formulates, or has engaged another person to design or formulate, an aspect of the product (or component part of the product) made by another person; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of the product.

(9) NONECONOMIC LOSS.—The term ''noneconomic loss'' means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(10) PERSON.—The term ''person'' means any individual corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(11) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state which—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSIONS.—The term does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; or

(ii) electricity, water delivered by a utility, natural gas, or steam.

(12) PRODUCT LIABILITY ACTION.— The term ''product liability action'' means a civil action brought on any theory for harm caused by a product.

(13) PRODUCT SELLER—

(A) IN GENERAL.—The term ''product seller'' means a person who in the course of a business conducted for that purpose—

(i) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term ''product seller'' does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(14) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future.

(15) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the foregoing.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) PREEMPTION.—

(1) IN GENERAL.—This Act governs any product liability action brought in any State or Federal court on any theory for harm caused by a product.

(2) ACTIONS EXCLUDED.—A civil action brought for commercial loss shall be governed only by applicable commercial or contract law.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes State law only to the extent that State law applies to an issue covered by this title. Any issue that is not governed by

this title, including any standard of liability applicable to a manufacturer, shall be governed by otherwise applicable State or Federal law.

(c) EFFECT ON OTHER LAW.—Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8)).

(d) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment, or any action brought under any theory of dramshop or third-party liability arising out of the sale or provision of alcohol products to intoxicated persons or minors, shall not be subject to the provisions of this Act but shall be subject to any applicable State law.

SEC. 103. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS, RENTERS, AND LESSORS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant;

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product—

(A) if the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) if the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product which allegedly caused the claimant's harm.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101(13)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

SEC. 104. DEFENSE BASED ON CLAIMANT'S USE OF INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—In any product liability action, it shall be a complete defense to such action if the defendant proves that—

(1) the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug when the accident or other event which resulted in such claimant's harm occurred; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for such accident or other event.

(b) CONSTRUCTION.—For purposes of subsection (a)—

(1) the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law; and

(2) the term ''drug'' mean any controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802(6)) that was not legally prescribed for use by the claimant or that was taken by the claimant other than in accordance with the terms of a lawfully issued prescription.

SEC. 105. MISUSE OR ALTERATION.

(a) GENERAL RULE.—

(1) IN GENERAL.—In a product liability action, the damages for which a defendant is otherwise liable under Federal or State law shall be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the claimant's harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, a defendant's express warnings or instructions if the warnings or instructions are adequate as determined pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this Act, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) WORKPLACE INJURY.—Notwithstanding subsection (a), the damages for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer or any coemployee who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries.

SEC. 106. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) and subsection (b), a product liability action may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered—

(A) the harm that is the subject of the action; and

(B) the cause of the harm.

(2) EXCEPTION.—A person with a legal disability (as determined under applicable law) may file a product liability action not later than 2 years after the date on which the person ceases to have the legal disability.

(3) EFFECT OF STAY OR INJUNCTION.—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this Act concerning a product alleged to have caused harm (other than toxic harm) may be filed after the 18-year period beginning at the time of delivery of the product to the first purchaser or lessee.

(2) EXCEPTIONS.—

(A) A motor vehicle, vessel, aircraft, or train, that is used primarily to transport passengers for hire, shall not be subject to this subsection.

(B) Paragraph (1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety or life expectancy of the specific product involved which was longer than 18 years, but it will apply at the expiration of that warranty.

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action not later than 1 year after the date of enactment of this Act.

SEC. 107. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) SERVICE OF OFFER.—A claimant or a defendant in a product liability action may, not later than 60 days after the service of—

(1) the initial complaint; or

(2) the applicable deadline for a responsive pleading;

whichever is later, serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute

resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(b) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in subsection (c), not later than 10 days after the service of an offeree to proceed under subsection (a), an offeree shall file a written notice of acceptance or rejection of the offer.

(c) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in subsection (b), extend the period for filing a written notice under such subsection for a period of not more than 60 days after the date of expiration of the period specified in subsection (b). Discovery may be permitted during such period.

SEC. 108. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant if the claimant establishes by clear and convincing evidence that conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action in any product liability action.

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—The amount of punitive damages that may be awarded in an action described in subsection (a) may not exceed the greater of—

(A) 2 times the sum of the amount awarded to the claimant for economic loss and noneconomic loss; or

(B) $250,000.

(2) SPECIAL RULE.—Notwithstanding paragraph (1), in any action described in subsection (a) against an individual whose net worth does not exceed $500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization which has fewer than 25 full-time employees, the punitive damages shall not exceed the lesser of—

(A) 2 times the sum of the amount awarded to the claimant for economic loss and noneconomic loss; or

(B) $250,000.

For the purpose of determining the applicability of this paragraph to a corporation, the number of employees of a subsidiary or wholly-owned corporation shall include all employees of a parent or sister corporation.

(3) EXCEPTION FOR INSUFFICIENT AWARD IN CASES OF EGREGIOUS CONDUCT.—

(A) DETERMINATION BY COURT.—If the court makes a determination, after considering each of the factors in subparagraph (B), that the application of paragraph (1) would result in an award of punitive damages that is insufficient to punish the egregious conduct of the defendant against whom the punitive damages are to be awarded or to deter such conduct in the future, the court shall determine the additional amount of punitive damages (referred to in this paragraph as the ''additional amount'') in excess of the amount determined in accordance with paragraph (1) to be awarded against the defendant in a separate proceeding in accordance with this paragraph.

