SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. GRAMS:

S. Res. 31. A resolution commending Archbishop Desmond Tutu for being a recipient of the Immortal Chaplains Prize for Humanity; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY (for himself, Mr. TORRICELLI, Mr. DEWINE, Mr. JEFFORDS, Mr. KENNEDY, Mr. HARKIN, Ms. MIKULSKI, Mr. LEVIN, Mr. KERRY, Mrs. MURRAY, Mrs. BOXER, and Mr. SARBANES):

S. 333. A bill to amend the Federal Agriculture Improvement and Reform Act of 1996 to improve the farmland protection program; to the Committee on Agriculture, Nutrition, and Forestry.

FEDERAL AGRICULTURE IMPROVEMENT AND REFORM ACT AMENDMENTS

Mr. LEAHY. Mr. President, I am pleased to have Senators TORRICELLI, DEWINE, JEFFORDS, KENNEDY, HARKIN, MIKULSKI, LEVIN, KERRY, MURRAY and BOXER join me today to reauthorize a program that has helped hundreds of farmers across the country save their farms and stay in the business of farming. Today, we are introducing a bill to reauthorize the Farmland Protection Program at a funding level of $55 million a year. This new authorization supports the efforts of President Clinton to restart the program with $50 million in Fiscal Year 2000.

Since its creation in the 1996 Farm Bill, the Farmland Protection Program has been instrumental in curbing the loss of some of our nation's most productive farmland to urban sprawl. The Farmland Protection Program help shield farmers from development pressures by providing federal matching grants to state and local conservation organizations to purchase easements on farms.

We have all seen the impact of urban sprawl in our home states, whether it be large, multi-tract housing or megamalls that bring national superstores and nation-sized parking lots. We are losing farmland across the country at an alarming rate. This bill will step up our efforts to halt this disturbing trend before too many of America's farms are permanently transformed into asphalt jungles.

In Vermont, we are also seeing the impact of development on our farmland. Increasing land prices and development pressure have forced too many Vermont farmers to sell to developers instead of passing on their farms to the next generation. With the former Farms for the Future program and the Farmland Protection Program, farmers now have a fighting chance against development. Since its inception in Vermont, these programs have helped conserve 78,000 acres of land on more than 220 Vermont farms.

The success of the program should not just be measured in acres though. The program also has helped farmers expand and re-invest in farm facilities and equipment. Some of the farm projects have also led to construction of affordable housing and preservation of wildlife habitat. There are now success stories all over Vermont. One is the story of Paul and Marian Connor of Bridport, Vermont. Working with the Vermont Land Trust they were able to conserve their 221-acre farm while continuing their dairy operation, raising seven children and retire their mortgage.

Although Vermont is making great progress, across the nation we continue to lose as much as one million acres of prime farmland annually. This land is critically important to agriculture. For example, nearly three-quarters of America's dairy products, fruits and vegetables are grown in counties affected by urban growth.

For American farmers and ranchers, farmland protection is an issue of the survival of both family farms and agricultural regions. When urban pressure pushes up the value of agricultural land above its agricultural value, it threatens the end of family farms because the next generation simply cannot afford to farm land valued at development prices. As some farmers sell their land for development, it places increasing pressure on their neighbors to sell as well.

The 1996 Farm Bill recognized this problem by directly providing $35 million for farmland protection matching funds that have leveraged million more from local and private programs. The Farmland Protection Program is a model of what new federal conservation programs ought to be, enjoying the unanimous support of the National Governors Association. It preserves the private property rights of farmers.

It offers the Congress a way to demonstrate a realistic and meaningful commitment to the conservation of America's natural heritage without expanding the role of the federal government, and it encourages local communities and states to contribute their own efforts. The program's overwhelming success though has led to increased demand for the program—applicants requested a federal match of more than $130 million.

Our bill will help address some of this demand and encourage more state governments, local communities and private groups to start new matching programs. This modest federal investment will maintain our commitment to the protection of our rural heritage and working landscape.

By Ms. COLLINS (for herself, Mr. COCHRAN, Mr. LEVIN, Mr. DURBIN, and Mr. BURNS):

S. 335. A bill to amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to games of chance, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes; to the Committee on Governmental Affairs.

DECEPTIVE MAIL PREVENTION AND ENFORCEMENT IMPROVEMENT ACT

Ms. COLLINS. Mr. President, today, during National Consumer Protection Week, I am introducing the Deceptive Mail Prevention and Enforcement Act, a comprehensive bill designed to stem the rising tide of deceptive mailings that are flooding the mailboxes of the people of Maine and people throughout the country.

I am very pleased to have the cosponsorship of a trio of distinguished Senators in this regard: Senator COCHRAN, the chairman of the subcommittee with legislative jurisdiction over these types of mailings, who has been a leader in the effort to curtail deceptive mailings and sweepstakes fraud; Senator LEVIN, who serves as the ranking minority member of the Permanent Subcommittee on Investigations, and who has played an active role not only in the hearings held last year, but also in introducing his own legislation on this issue, which I am pleased to cosponsor. He has a longstanding interest in curtailing deceptive mailings. I am also pleased to have the support of Senator DURBIN, with whom I have worked very closely on many consumer issues.

Mr. President, several months ago, prompted by complaints that I have received from my constituents in Maine, I initiated an investigation into sweepstakes fraud and deceptive mailings. Over the course of this investigation, I have seen countless examples of mailings that deceptively promise extravagant prizes in order to entice consumers to make unnecessary and unneeded purchases. Unfortunately, this calculated confusion works far too often. In one particularly egregious example, one deceptive mailing prompted some of its victims to fly to Florida, believing that they then would be the first to claim the grand prize promised in a major sweepstakes.