(B) FACTORS FOR CONSIDERATION.—In any proceeding under paragraph (A), the court shall consider—

(i) the extent to which the defendant acted with actual malice;

(ii) the likelihood that serious harm would arise from the conduct of the defendant;

(iii) the degree of the awareness of the defendant of that likelihood;

(iv) the profitability of the misconduct to the defendant;

(v) the duration of the misconduct and any concurrent or subsequent concealment of the conduct by the defendant;

(vi) the attitude and conduct of the defendant upon the discovery of the misconduct and whether the misconduct has terminated;

(vii) the financial condition of the defendant; and

(viii) the cumulative deterrent effect of other losses, damages, and punishment suffered by the defendant as a result of the misconduct, reducing the amount of punitive damages on the basis of the economic impact and severity of all measures to which the defendant has been or may be subjected, including—

(I) compensatory and punitive damage awards to similarly situated claimants;

(II) the adverse economic effect of stigma or loss of reputation;

(III) civil fines and criminal and administrative penalties; and

(IV) stop sale, cease and desist, and other remedial or enforcement orders.

(C) REQUIREMENTS FOR AWARDING ADDITIONAL AMOUNT.—If the court awards an additional amount pursuant to this subsection, the court shall state its reasons for setting the amount of the additional amount in findings of fact and conclusions of law.

(D) PREEMPTION.—This section does not create a cause of action for punitive damages and does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages. Nothing in this subsection shall modify or reduce the ability of courts to order remittiturs.

(4) APPLICATION BY COURT.—This subsection shall be applied by the court and application of this subsection shall not be disclosed to the jury. Nothing in this subsection shall authorize the court to enter an award of punitive damages in excess of the jury's initial award of punitive damages.

(c) BIFURCATION AT REQUEST OF ANY PARTY.—

(1) IN GENERAL.—At the request of any party the trier of fact in any action that is subject to this section shall consider in a separate proceeding, held subsequent to the determination of the amount of compensatory damages, whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If any party requests a separate proceeding under paragraph (1), in a proceeding to determine whether the claimant may be awarded compensatory damages, any evidence, argument, or contention that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

SEC. 109. LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages without regard to section 108, but only during such time as the State law so provides. This section shall cease to be effective September 1, 1997.

SEC. 110. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the ''Biomaterials Access Assurance Act of 1997''.

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States,

the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term ''biomaterials supplier'' means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf of or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR OR INCOMPETENT.—With respect to an action brought on behalf of or through a minor or incompetent, such term includes the parent or guardian of the minor or incompetent.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional health care services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services;

(ii) a person acting in the capacity of a manufacturer, seller, or biomaterials supplier;

(iii) a person alleging harm caused by either the silicone gel or the silicone envelope utilized in a breast implant containing silicone gel, except that—

(I) neither the exclusion provided by this clause nor any other provision of this Act may be construed as a finding that silicone gel (or any other form of silicone) may or may not cause harm; and

(II) the existence of the exclusion under this clause may not—

(aa) be disclosed to a jury in any civil action or other proceeding; and

(bb) except as necessary to establish the applicability of this Act, otherwise be presented in any civil action or other proceeding; or

(iv) any person who acts in only a financial capacity with respect to the sale of an implant.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term ''component part'' means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant non-implant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term ''harm'' means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term ''implant'' means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term ''manufacturer'' means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1)) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 501(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term ''medical device'' means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) and includes any device component of any combination product as that term is used in section 503(g) of such Act (21 U.S.C. 353(g)).

(8) RAW MATERIAL.—The term ''raw material'' means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

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

(10) SELLER.—

(A) IN GENERAL.—The term ''seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28. United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant; and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(ii) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a seller because the related seller meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j), and received clearance from the Secretary if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action against it on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2)(B)(i) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists as to the applicable elements set forth in paragraphs (1) and (2) of section 205(d).

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b)(3)(A) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 301. EFFECT OF COURT OF APPEALS DECISIONS.

A decision by a Federal circuit court of appeals interpreting a provision of this Act (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 302. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction pursuant to this Act based on section 1331 or 1337 of title 28, United States Code.

SEC. 303. EFFECTIVE DATE.

This Act shall apply with respect to any action commenced on or after the date of the enactment of this Act without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.●

By Ms. SNOWE (for herself, Mr. GRASSLEY, Mr. GLENN, Mr. D'AMATO, Mr. INOUYE, Mr. ROCKEFELLER and Mr. MACK):

S. 649. A bill to amend title XVIII of the Social Security Act to provide for coverage of bone mass measurements for certain individuals under part B of the Medicare program; to the Committee on Finance.

THE BONE MASS MEASUREMENT STANDARDIZATION ACT OF 1997

● Ms. SNOWE. Mr. President, today I am introducing the Bone Mass Measurement Standardization Act of 1997.

Millions of women in their post-menopausal years face a silent killer, a stalker disease we know as osteoporosis. This unforgiving bone disease afflicts 28 million Americans; causes 50,000 deaths each year; 1.5 million bone fractures annually; and the direct medical costs of osteoporosis fracture patients are $13.8 billion each year, or $38 million every single day. This cost is projected to reach $60 billion by the year 2020 and $240 billion by the year 2040 if medical research has not discovered an effective treatment.

The facts also show that one out of every two women have a lifetime risk of bone fractures due to osteoporosis, and that it affects half of all women over the age of 50 and an astounding 90% of all women over 75. Perhaps the most tragic consequences of osteoporosis occur with the 300,000 individuals annually who suffer a hip fracture. Twelve to thirteen percent of these persons will die within six months following a hip fracture, and of those who survive, 20% will never walk again, and 20% will require nursing home care—often for the rest of their lives.

We all know that osteoporosis cannot be cured, although with a continued commitment to research in this area I remain hopeful that we will find one. We also know that once bone mass is lost, it cannot be replaced. Therefore, early detection is our best weapon because it is only through early detection that we can thwart the progress of the disease and initiate preventive efforts to stop further loss of bone mass.

Bone mass measurement can be used to determine the status of a person's bone health and to predict the risk of future fractures. These tests are safe, painless, accurate and quick. Our expanding technology is adding new methods to determine bone mass and we need to keep up with this technology. The most commonly used test currently is DXA (Dual energy X-ray Absorptiometry).

In order to ensure that we detect bone loss early, we need to ensure that older women have coverage for bone mass tests. Unfortunately, Medicare coverage is inconsistent in its coverage depending on where an individual resides. Instead of national coverage of the DXA test, Medicare leaves coverage decisions to local Medicare insurance carriers. The definition of who is qualified to receive a bone mass measurement varies from carrier to carrier. Some carriers require beneficiaries to have suffered substantial bone loss before allowing coverage for a bone density test. For example, in about 20 States, the carriers require x-ray proof of low bone mass or other abnormalities. Unfortunately, standard x-rays do not reveal osteoporosis until 25 to 40 percent of bone mass has been lost.

One carrier allows pre-menopausal women to have a DXA test to determine whether hormone replacement therapy is indicated. However, it does not allow the test to determine treatment for the post-menopausal women—the majority of Medicare beneficiaries. Other carriers have no specific rules to guide reimbursement and cover the tests on a haphazard case-by-case basis.

Frequency of testing also varies from carrier to carrier. Re-testing is important to monitor treatment, yet only eight states specifically allow coverage for people who are under treatment for osteoporosis.

This patchwork coverage is confusing to beneficiaries, and means that an older woman who lives in one State will be covered, but if she moves to another state, she may not be. A woman may also lose coverage if she moves to another city within a given State.

Mr. President, a woman shouldn't have to change zip codes to obtain coverage for a preventive test, especially when early intervention is the only action we can take right now to slow the loss of bone mass. Once it is lost, it cannot be replaced.

The Medicare Bone Mass Measurement Standardization Act will clarify the Medicare coverage policy for DXA testing to make it uniform in all states. We all know that an ounce of prevention is worth a pound of cure. This bill will ensure that older women, regardless of where they live, will have access to bone mass measurement technology that will help detect bone loss and allow preventive steps to be taken.

I urge my colleagues to support this important bill.●

● Mr. GRASSLEY. Mr. President, I am pleased to join my colleague from Maine, Senator SNOWE, to introduce legislation to standardize Medicare eligibility for the diagnosis of osteoporosis. It is estimated that osteoporosis results in 1.5 million fractures and $20 billion in medical costs each year. The Centers for Disease Control and Prevention, through the use of 1992 incidence data of bone fractures related to osteoporosis, determined that such fractures represent three percent of all Medicare costs. A recent report issued by the Alliance for Aging Research examined the dramatic savings realized when the onset of age-related disability is delayed. The report indicates that delaying the onset of osteoporosis by 5 years could save the economy up to as much as $10 billion annually.

In the state of Iowa, 15 percent of men and women over the age of 50, which is approximately 340,000 Iowans, have osteoporosis. Women are particularly prone to getting osteoporosis, which can lead to bone fractures that result in loss of independence and eventually to nursing home care. Early detection is critical, and there are effective treatments available to prevent bone mass deterioration. An ounce of prevention is worth a pound of cure.

Medicare currently covers bone mass measurement, which is the diagnostic tool used to detect osteoporosis. However, Medicare carriers have discretion regarding eligibility requirements. States cover bone mass measurement on a case-by-case basis; some States cover it when an individual is in the early stages of or already has the disease; and some States allow early detection of the disease based on whether or not the patient is at high risk of developing osteoporosis.

Medicare carriers in states such as Iowa and Maine promote early detection of osteoporosis by covering bone mass measurement for individuals at-risk of the disease. However, carriers in more than half the States do not allow testing until the person already has the disease or is at very high-risk of getting it.

The legislation I am co-sponsoring with Senator SNOWE would help reduce the economic and social costs of osteoporosis through early detection of this crippling disease. The bill would establish uniform eligibility requirements for coverage of bone mass measurement, eliminating the variation in Medicare coverage that currently exists. It would not require that every individual be screened for the disease, only those that are considered at-risk. Medicare is a federal program where everyone pays 2.9 percent of their pay. Therefore, everyone deserves to have access to the same benefits.

I congratulate my colleague, Senator SNOWE, for taking the lead on this very important health issue. I urge my colleagues on both sides of the aisle to support this legislation.●

By Mr. NICKLES:

S. 650. A bill to amend the Internal Revenue Code of 1986 to reduce estate taxes by providing a 20 percent rate of tax on estates exceeding $1,000,000, and a 30 percent rate of tax on estates exceeding $10,000,000, and for other purposes; to the Committee on Finance.

THE ESTATE TAX REDUCTION ACT OF 1997

Mr. NICKLES. Mr. President, an April 15, 1997 letter to the Wall Street Journal, which I will insert for the RECORD, describes one family's recent experience with the estate tax.

The letter states, ''We finally did it. We didn't want to, but we had no choice. Exactly nine months after my father-in-law died, my wife and I signed a check for $1,285,000 payable to the Internal Revenue Service.''

The man who wrote this letter goes on to talk about what his family could have used that money for, such as buying a beach house, prepaying their kids' college education, or even retiring.