Deceptive mailings take many forms. One such form that I find particularly offensive is ''Government look-alike mailings,'' which appear deceptively like a mailing from a Federal agency or other official entity. An example of such a deceptive mailing was recently sent to me by a woman from Machiasport, ME. The postcard that she received was marked ''Urgent Delivery, a Special Notification of Cash Currently Being Held by the U.S. Government is ready for shipment to you.'' I have blown up a copy of the postcard she received so you can see just how deceptive this mailing was. On the back of the postcard, the consumer was asked to send $9.97 to learn how to receive this cash. Of course, this was not a legitimate mailing from the Federal

Government, but simply a ploy used by an unscrupulous individual to trick an unsuspecting consumer into sending money.

Mr. President, millions of Americans have received sweepstakes letters that use deceptive marketing ploys to encourage the purchase of magazines and other products. A common tactic is a ''promise'' of winning printed in large type, such as this example: ''You Were Declared One of Our Latest Sweepstakes Winners and You're About to be Paid $833,337 in Cash.'' A constituent of mine from Portland, ME, received this mailing, but, of course, he wasn't really a winner. It takes an awfully sharp eye and very careful scrutiny to notice the very fine print that states that the money is won only ''if you have and return the grand prize-winning number in time.''

Mr. President, thousands of consumers have made very frequent purchases, often of more than $1,000 a year, in response to deceptive sweepstakes mailings. I have heard sad stories from many people who have described personal horror stories caused by these deceptive mailings. Some people have told me of their elderly parents spending $10,000, $20,000, even as much as $60,000 in one case, hoping that their next purchase would result in a large prize. Senior citizens are particularly vulnerable, as they generally trust the statements made by these marketing appeals, particularly if they are pitched by celebrities, or if the mailing appears to be connected or in some way sanctioned by the Federal Government.

To increase consumer protections, and to punish those who use such deceptive mailings to prey on our senior citizens, the bill that I am introducing today, along with Senators COCHRAN, LEVIN and DURBIN, will attack sweepstakes fraud and deceptive mailings on four fronts.

First, the bill will prevent fraud and deception by requiring companies to be more honest with the American people when using sweepstakes and other promotional mailings. My legislation would establish new standards for sweepstakes, including clear disclosure. In addition, my legislation would strengthen the law against mailings that mimic Government documents. Mailings could not use any language or device that gives the appearance that the mailing is connected, approved, or endorsed by the Federal Government.

Second, this bill provides strong new financial penalties for sending mail that does not comply with these and existing standards. Civil penalties include fines ranging from $50,000 to $2 million would be allowed depending on the number of mailings sent.

Third, the bill strengthens Federal law enforcement efforts and makes them more effective by giving the U.S. Postal Inspection Service additional tools to combat these deceptive practices.

Fourth, my legislation would preserve the important role the States play in fighting this type of fraud and deception. Our bill would not preempt States and local laws protecting consumers from fraudulent and deceptive mailings.

Mr. President, hundreds of millions of these promotional materials are sent out each year to consumers across the country. By design, they are meant to confuse their recipients and to trick them into spending money needlessly under the false pretense that doing so will earn them huge rewards.

As the chairman of the Permanent Subcommittee on Investigations, I will shortly be holding hearings on this issue in the coming months to document the nature and extent of the problem and how these deceptive mailings affect Americans, particularly our senior citizens.

I look forward to working with my colleagues, particularly the subcommittee's ranking member, Senator LEVIN, who has been such a leader in this area. It is my hope that Congress will enact the Deceptive Mail Prevention and Enforcement Improvement Act to increase consumer protections, to improve law enforcement efforts, and to provide effective penalties for those who deceive American consumers.

Mr. President, I yield any remaining time to the Senator from Michigan, Senator LEVIN.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank my good friend from Maine for her leadership, her kind words, and for her bill, which I am proud to cosponsor. The bill I am introducing today, with her support and the support of Senator DURBIN, addresses the same kinds of practices. These two bills together, if adopted, would go a long way toward addressing the deceptive mailing practices that we see under the general heading of ''sweepstakes.''

The bill that I am introducing, with the cosponsorship of Senator COLLINS and Senator DURBIN, will help eliminate the deceptive practices in mailings that use games of chance, like sweepstakes, to induce consumers to purchase a product that they may not need and to play a game that they will not win.

I originally introduced this bill last year. It was not enacted. It was introduced late in the session. I am very hopeful that this bill and Senator COLLINS' bill will be enacted this year following the hearings that she has just described—important hearings which I commend our chairman of the subcommittee for scheduling, for initiating.

The bill that I am introducing—this part of the remedy for the current abuses—will stiffen the penalties for deceptive mailings, will give the Postal Service administrative subpoena power, will restrict the use of misleading language and symbols, and require better disclosure about chances of winning and statements that no purchase is necessary to win.

The elderly are easy prey for the gimmicks used in these kinds of contests, such as a large notice declaring the recipient a winner—oftentimes a ''guaranteed'' winner or one of two final competitors for a large cash prize—and these gimmicks have proliferated to the point that American consumers are being duped into purchasing products they don't want or need because they think they have won or will win a big prize if they do so. Complaints about these mailings are one of the top ten consumer complaints in the nation. I have received numerous complaints from my constituents in Michigan asking that something be done to provide relief from these very misleading mailings.