Instead, he calculates that the federal government will spend in 26.8 seconds what took his father-in-law 75 years to accumulate.

After I read this letter, I decided to do some calculations of my own. In 1997, the federal government will collect $19.2 billion in estate taxes from 37,200 Americans. The federal government will spend that $19.2 billion in 4.3 days. Assuming each of those decedents was 70 years old when they died, that represents more than 2.6 million years' worth of work and savings which will be wiped-out forever and spent by the government in less than five days.

Mr. President, some people mistakenly believe estate taxes only affect the rich. In the Washington Post this week, Deputy Treasury Secretary Larry Summers says in response to a question about the estate tax, ''You have to raise revenue somewhere, and ability to pay seems like a good way to do it.''

The truth is that there are thousands of small businesses and farms throughout the country owned and operated by middle-income Americans that are affected by the estate tax. In Oklahoma alone, statistics from the U.S. Census of Agriculture indicate that over 7,500 farms and ranches have a value that could trigger estate tax. Even those who do not end up paying the tax will spend thousands of dollars planning to avoid it or insuring against it.

What is the ultimate impact of all this uneconomic activity? According to the Small Business Administration, only 30 percent of family businesses are passed down to a second generation, and only 13 percent make it to a third generation.

It does not take a lot of success in business or investing these days to become a ''taxable estate'' in the eyes of Uncle Sam. With the explosive growth in mutual fund investments over the last several years, and the corresponding increase in stock prices, workers will retire and discover their pension plan to be much larger than they had anticipated. Aggressive business owners who reinvest all their profits back into their business will find themselves asset-rich and cash-poor.

Under current law, a taxable estate of $1 million faces a marginal tax rate of 39 percent. A taxable estate of $3 million qualifies you for a confiscatory 55 percent marginal tax rate. A tax credit limits the tax on the first $600,000 of the estate.

If a person starts a small business—be it a farm, a restaurant, or a car dealership—and they work hard, expand, and become successful, why should Uncle Sam be entitled to 39 percent or 55 percent of it? What did the government do to build that business?

This business owner has already paid annual income tax (twice if organized as a corporation), self-employment tax, FICA tax, FUTA tax, and capital gains tax. Why should the Government come in and say, after all these taxes are paid, ''We want over half of everything that's left''?

Mr. President, the current estate tax is unfair and it is counterproductive. In the long term, it needs to be repealed. In the short term, it needs to be dramatically changed.

I am introducing legislation today which represents dramatic change in the short term and provides a stepping-stone to eventual repeal. My bill goes right to the basic problem, which is estate tax rates. With seventeen marginal tax rate brackets ranging from 18 percent to 55 percent, estate tax rates are too complex and too high.

Under my legislation, taxable estates and gifts under $1 million will pay no tax, taxable estates and gifts from $1 million to $10 million will be taxed at a marginal rate of 20 percent, and taxable estates and gifts over $10 million will be taxed at a marginal rate of 30 percent.

Mr. President, this legislation benefits all taxpayers by simplifying the structure of the estate tax and reducing the number of tax brackets from seventeen to three. Further, by increasing the basic exemption from $600,000 to $1 million, it will reduce the number of estates subject to taxation by more than 40 percent and greatly reduce the need for and cost of estate tax planning.

The benefits of this legislation are also progressive. A taxable estate worth $1 million will have its tax liability completely eliminated. A taxable estate worth $5 million will receive a 64 percent reduction in tax liability, and a taxable estate worth $50 million will receive a 50 percent reduction in tax liability.

Finally, the benefits of this legislation are fair. It does not single-out certain types of estate assets for preferential treatment, and thus avoids the problems of picking winners and losers.

The enactment of estate tax reform this year will not be very easy, Mr. President, despite broad, bipartisan support in the Senate and the House.

The Clinton administration continues to block estate tax reform with partisan, class-warfare rhetoric. In the Washington Post article I mentioned earlier about estate tax reform, Deputy Secretary Summers even said, ''When it comes to the estate tax, there is no case other than selfishness.''

I find that statement offensive, and I wonder if President Clinton agrees with his lieutenant. Is passing your life's work on to your children is ''selfish''?

I encourage all my colleagues to read the letter I submitted with my statement today and ask themselves, ''Is our estate tax policy promoting freedom, family, and opportunity, or does it just promote the redistribution of wealth?''

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 650

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 ''Estate Tax Reduction Act of 1997''.

SEC. 2. 20 PERCENT RATE OF TAX ON ESTATES EXCEEDING $1,000,000; 30 PERCENT RATE OF TAX ON ESTATES EXCEEDING $10,000,000.

(a) IN GENERAL.—Section 2001(c) of the Internal Revenue Code of 1986 (relating to imposition and rate of tax) is amended to read as follows:

''(c) RATE SCHEDULE.—

''If the amount with respect to which the tentative tax to be computed is:.	The tentative tax is:
Not over $10,000,000	20 percent.
Over $10,000,000	$2,000,000 plus 30 percent of the excess over $10,000,000.''.

(b) INCREASE IN UNIFIED CREDIT.—

(1) IN GENERAL.—Section 2010(a) of the Internal Revenue Code of 1986 (relating to unified credit against estate tax) is amended by striking ''$192,800'' and inserting ''$200,000''.

(2) GIFT TAX CREDIT.—Section 2505(a)(1) of such Code (relating to unified credit against gift tax) is amended by striking ''$192,800'' and inserting ''$200,000''.