In early September 1998, we held a hearing in our Governmental Affairs Committee federal services subcommittee on the problem of deceptive sweepstakes and other mailings involving games of chance. We learned from three of our witnesses, the Florida Attorney General, the Michigan Assistant Attorney General and the Postal Inspection Service, that senior citizens are particular targets of these deceptive solicitations, because they are the most vulnerable. State Attorneys General have taken action against many of the companies that use deceptive mailings. The states have entered into agreements to stop the most egregious practices, but the agreements apply only to the states that enter into the agreements. This allows companies to continue their deceptive practices in other states. That's one reason why federal legislation in this area is needed. The bill I'm introducing today will help eliminate deceptive practices by prohibiting misleading statements, requiring more disclosure, imposing a $10,000 civil penalty for each deceptive mailing, and providing the Postal Service with additional tools to pursue deceptive and fraudulent offenders.

Sweepstakes solicitations are put together by teams of clever marketers who package their sweepstakes offers in such a way so as to get people to purchase a product by implying that the chances of winning are enhanced if the product being offered is purchased.

That is not allowed. You cannot require that a purchase be made in order to win a prize. But these deceptive practices are such and they are so finely honed that, no matter what the fine print says about no purchase being necessary, the recipient of the mailing often is led to believe, by the nature of the mailing, that a purchase indeed will enhance the opportunity to win the prize. Senator COLLINS addresses the sum of those issues in her bill.

Rules and important disclaimers are written in fine print and hidden away in obscure sections of the solicitation or on the back of the envelope that is frequently tossed away. Even when one can find and read the rules, it frequently takes a law degree to understand them.

The bill I am introducing will help to protect consumers from deceptive practices by directing the Postal Service to develop and issue regulations that restrict the use of misleading language and symbols in direct mail game of chance solicitations, including sweepstakes. The bill also requires additional disclosure about chances of winning and the statement that no purchase is necessary. Any mail that is designated by the Postal Service as being deceptive will not be delivered. This will significantly reduce the deceptive practices being used in the direct mail industry to dupe unsuspecting consumers into thinking they are grand prize winners. The direct mail industry also would benefit, in that the adverse publicity recently aimed at the industry because of ''You Have Won a Prize'' campaigns has maligned the industry as a whole. Cleaning up deceptive advertising could improve the industry's image.

For those entities that continue to use deceptive mailings, my bill imposes a civil penalty of $10,000 for each piece of mail that violates Postal Service regulations. Currently the Postal Service can impose a fine for noncompliance with a Postal Service order. My bill imposes a fine whether or not the order actually has been issued. This has the effect of applying the penalty to the deceptive offense, not for noncompliance with the order.

My bill also allows the Postal Service to quickly respond to changes in deceptive marketing practices by giving the Postal Service the authority to draft regulations that will be effective against the ''scheme du jour.'' A deceptive practice used today, may not be used tomorrow. As soon as the Post Office learns about one scheme, it changes. If legislation is passed that requires a specific notice, it can take just a short time before another deceptive practice pops up to by-pass the legislation. My bill gives the Postal Service the authority to evaluate what regulatory changes will be required to keep pace with the ever changing deceptive practices. This will help weed out deceptive practices in a timely manner.

The bill also gives the Postal Service administrative subpoena power to respond more quickly to deceptive and fraudulent mail schemes. Currently the Postal Service must go through a lengthy administrative procedure before it can get evidence to shut down illegal operations. Currently the $10,000 fine—and civil penalty which exists—can only be imposed for noncompliance with a Postal Service order. There has to be an order issued which is violated before there can even be a civil fine. Our bill would impose a fine for violating the law, a penalty for perpetrating the deceptive offense or practice, and it would not require that there be an order previously entered. By the time the Postal Service gets through all the administrative hoops, the sweepstakes promoter may have folded up operations and disappeared, or has destroyed all the evidence. By granting the Postal Service limited subpoena authority to obtain relevant material records for an investigation, the Postal Service will be able to act more efficiently against illegal activities. Subpoena authority will make the Postal Service more effective and efficient in its pursuit of justice.

The Deceptive Sweepstakes Mailings Elimination Act of 1999 takes a tough approach to dealing with sweepstakes solicitations and other games of chance offerings that are sent through the mail. If you use sweepstakes or a game of chance to promote the sale of a legitimate product, provide adequate disclosure, and abide with Postal Service regulations, then the Postal Service will deliver that solicitation. If deceptive practices are used in a sweepstakes or a game of chance solicitation, the Postal Service will be able to stop the solicitation and impose a significant penalty.

So we are going to take a tough approach, both through Senator COLLINS' bill which I have cosponsored, through my bill which she has cosponsored, along with others, and this tough approach that is absolutely essential if we are going to protect seniors and others from the kind of deceptive practices which cost them so much money by encouraging them, through these practices, to buy items that they really do not want in order to win prizes that truly are unlikely or impossible to win.

By Mr. LEVIN (for himself, Mr. DURBIN and Mr. COLLINS):

S. 336. A bill to curb deceptive and misleading games of chance mailings, to provide Federal agencies with additional investigative tools to police such mailings, to establish additional penalties for such mailings, and for other purposes; to the Committee on Governmental Affairs.

DECEPTIVE GAMES OF CHANCE MAILINGS ELIMINATION ACT OF 1999

Mr. DURBIN. Mr. President, I am pleased to join my distinguished colleagues, Senators LEVIN and COLLINS, today in introducing the Deceptive Games of Chance Mailing Elimination Act of 1999.

It's rare that any American household has escaped receipt of a flurry of envelopes boldly proclaiming ''You're our next million-dollar winner!'' or similar claim of impending good fortune. Most of us recognize these prominent lines as the special language of direct mail sweepstakes. While many companies have used sweepstakes responsibly, others have bilked consumers out of millions of dollars by falsely suggesting a purchase is necessary to qualify for the sweepstakes or to increase the odds of winning a prize. Some of these operators promise fame and fortune, but they deliver fraud and false promises.

As Senator LEVIN has outlined, this bill sharpens the teeth of the current postal statutes by directing the Postal Service to develop and issue rules that restrict the use of misleading language and symbols on direct mail games of chance such as sweepstakes that mislead the recipient into believing they've already won or will win a prize. This rulemaking authority will allow the Postal Service to respond more rapidly to emerging deceptive practices. The bill also requires that additional disclosures be given to recipients of mailed solicitations involving sweepstakes giveaways about their chances of winning and that no purchase is necessary to enter the contest. Furthermore, the bill gives the Postal Service administrative subpoena power so it can react and respond more rapidly to deceptive and fraudulent mail schemes. Under our bill, civil fines can be imposed upon the issuance of an enforcement order, or alternatively, in lieu of an enforcement order, rather than awaiting a violation of that order.

By giving the Postal Service these additional tools and authority, this legislation will help combat the growing problem of consumer fraud in the form of deceptive or misleading mailings that use games of chance or sweepstakes contests to solicit the purchase of a product. Other deceptions have included packaging sweepstakes solicitations to closely resemble government documents and promising recipients that they have already won, even though the fine print reveals minuscule odds of winning.

The elderly are particularly vulnerable to sweepstakes fraud. Some senior citizen sweepstakes recipients have traveled thousands of miles to claim prizes they thought they had been assured of winning. Others spend thousands of dollars on magazines and other merchandise because they are convinced it will boost their chances of winning.

Like Senators LEVIN and COLLINS, I have heard from numerous constituents about how some crafty purveyors prey on the public, often persons on fixed or limited incomes, through these deceptive envelopes and packaging techniques. Recently, one constituent related how her elderly mother has become ''hooked'' on sweepstakes. She shared with me a bulky stack of envelopes, representing just a sample of the mailings. She remarked how her mother is convinced that the company will think better of her if she orders lots of merchandise, and that buying more products will accord her special consideration and improve her chances to win a lucrative prize. She noted that some companies, by using clever typefaces, sophisticated and official-looking symbols, gimmicky labels, and personalization, lead people to believe the company is writing to them personally, and that the odds of winning are high. Her story is but one example of what we have heard, and why it is so important to ensure that strong laws are enacted to address deceptive practices.

I am pleased that the United States Postal Inspector, the National Fraud

Information Center, the Direct Marketing Association, the American Association of Retired Persons, and a special committee of the Association of Attorneys General are among those who are actively seeking ways to ensure that consumers are informed and protected from dishonest marketing ploys.

I look forward to the hearings planned by Senator COLLINS in the Permanent Subcommittee on Investigations to examine the problem of deceptive mailings and legislative solutions. I urge my colleagues to join me in supporting enactment of legislation to promote more honesty by product marketers, clearer disclosure for consumers, tighter penalties for violators, and quicker and more effective enforcement tools for more rapid response to unscrupulous practices.

By Mr. HUTCHINSON (for himself, Mr. LOTT, Mr. NICKLES, Mr. MACK, Mr. CRAIG, Mr. COVERDELL, Mr. WARNER, Mr. HATCH, Ms. COLLINS, Mr. COCHRAN, Mr. BUNNING, Mr. ASHCROFT, Mr. HELMS. Mr. GRASSLEY, Mr. ENZI, Mr. INHOFE, Mr. BOND, Mr. GORTON, Mr. FRIST, Mr. THURMOND, Mr. HAGEL, Mr. ALLARD, Mr. GRAMS, Mr. KYL, Mr. ROBERTS, Mr. SESSIONS, and Mr. SHELBY):

S. 337. A bill to preserve the balance of rights between employers, employees, and labor organizations which is fundamental to our system of collective bargaining while preserving the rights of workers to organize, or otherwise engage in concerted activities protected under the National Labor Relations Act; to the Committee on Health, Education, Labor, and Pensions.

TRUTH IN EMPLOYMENT ACT OF 1999

Mr. HUTCHINSON. Mr. President, I am honored to have the opportunity to introduce today an important piece of legislation which will provide thousands of businesses in my home state of Arkansas and across the nation with a defense against an unscrupulous practice which is literally crippling them. The Truth in Employment will protect these businesses and curtail the destructive abuse of the union tactic known as salting.

''Salting abuse'' is the calculated practice of placing trained union professional organizers and agents in the non-union workplace whose sole purpose is to harass or disrupt company operation, apply economic pressure, increase operating and legal costs, and ultimately put a company out of business. The objectives of these union agents are accomplished through filing frivolous and unfair labor practice complaints or discrimination charges against the employer with the National Labor Relations Board (NLRB), the Occupational Safety and Health Administration (OSHA), and the Equal Employment Opportunity Commission (EEOC). Salting campaigns have been used successfully to cause economic harm to construction companies and are quickly expanding into other industries across the country. It can cost employers anywhere from $5,000 to hundreds of thousands of dollars to defend him or herself against this practice.

Salting is not merely a union organizing tool. It has become an instrument of economic destruction aimed at non-union companies. Union send their agents into non-union workplaces under the guise of seeking employment. Hiding behind the shield of the National Labor Relations Act, these ''salts'' use its provisions offensively to bring hardship on their employers. They deliberately increase the operating costs of their employers through actions such as sabotage and frivolous discrimination complaints.

In the 1995 Town & Country decision, the U.S. Supreme Court held that paid union organizers are ''employees'' within the meaning of the National Labor Relations Act. Because of their broad interpretation of this Act, employers who refuse to hire paid union employees or their agents violate the Act if they are shown to have discriminated against the union salts.