(3) CONFORMING AMENDMENTS.—

(A) Section 2102(c)(3)(A) of such Code is amended by striking ''$192,800'' and inserting ''$200,000''.

(B) Section 6018(a)(1) of such Code is amended by striking ''$600,000'' and inserting ''$1,000,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after the date of the enactment of this Act.

[From the Wall St. Journal, Apr. 15, 1997]

ELIMINATE THE MIDDLEMAN

(By Sanford F. Young)

We finally did it. We didn't want to, but we had no choice.

Exactly nine months after my father-in-law died, my wife and I signed a check for $1,285,000, payable to the Internal Revenue Service.

Now, you may ask what we are complaining about. After all, we were born into enlightened, liberal upper-middle-income families in the 1950s. Our fathers extolled our obligation to pay taxes so that the government can provide for the less fortunate. Indeed, it may have been those principles that dissuaded my father-in-law from engaging in any estate planning. So we had to sign away—in addition to state inheritance taxes, deferred income taxes, excise taxes and countless legal and accounting fees incurred just so we could compute how much tax we must pay—the great bulk of my father-in-law's estate.

Having had the privilege of holding on to this much money for these past months—as executors of the estate we are legally obligated to accumulate and preserve the assets for paying taxes—we dreamed of what we could have done with the funds: buy a beach house, prepay our kids' college education, even quit our jobs and retire. Instead, the reality of how fast that money will be spent by the government is hammered home by the giant billboard tallying government debt at the intersection of Sixth Avenue and 43rd Street in New York. I calculate that the federal government will spend in 26.8 seconds what took my father-in-law 75 years to accumulate—after the taxes he paid during his lifetime. Not a satisfying thought.

We thus propose the following: Rather than paying my father-in-law's hard-earned money to the government, which acts as no more than a greedy and inefficient middleman between the haves and have-nots, it should simply identify three of the neediest families and let us hand over a half-million dollars or so to each. This way we can know that my father-in-law's money will make a difference. And at least someone would give my father-in-law a posthumous thank-you.

NICKLES ESTATE TAX PROPOSAL

	Current law					Proposal					Impact	
	Marginal tax rate (%)	Tax before unified credit	Unified credit	Tax after unified credit	Effective tax rate	Marginal tax rate (%)	Tax before unified credit	Unified credit	Tax after unified credit	Effective tax rate	Reduction in tax liability	As a % of current law
Taxable estate:												
10,000	18	1,800	192,800	0	0	20	2,000	200,000	0	0	.....	.....
20,000	20	3,800	192,800	0	0	20	4,000	200,000	0	0	.....	.....
40,000	22	8,200	192,800	0	0	20	8,000	200,000	0	0	.....	.....
60,000	24	13,000	192,800	0	0	20	12,000	200,000	0	0	.....	.....
80,000	26	18,200	192,800	0	0	20	16,000	200,000	0	0	.....	.....
100,000	28	23,800	192,800	0	0	20	20,000	200,000	0	0	.....	.....
150,000	30	38,800	192,800	0	0	20	30,000	200,000	0	0	.....	.....
250,000	32	70,800	192,800	0	0	20	50,000	200,000	0	0	.....	.....
500,000	34	155,800	193,800	0	0	20	100,000	200,000	0	0	.....	.....
750,000	37	248,300	192,800	55,500	7	20	150,000	200,000	0	0	(55,500)	−100
1,000,000	39	345,800	192,800	153,000	15	20	200,000	200,000	0	0	(153,000)	−100
1,250,000	41	448,300	192,800	255,500	20	20	250,000	200,000	50,000	4	(205,500)	−80
1,500,000	43	555,800	192,800	363,000	24	20	300,000	200,000	100,000	7	(263,000)	−72
2,000,000	45	780,800	192,800	588,000	29	20	400,000	200,000	200,000	10	(388,000)	−66
2,500,000	49	1,025,800	192,800	833,000	33	20	500,000	200,000	300,000	12	(533,000)	−64
3,000,000	53	1,290,800	192,800	1,098,000	37	20	600,000	200,000	400,000	13	(698,000)	−64
5,000,000	55	2,390,800	192,800	2,198,000	44	20	1,000,000	200,000	800,000	16	(1,398,000)	−64
10,000,000	55	5,140,800	192,800	4,948,000	49	20	2,000,000	200,000	1,800,000	18	(3,148,000)	−64
20,000,000	55	11,000,000	0	11,000,000	55	30	5,000,000	200,000	4,800,000	24	(6,200,000)	−56
50,000,000	55	27,500,000	0	27,500,000	55	30	14,000,000	200,000	13,800,000	28	(13,700,000)	−50
100,000,000	55	55,000,000	0	55,000,000	55	30	29,000,000	200,000	28,800,000	29	(26,200,000)	−48

Replace the current unified transfer tax rate structure with two rates, 20% under $10 million and 30% over $10 million. Increase the unified credit equivalent to $1 million.
Staff estimates assume reductions are fully phased-in.

ESTATE TAX REFORM COMPARISION—$1 MILLION ESTATE

S. 2 increases the basic exemption to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of any remaining family business assets.

S. 479 increases the unified credit equivalent to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of the next $8.5 million in family business assets.

The Nickles Plan imposes no tax on estates up to $1 million, taxes estates up to $10 million at 20%, and taxes estates over $10 million at 30%.