This leaves employers in a precarious position. If employers refuse to hire union salts, they will file frivolous charges and accuse the employer of discrimination. Yet, if salts are employed, they will create internal disruption through a pattern of dissension and harassment. They are not there to work—only to disrupt. In a classic example of salting abuse, John Gaylor of Gaylor Electric had to fire one employee after this refusal to wear his hard hat on his head. This employee would strap the hard hat to his knee and then dare Gaylor to fire him because he said the employee manual stated only that he had to wear the hard hat, it didn't state where he had to wear it.

As a result of the salting abuse, whenever many small businesses make hiring decisions, the future of the company, and its very existence, may be at stake. A wrong decision can mean frivolous charges, legal fees, and lost time, which may threaten the very existence of their business.

I have received many accounts from across the nation of how salting abuse is affecting small businesses. The following examples were received as testimony in Congressional hearings. In my home state of Arkansas, Little Rock Electrical Contractors, Inc. incurred in excess of $80,000 in legal fees over the course of one year to fight 72 unfair labor practice charges, of which 20 were dismissed, 45 were set for trial, and 7 were appealed. In Cape Elizabeth, Maine, over a period of four years, Bay Electric incurred $100,000 in legal fees plus lost time to defend itself against 14 unfair labor practices, all of which were dismissed. In Delano, Minnesota, Wright Electric incurred $150,000 in legal fees and lost between $200,000 and $300,000 in lost time to win the dismissal of 14 of 15 unfair labor practices charges. And, in Clearfield, Pennsylvania, R.D. Goss incurred $75,000 battling approximately 20 unfair labor practices; while all but one of the charges were dismissed, the company was forced to close its doors after doing business for thirty-eight years. Finally, in Union, Missouri, it cost the Companies $150,000 to win the dismissal of 47 unfair labor practices charges and to achieve one settlement for $200.

Another common salting abuse is for salts to actually create Occupational Safety and Health Administration (OSHA) violations and then report those violations to OSHA. When the employer terminates these individuals, they file frivolous unfair labor practices against the employer. This results in wasted time and money, as well as bad publicity for the company.

These are just a few of the many examples of how devastating salting abuse can be to small businesses. What makes this practice even more appalling is how organized labor openly advocates its use. According to the group, the ''Coalition For Fairness For Small Businesses And Employees,'' the labor unions are even advocating this practice in their manuals.

The Union Organizing Manual of the International Brotherhood of Electrical Workers explains why salts are used. Their purpose is to gather information that will ''. . . shape the strategy the organizer will use later in the campaign to threaten or actually apply the economic pressure necessary to cause the employer to . . . raise his prices to recoup additional costs, scale back his business, leave the union's jurisdiction, go out of business, and so on. . .''

Thomas J. Cook, a former ''salt,'' explained the ultimate goal of salting abuse. Mr. Cook said, ''Salting has become a method to stifle competition in the marketplace, steal away employees, and to inflict financial harm on the competition.'' Mr. Cook concluded by stating that ''[i]n a country where free enterprise and independence is so highly valued, I find these activities nothing more than legalized extortion.''

The balance of rights must be restored between employers, employees and labor organizations. The Truth in Employment Act seeks to do this by inserting a provision in the National Labor Relations Act establishing that an employer is not required to employ any person who is not a bona fide employee applicant, in that such person is seeking employment for the primary purpose of furthering interests unrelated to those of that employer. Furthermore, this legislation will continue to allow employees to organize and engage in activities designed to be protected by the National Labor Relations Act.

This measure is not intended to undermine those legitimate rights or protections. Employers will gain no ability to discriminate against union membership or activities. This bill only seeks to stop the destructive results of

salting abuse. Salting abuse must be curtailed if we are to protect the small business owners and employees of this nation. This legislation will insure these protections are possible.

It is for these reasons that I am introducing the Truth in Employment Act. I ask that my colleagues support this bill and restore fairness to the American workplace.

By Mr. CAMPBELL:

S. 338. A bill to provide for the collection of fees for the making of motion pictures, television productions, and sound tracks in units of the Department of the Interior, and for other purposes; to the Committee on Energy and Natural Resources.

NATIONAL PARK SERVICE COMMERCIAL FILMING PERMIT FEE ACT OF 1999

Mr. CAMPBELL. Mr. President, today I introduce the National Park Service Commercial Filming Permit Fee Act of 1999. This bill gives the National Park Service (NPS) and the National Wildlife Refuge System (NWRS) the authority to require fee-based permits for the use of Park Service and National Wildlife Reserve lands in the production of motion pictures, television programs, advertisements or other similar commercial purposes. This bill is based on legislation which I introduced in the 105th Congress, S. 1614.

Our National Parks are among our nation's most valuable resources. The National Park Service Commercial Filming Permit Fee Act of 1999 would help us to protect them and ensure that future generations will be able to enjoy their beauty by making sure the parks are reimbursed for their commercial use.

The Bureau of Land Management and the Forest Service already have a similar permit and fee system for commercial filming on public lands. It doesn't make sense that our National Parks, which have been deemed to be even more precious by their designation, should be used commercially for free. This is especially important now when taxpayers are facing increased fees to enter the national parks and more people are enjoying our natural wonders every year in record numbers.

My bill allows the National Park Service to collect a fair return fee when the American peoples' parks are used in these commercial media ventures and then devotes those fees to the preservation of our National Parks. Common sense directs us to do this, and I believe this bill is fair for the commercial users of our National Parks, and more importantly, for the American taxpayers.

This bill builds upon progress made through hearings, conferences, and other valuable input received during the 105th Congress. The revised legislative language reflects input from the administration, industry groups—including the Motion Picture Association of America—and public interest groups such as the National Parks and Conservation Association. This bill is similar to legislation that my friend and colleague from Colorado, Congressman HEFLEY, introduced in the 105th and reintroduced in the 106th Congress as H.R. 154.