	Current law	S. 2	S. 479	Nickles Plan
ALL FAMILY BUSINESS				
Family business assets	1,000,000	1,000,000	1,000,000	1,000,000
Other assets	0	0	0	0
Total estate	1,000,000	1,000,000	1,000,000	1,000,000
Family business exclusion	(1)	(1,000,000)	(1,000,000)	(1)
Taxable estate	1,000,000	0	0	1,000,000
Tax before unified credit	345,800	0	0	200,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	153,000	0	0	0
Effective tax rate (percent)	15	0	0	0

	Current law	S. 2	S. 479	Nickles Plan
NO FAMILY BUSINESS				
Family business assets	0	0	0	0
Other assets	1,000,000	1,000,000	1,000,000	1,000,000
Total estate	1,000,000	1,000,000	1,000,000	1,000,000
Family business exclusion	[1]	0	0	[1]
Taxable estate	1,000,000	1,000,000	1,000,000	1,000,000
Tax before unified credit	345,800	345,800	345,800	200,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	153,000	0	0	0
Effective tax rate (percent)	15	0	0	0
SPLIT				
Family business assets	500,000	500,000	500,000	500,000
Other assets	500,000	500,000	500,000	500,000
Total estate	1,000,000	1,000,000	1,000,000	1,000 000
Family business exclusion	[1]	(500,000)	(500,000)	[1]
Taxable estate	1,000,000	500,000	500,000	1,000,000
Tax before unified credit	345,800	155,800	155,800	200,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	153,000	0	0	0
Effective tax rate (percent)	15	0	0	0

[1] Not applicable.

Note.—For simplicity, the current law phase-out of the unified credit and marginal rate benefits for estates between $10,000,000 and $21,040,000 is not computed in these examples.

ESTATE TAX REFORM COMPARISON—$5 MILLION ESTATE

S. 2 increases the basic exemption to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of any remaining family business assets.

S. 479 increases the unified credit equivalent to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of the next $8.5 million in family business assets.

The Nickles Plan imposes no tax on estates up to $1 million, taxes estates up to $10 million at 20%, and taxes estates over $10 million at 30%.

	Current law	S. 2	S. 479	Nickles Plan
ALL FAMILY BUSINESS				
Family business assets	5,000,000	5,000,000	5,000,000	5,000,000
Other assets	0	0	0	0
Total estate	5,000,000	5,000,000	5,000,000	5,000,000
Family business exclusion	[1]	(3,250,000)	(3,250,000)	[1]
Taxable estate	5,000,000	1,750,000	1,750,000	5,000,000
Tax before unified credit	2,398,000	668,300	668,300	1,000,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	2,205,200	322,500	322,500	800,000
Effective tax rate (percent)	44	6	6	16
NO FAMILY BUSINESS				
Family business assets	0	0	0	0
Other assets	5,000,000	5,000,000	5,000,000	5,000,000
Total estate	5,000,000	5,000,000	5,000,000	5,000,000
Family business exclusion	[1]	0	0	[1]
Taxable estate	5,000,000	5,000,000	5,000,000	5,000,000
Tax before unified credit	2,398,000	2,398,000	2,398,000	1,000,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	2,205,200	2,052,200	2,052,200	800,000
Effective tax rate (percent)	44	41	41	16
SPLIT				
Family business assets	2,500,000	2,500,000	2,500,000	2,500,000
Other assets	2,500,000	2,500,000	2,500,000	2,500,000
Total estate	5,000,000	5,000,000	5,000,000	5,000,000
Family business exclusion	[1]	(2,000,000)	(2,000,000)	[1]
Taxable estate	5,000,000	3,000,000	3,000,000	5,000,000
Tax before unified credit	2,398,000	1,298,000	1,298,000	1,000,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	2,205,200	952,200	952,200	800,000
Effective tax rate (percent)	44	19	19	16

[1] Not applicable.

Note.—For simplicity, the current law phase-out of the unified credit and marginal rate benefits for estates between $10,000,000 and $21,040,000 is not computed in these examples.

ESTATE TAX REFORM COMPARISON—$50 MILLION ESTATE

S. 2 increases the basic exemption to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of any remaining family business assets.

S. 479 increases the unified credit equivalent to $1 million, excludes 100% of the first $1.5 million in family business assets, and excludes 50% of the next $8.5 million in family business assets.

The Nickles Plan imposes no tax on estates up to $1 million, taxes estates up to $10 million at 20%, and taxes estates over $10 million at 30%.

	Current law	S. 2	S. 479	Nickles Plan
ALL FAMILY BUSINESS				
Family business assets	50,000,000	50,000,000	50,000,000	50,000,000
Other assets	0	0	0	0
Total estate	50,000,000	50,000,000	50,000,000	50,000,000
Family business exclusion	[1]	(25,750,000)	(5,750,000)	[1]
Taxable estate	50,000,000	24,250,000	44,250,000	50,000,000
Tax before unified credit	27,148,000	12,985,500	23,985,500	14,000,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	26,955,200	12,639,700	23,639,700	13,800,000
Effective tax rate (percent)	54	25	47	28
NO FAMILY BUSINESS				
Family business assets	0	0	0	0
Other assets	50,000,000	50,000,000	50,000,000	50,000,000
Total estate	50,000,000	50,000,000	50,000,000	50,000,000
Family business exclusion	[1]	0	0	[1]
Taxable estate	50,000,000	50,000,000	50,000,000	50,000,000
Tax before unified credit	27,148,000	27,148,000	27,148,000	14,000,000

	Current law	S. 2	S. 479	Nickles Plan
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	26,955,200	26,802,200	26,802,200	13,800,000
Effective tax rate (percent)	54	54	54	28
SPLIT				
Family business assets	25,000,000	25,000,000	25,000,000	25,000,000
Other assets	25,000,000	25,000,000	25,000,000	25,000,000
Total estate	50,000,000	50,000,000	50,000,000	50,000,000
Family business exclusion	(1)	(13,250,000)	(5,750,000)	(1)
Taxable estate	50,000,000	36,750,000	44,250,000	50,000,000
Tax before unified credit	27,148,000	19,860,500	23,985,500	14,000,000
Unified credit	192,800	345,800	345,800	200,000
Tax after UC	26,955,200	19,514,700	23,639,700	13,800,000
Effective tax rate (percent)	54	39	47	28

[1] Not applicable.

Note.—For simplicity, the current law phase-out of the unified credit and marginal rate benefits for estates between $10,000,000 and $21,040,000 is not computed in these examples.

By Mr. ALLARD:

Senate Joint Resolution 28. A joint resolution proposing an amendment to the Constitution of the United States granting the President the authority to exercise an item veto of individual appropriations in an appropriations bill; to the Committee on the Judiciary.

THE LINE-ITEM VETO CONSTITUTIONAL AMENDMENT

● Mr. ALLARD. Mr. President, today I am pleased to introduce a line-item veto constitutional amendment.

This action is particularly timely in light of the decision by a Federal district court judge which declared the recently enacted statutory line-item veto, or more accurately, enhanced rescission authority, to be unconstitutional.

This judge's decision may be overturned, or Congress may be able to modify the language in a way that satisfies the courts. Baring either of these, a line-item veto can only be provided by amending the Constitution.

Fortunately, Congress provided for expedited judicial review of the constitutionality of the 1996 Line Item Veto legislation, and the Supreme Court has agreed to hear arguments in the case next month, and to render a decision by July.

Prior to my election to the Senate I served in the House of Representatives. In that body I introduced a constitutional line-item veto on several occasions. This was motivated by my view that the greatest threat to our economy is the continued deficits which Congress piles on top of the accumulated $5.3 trillion national debt.

Obviously, the budget system that we have in place is not working. We need a balanced budget amendment and a line-item veto.

Last year, Congress gave the President what is generally referred to as expanded rescission authority. The Republican Congress committed to give this authority to whoever was elected President in 1996, Democrat or Republican. It was immaterial to us, our objective was to provide a bi-partisan tool to help eliminate wasteful spending beginning on January 1, 1997.

Last year's legislation was an expansion of the very limited rescission authority granted to the President in 1974 under the Impoundment Control Act. Under that earlier statute, the President could indicate items in the budget that he wanted to rescind, but he was required to obtain the support of both Houses of Congress in order for the rescission to actually be enacted. The budget history of the past two decades demonstrates better than I could why this is akin to the fox guarding the henhouse.

The Line-Item Veto Act reversed this burden and required the Congress to disapprove any rescissions identified by the President within 30 days. If this deadline was not met, then the item was eliminated.

This new authority permitted three types of rescissions. First, discretionary appropriations could be rescinded. Discretionary spending is about one-third of the budget and is where most of what is considered pork barrel spending occurs.

Second, the law permitted the rescission of any new item of entitlement spending. While currently existing entitlements would be exempt, any new item could be stricken—entitlements constitute the remaining two-thirds of the budget and is certainly the fastest growing portion of the budget.

Finally, certain limited tax benefits could be rescinded. These limited tax provisions were generally defined as provisions that provided a federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries.

The judge who ruled the line item veto statute unconstitutional focused on the fact that the cancellation or rescission authority under the statue exists only after the President signs a bill. He has up to 5 days after signature to identify these rescissions. The judge concluded that this was an unconstitutional delegation of Congressional power.

I find this reasoning puzzling since the statute was crafted in a manner that Congress believed to be consistent with past Supreme Court decisions concerning Congressional delegation of authority. The statute also provides nearly identical authority to the impoundment authority held by all Presidents from George Washington up through 1974 when Congress voted to deny this authority to future presidents.

Obviously, we will hear the final word on this in July. One thing however, is certain. The authority given to the President last year was different from that authority held by 43 state governors. In the states the governor has the explicit authority to line item veto provisions in a bill as part of the actual bill-signing process.

I believe it is time that we take the approach of the states. In order to do this we must enact a Constitutional Amendment. Under article I, section 7 of the Constitution, the President's veto authority has been interpreted to mean that he must sign or veto an entire piece of legislation—he cannot pick and choose.

This language reads: ''Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, . . .'' this section then proceeds to outline the procedures by which Congress may override this veto with a two-thirds vote of both houses.

The amendment that I am introducing today amends this language as it pertains to appropriations bills. It specifically provides that the President shall have the power to disapprove any appropriation of an appropriations bill at the time the President approves the bill.

This change will make explicit that the President is no longer confined to either vetoing or signing an entire bill, but that he may choose to single out certain appropriations for veto and still sign a portion of the bill.

I noted earlier that 43 state governors have some type of line item veto. This is consistent with the approach taken in most state constitutions of providing a greater level of detail concerning the budget process than is contained in the U.S. Constitution. In my view, the line item veto has been an important factor in the more responsible budgeting that occurs at the state level.

Colorado is one of the states that gives line item veto authority to the governor. That power, along with a balanced budget requirement in the state constitution, has worked well and insured that Colorado has been governed in a fiscally responsible manner regardless of who served in the legislature or in the governor's office.

Mr. President, I look forward to further discussion on this important issue. I realize that the Supreme Court may overturn the lower court decision and declare the line item veto statute

constitutional. However, in my mind, this is no substitute for moving ahead on a constitutional amendment. It is time to eliminate the uncertainly, and provide for explicit line item veto authority for the President.●

ADDITIONAL COSPONSORS

S. 9

At the request of Mr. NICKLES, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 9, a bill to protect individuals from having their money involuntarily collected and used for politics by a corporation or labor organization.