Mr. President, I have letters from two key interested associations in support of my bill's goals. I ask unanimous consent that these letters of support from the Motion Picture Association of America and the National Parks and Conservation Association and my bill be printed in the RECORD. I urge my colleagues to support passage of this bill.

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

S. 338

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

SECTION 1. USE OF LAND; FEE AUTHORITY.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary of the Interior (referred to in this Act as the ''Secretary'') may permit the use of land and facilities in units administered by the Secretary for—

(A) motion picture production;

(B) television production;

(C) soundtrack production;

(D) the production of an advertisement using a prop or a model; or

(E) any similar commercial project.

(2) EXCEPTION.—The Secretary shall not permit a use of land or a facility described in paragraph (1) if the Secretary determines that a proposed use—

(A) is not appropriate; or

(B) will impair the value or resources of the land or facility.

(3) BONDING AND INSURANCE.—The Secretary may require a bond, insurance, or such other means as is necessary to protect the interests of the United States in connection with an activity conducted under a permit issued under this Act.

(b) FEES.—

(1) IN GENERAL.—For any use of land or a facility in a unit described in subsection (a), the Secretary shall assess—

(A) a reimbursement fee; and

(B) a special use fee.

(2) REIMBURSEMENT FEE.—

(A) IN GENERAL.—The Secretary shall require the payment of a reimbursement fee in an amount that is not less than the amount of any direct and indirect costs to the Government incurred—

(i) in processing the application for a permit for a use of land or facilities; and

(ii) as a result of the use of land and facilities under the permit, including any necessary costs of cleanup and restoration.

(B) FUNDS COLLECTED.—An amount equal to the amount of a reimbursement fee collected under this subparagraph shall—

(i) be retained by the Secretary; and

(ii) be available for use by the Secretary, without further Act of appropriation, in the unit in which the reimbursement fee is collected.

(3) SPECIAL USE FEE.—

(A) FACTORS IN DETERMINING SPECIAL USE FEE.—To determine the amount of a special use fee, the Secretary shall establish a schedule of rates sufficient to provide a fair return to the Government, based on factors such as—

(i) the number of people on site under a permit;

(ii) the duration of activities under a permit;

(iii) the conduct of activities under a permit in any area designated by a statute or regulation as a special use area, including a wilderness or research natural area;

(iv) the amount of equipment on site under a permit; and

(v) any disruption of normal park function or accessibility, including temporary closure of land or a facility to the public.

(B) FUNDS COLLECTED.—A special use fee under this subparagraph shall be distributed as follows:

(i) 80 percent shall be deposited in a special account in the Treasury, and shall be available, without further Act of appropriation, for use by the supervisors of units where the fee was collected.

(ii) 20 percent shall be deposited in a special account in the Treasury, and shall be available, without further Act of appropriation, for use by supervisors of units in the region where the fee was collected.

(4) EXCEPTIONS.—

(A) FEE WAIVER OR REDUCTION.—The Secretary may waive a special use fee or charge a reduced special use fee if the activity for which the fee is charged provides clear educational or interpretive benefits for the Department of the Interior or the public.

(B) REGULAR VISITOR ENTRANCE FEE.—Nothing in this subsection affects the requirement that, in addition to fees under in subparagraph (A), each individual entering a unit for purposes described in subsection (a) shall pay any regular visitor entrance fee charged to visitors to the unit.

(c) REGULATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate regulations that establish a schedule of rates for fees collected under subsection (b) based on factors listed in subsection (b)(2)(C)(ii).

(2) REVIEW OF REGULATIONS.—

(A) INITIAL REVIEW.—Not later than 3 years after the date of enactment of this Act, the Secretary shall review and, as appropriate, revise the regulations promulgated under this subsection.

(B) CONTINUING REVIEW.—After the date of promulgation of regulations under subparagraph (A), the Secretary shall periodically review the regulations and make necessary revisions.

(d) APPLICABILITY OF REGULATIONS.—

(1) PROHIBITION ON CERTAIN FEES.—The prohibition on fees set forth in section 5.1(b)(1) of title 43, Code of Federal Regulations, shall cease to apply beginning on the effective date of regulations promulgated under this Act.

(2) EFFECT ON OTHER REGULATIONS.—Nothing in this Act, other than paragraph (1), affects the regulations set forth in part 5 of title 43, Code of Federal Regulations.

(e) CIVIL PENALTY.—

(1) IN GENERAL.—A person that violates any regulation promulgated under this Act, or conducts or attempts to conduct an activity under subsection (a)(1) without obtaining a permit or paying a fee, shall be assessed a civil penalty—

(A) for the first violation, in the amount that is equal to twice the amount of the fees charged (or fees that would have been charged) under subsection (b)(2);

(B) for the second violation, in the amount that is equal to 5 times the amount of the fees charged (or fees that would have been charged) under subsection (b)(2); and

(C) for the third and each subsequent violation, in the amount that is equal to 10 times the amount of the fees charged (or fees that would have been charged) under subsection (b)(2).

(2) COSTS.—A person that violates this Act or any regulation promulgated under this Act shall be required to pay all costs of any

proceedings instituted to enforce this subsection.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this Act and the regulations promulgated under this Act take effect 180 days after the date of enactment of this Act.

(2) EXCEPTION.—This subsection and the authority of the Secretary to promulgate regulations under subsection (c) take effect on the date of enactment of this Act.

MOTION PICTURE ASSOCIATION
OF AMERICA, INC.,
Washington, DC, February 2, 1999.

Hon. BEN NIGHTHORSE CAMPBELL,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR BEN: I am writing to you today about your legislation dealing with the filming of motion pictures in national park and public lands. I would like to lend my support for the aim of this bill and pledge to work with you on some areas of concern to our industry.

Right now, the National Parks Service cannot charge fees for filming. Although the parks can be reimbursed for costs of filming, these reimbursements do not provide real financial support to the parks. As a result, park administrators can become indifferent to filming, or even hostile because their efforts to promote movie making in the park don't produce for them any direct return.

Your legislation provides a reasonable solution by setting forth a fee schedule that is predictable. We think the fee schedule approach is an improvement over the ''fair market value'' approach from previous legislation. The fee schedule provides a more simple, clear and predictable way of collecting fees. Furthermore, we urge you to limit the factors as much as possible to the number of people in the crew and the number of days in the shoot.

As the bill moves through the legislative process, we hope to work with you further. A particular area of concern is the provision related to regular visitor entrance fees.

All in all, I applaud your efforts. I know that you, Senator are one who particularly appreciates the treasure of our national park system and public lands. I am pleased that the American movie, exhibited in over 150 countries, advertises to the world the unduplicatable beauties of our national parks, irreplaceable treasures which belong to the American citizenry.

I look forward to working with you and your staff.

With great affection,

JACK VALENTI.

NATIONAL PARKS
AND CONSERVATION ASSOCIATION,
Washington, DC, February 2, 1999.

Hon. BEN NIGHTHORSE CAMPBELL,
U.S. Senate, Washington, DC.

DEAR SENATOR CAMPBELL: The National Parks and Conservation Association appreciates your efforts to close the ''equity gap'' between visitors to the National Park System and those in Hollywood and on Madison Avenue who have profited from their commercial use of the national parks.

For the past five decades, the National Park Service has been prohibited from collecting anything but a nominal permitting fee and a modest amount of cost recovery (associated with monitoring filming activity and any necessary site remediation) from those who undertake commercial filming projects in our national parks. Yet, the individuals and institutions using the parks as a backdrop for their films, commercials, television programs, etc. have profited handsomely.

It is grossly unfair to allow a few businesses to profit from the parks while the visiting public is being asked to pay more in entrance and use fees, and while the parks suffer from a significant and ongoing budgetary shortfall.

We are optimistic that your legislation will help generate the debate necessary to result in the remedying of this inequity. Thank you for taking this first and positive step towards solving this problem.

Sincerely,

WILLIAM J. CHANDLER,
Vice President for Conservation Policy.

By Mr. MCCAIN (for himself and Mr. INOUYE):

S. 339. A bill to amend the Indian Gaming Regulatory Act, and for other purposes; to the Committee on Indian Affairs.

INDIAN GAMING REGULATORY ACT AMENDMENTS OF 1999

Mr. MCCAIN. Mr. President, I rise today, along with my distinguished colleague, Senator INOUYE, to propose the Indian Gaming Regulatory Act Amendments of 1999. The good Senator and I have sponsored this bill for the past four years because of our continuing belief that we must strengthen the Indian gaming law and protect the authority of tribal governments to engage in gaming activities.

Senator INOUYE and I have sat through hundreds of hours of discussions with Indian tribes, the States and interested parties over the expansion of Indian gaming. While the interest grows stronger in amending IGRA, a proposal has not been endorsed by either the Tribes or the States. Our intention in forwarding this bill is to once again set forth a balanced and fair discussion over necessary changes to the Indian gaming law.

The bill we are introducing today will provide for minimum federal standards in the regulation and licensing of class II and III gaming as well as all of the contractors, suppliers, and industries associated with such gaming. This will be accomplished through the Federal Indian Gaming Regulatory Commission which will be funded through assessments on Indian gaming revenues and fees imposed on license applicants.

In addition, this bill is consistent with the 1987 decision of the U.S. Supreme Court in the case of California v. Cabazon Band of Mission Indians in that it neither expands or further restricts the scope of Indian gaming. The laws of each State would continue to be the basis for determining what gaming activities may be available to an Indian tribe located in that State.

Under the Indian Gaming Regulatory Act of 1988, Indian tribes are required to expend the profits from gaming activities to fund tribal government operations or programs and to promote tribal economic development. Profits may only be distributed directly to the members of an Indian tribe under a plan which has been approved by the Secretary of Interior. Virtually all of the proceeds from Indian gaming activities are used to fund the social welfare, education, and health needs of the Indian tribes. Schools, health facilities, roads, and other vital infrastructure are being built by the Indian tribes with the proceeds from Indian gaming.

In the years before the enactment of the Indian Gaming Regulatory Act and in the years since its enactment, we have heard concerns about the possibility for organized criminal elements to penetrate Indian gaming. I believe the Act provides for a very substantial regulatory role and law enforcement role by the States and Indian tribes in class III gaming and by the Federal government in Class II gaming. The record clearly shows that in the few instances of known criminal activity in class III gaming, the Indian tribes have discovered the activity and have sought Federal assistance in law enforcement.

Indian gaming will continue to be scrutinized because of its increasing prominence in our nation's economy and political spectrum. I believe that any proposal to amend the Indian gaming law should respect both the rights of the Indian tribes and the States, while recognizing the benefits of well-regulated gaming to both Indian and non-Indian communities. I look forward to working with my colleagues and all affected entities on a continuing dialogue to protect the integrity of Indian gaming.

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

Sections 1–3 set forth the title, findings and purpose of the Act.

Section 4 amends the Indian Gaming Regulatory Act to revise definitions.

Section 5 establishes (in lieu of the National Indian Gaming Commission) the Federal Indian Gaming Regulatory Commission as an independent U.S. agency. It directs the Commission to establish minimum Federal standards for background investigations, internal control systems, and licensing. The Commission is granted investigatory authority.

Section 6 sets forth the powers of the Chairperson of the Federal Indian Gaming Regulatory Commission.