S. 28

At the request of Mr. THURMOND, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 28, a bill to amend title 17, United States Code, with respect to certain exemptions from copyright, and for other purposes.

S. 89

At the request of Ms. SNOWE, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 89, a bill to prohibit discrimination against individuals and their family members on the basis of genetic information, or a request for genetic services.

S. 222

At the request of Mr. DOMENICI, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 222, a bill to establish an advisory commission to provide advice and recommendations on the creation of an integrated, coordinated Federal policy designed to prepare for and respond to serious drought emergencies.

S. 263

At the request of Mr. MCCONNELL, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 263, a bill to prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 311

At the request of Mr. GRAHAM, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 311, a bill to amend title XVIII of the Social Security Act to improve preventive benefits under the medicare program.

S. 317

At the request of Mr. CRAIG, the name of the Senator from Kansas [Mr. ROBERTS] was added as a cosponsor of S. 317, a bill to reauthorize and amend the National Geologic Mapping Act of 1992.

S. 347

At the request of Mr. CLELAND, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 347, a bill to designate the Federal building located at 100 Alabama Street NW, in Altanta, Georgia, as the ''Sam Nunn Federal Center''.

S. 413

At the request of Mrs. HUTCHISON, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 413, a bill to amend the Food Stamp Act of 1977 to require States to verify that prisoners are not receiving food stamps.

S. 415

At the request of Mr. BAUCUS, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 415, a bill to amend the medicare program under title XVIII of the Social Security Act to improve rural health services, and for other purposes.

S. 436

At the request of Mr. ROTH, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 436, a bill to amend the Internal Revenue Code of 1986 to provide for the establishment of an intercity passenger rail trust fund, and for other purposes.

S. 476

At the request of Mr. HATCH, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 476, a bill to provide for the establishment of not less than 2,500 Boys and Girls Clubs of America facilities by the year 2000.

S. 562

At the request of Mr. D'AMATO, the names of the Senator from Nevada [Mr. REID], the Senator from Montana [Mr. BURNS), and the Senator from Minnesota [Mr. GRAMS] were added as cosponsors of S. 562, a bill to amend section 255 of the National Housing Act to prevent the funding of unnecessary or excessive costs for obtaining a home equity conversion mortgage.

S. 563

At the request of Mr. SANTORUM, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 563, a bill to limit the civil liability of business entities that donate equipment to nonprofit organizations.

S. 564

At the request of Mr. SANTORUM, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 564, a bill to limit the civil liability of business entities providing use of facilities to nonprofit organizations.

S. 565

At the request of Mr. SANTORUM, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 565, a bill to limit the civil liability of business entities that make available to a nonprofit organization the use of a motor vehicle or aircraft.

S. 566

At the request of Mr. SANTORUM, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 566, a bill to limit the civil liability of business entities that provide facility tours.

S. 570

At the request of Mr. NICKLES, the names of the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Kentucky [Mr. MCCONNELL) were added as cosponsors of S. 570, a bill to amend the Internal Revenue Code of 1986 to exempt certain small businesses from the mandatory electronic fund transfer system.

S. 572

At the request of Mr. ALLARD, the names of the Senator from Nebraska [Mr. HAGEL], the Senator from Wyoming [Mr. ENZI], and the Senator from Alabama [Mr. SESSIONS] were added as cosponsors of S. 572, a bill to amend the Internal Revenue Code of 1986 to repeal restrictions on taxpayers having medical savings accounts.

S. 606

At the request of Mr. HUTCHINSON, the name of the Senator from Oregon [Mr. SMITH] was added as a cosponsor of S. 606, a bill to prohibit discrimination in contracting on federally funded projects on the basis of certain labor policies of potential contractors.

SENATE CONCURRENT RESOLUTION 23—HONORING THE LIFETIME ACHIEVEMENTS OF JACKIE ROBINSON

Mr. MCCAIN submitted the following concurrent resolution; which was referred to the Committee on Commerce, Science, and Transportation.

S. CON. RES. 23

Whereas Jackie Robinson was the first four sport letterman at the University of California at Los Angeles;

Whereas on April 15, 1947, Jackie Robinson was the first African-American to cross the color barrier and play for a major league baseball team;

Whereas Jackie Robinson, whose career began in the Negro Leagues, went on to be named Rookie of the Year and subsequently led the Brooklyn Dodgers to six National League pennants and a World Series championship;

Whereas Jackie Robinson's inspiring career earned him recognition as the first African-American to win a batting title, lead the league in stolen bases, play in an All-Star game, win a Most Valuable Player award, play in the World Series and be elected to baseball's Hall of Fame;

Whereas after retiring from baseball Jackie Robinson was active in the civil rights movement and founded the first bank owned by African-Americans in New York City;

Whereas his legacy continues to uplift the Nation through the Jackie Robinson Foundation that has provided 425 scholarships to needy students;

Whereas Jackie Robinson's courage, dignity, and example taught the Nation that what matters most is not the color of a man's skin but rather the content of his character;

Whereas Jackie Robinson, in his career, consistently demonstrated that how you play the game is more important than the final score;

Whereas Jackie Robinson's life and heritage help make the American dream more accessible to all; and

Whereas April 15, 1997, marks the 50th anniversary of Jackie Robinson's entrance into major league baseball: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

That the achievements and contributions of Jackie Robinson be honored and celebrated; that his dedication and sacrifice be