Section 7 sets forth the powers and authority of the Commission.

Section 8 sets forth the regulatory framework for class II and III gaming.

Section 9 directs the President to establish the Advisory Committee on Minimum Regulatory Requirements and Licensing Standards.

Sections 10, 11, 12, 13 and 14 set forth requirements for: (1) licensing; (2) conduct of class I, II, and III gaming on Indian lands; and (3) contract review.

Sections 15 and 16 set forth civil penalty and judicial review provisions.

Sections 17 and 18 fund the Commission from authorized appropriations and class II and III gaming fees.

Section 19 applies specified tax withholding and bank reporting requirements to Indian gaming operations. Requires the Commission to make certain law enforcement information available to State and tribal authorities.

By Mr. ALLARD:

S. 340. A bill to amend the Cache La Poudre River Corridor Act to make technical corrections, and for other purposes; to the Committee on Energy and Natural Resources.

TECHNICAL CORRECTIONS TO THE CACHE LA POUDRE RIVER CORRIDOR ACT

Mr. ALLARD. Mr. President, today I am introducing a bill to amend the Cache La Poudre River Corridor Act to make technical corrections.

This Act became Public Law on October 19, 1996 thanks to the diligence and hard work of Senator Brown, my predecessor. The purpose of this Act is to designate the Cache La Poudre Corridor with the Cache La Poudre River Basin. The Poudre Corridor provides an educational and inspirational benefit to both present and future generations, as well as unique and significant contributions to our national heritage of cultural and historical lands, waterways, and structures within the Corridor.

It is important that the following technical corrections be made to ensure that this act is interpreted and implemented correctly.

By Mr. FRIST (for himself, Mr. MCCAIN, and Mr. BURNS):

S. 342. A bill to authorize appropriations for the National Aeronautics and Space Administration for fiscal years 2000, 2001, and 2002, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT FOR FY 2000, 2001, AND 2002

Mr. FRIST. Mr. President, I rise to introduce the authorization bill for the National Aeronautics and Space Administration for fiscal years 2000, 2001, and 2002.

NASA's unique mission of exploration, discovery, and innovation has preserved America's role as both a world leader in aviation and the preeminent spacefaring nation. It is NASA's mission to:

Explore, use, and enable the development of space for human enterprise;

Advance scientific knowledge and understanding of the Earth, the Solar System, and the Universe and utilize the environment of space for research; and

Research, develop, verify and transfer advanced aeronautics, space and related technologies.

This bill is essentially the same as reported by the Commerce Committee last year. It contains provisions that had bi-partisan support and would have been included in a manager's amendment had the bill been brought up for discussion on the Senate floor.

The bill, which authorizes $13.4 billion for NASA in FY 2000, $13.8 billion for FY 2001, and $13.9 billion for FY 2002, provides for the continued development of the International Space Station, Space Shuttle operations and safety and performance upgrades, space science, life and micro gravity sciences and applications, the Earth Science program, aeronautics and space transportation technology, mission communications, academic programs, mission support and the Office of the Inspector General.

The FY 2000 levels are consistent with the President's request with the exception of a reduction of $200 million for the International Space Station account. This reduction eliminates the funding requested for the Russian Program Assurance activities. I feel that it is only appropriate to withhold judgement on providing additional funding to assist Russia with their financial problems until NASA provides additional explanation on how these funds will be used. The situation in Russia is changing daily and we must fully understand the impact on the Station schedule and overall cost before committing more funds.

The FY 2001 and FY 2002 levels represent a 3 percent increase over the previous year's amount with the exception of the Space Station. The Space Station has been authorized in accordance with NASA outyear projections for FY 2001 and FY 2002.

The bill contains a price cap on the development costs of the International Space Station. The price cap language provides NASA with additional funding Space Station development and allows for additional Space Shuttle flights by exempting certain activities at the point when research, operating and crew return vehicles activities' costs comprise more than 95 percent of the annual funding for the Station. At this point, the majority of the activities are truly beyond the development phase of the project.

The bill provides for liability cross-waivers for the Space Station. The provision authorizes, but does not require NASA to enter into agreements with any cooperating party participating in the Space Station program, whereby all involved parties agree to take the risk of damage to their own assets, and agrees not to sue other entities. These cross waivers would not apply in the case of sabotage or other deliberate and willful acts.

NASA has indicated that these liability cross-waivers will be needed to fully commercialize the Space Station. I support the commercialization of the Station as a means of achieving a return on investment for the public through the creation of new industries and jobs for the Nation.

I am concerned with the cost and schedule delays in other programs as well. The X–33 test vehicle and the Advanced X-ray Astrophysics Facility programs represents major investments of public funds and therefore should be managed such that program requirements are met in a timely manner.

The balance between manned and unmanned flight, as well as the balance between fundamental science and development activities, is in need of review. I intend to pursue these balances further when the Commerce Committee holds hearings on the NASA budget and associated activities in the upcoming weeks.

Therefore, I, along with my co-sponsors, urge the Members of this body to support this bill and allow NASA to continue its mission of support for all space flight, for technological progress in aeronautics, and for space science.

Mr. MCCAIN. Mr. President, I rise today as a cosponsor of the National Aeronautics and Space Administration (NASA) authorization bill for fiscal years 2000, 2001, and 2002. As Chairman of the Committee on Commerce, Science, and Transportation, I am able to work closely with NASA and to review the agency's achievements on a continual basis. I am proud of NASA's accomplishments and want to applaud its sustained dominance throughout the world as the premier leader in basic aeronautics and space research.

Yet leadership has a price. All one has to do is open the newspaper to learn about NASA's endless difficulties with the International Space Station, the agency's most comprehensive and complex endeavor to date.

This one-of-a-kind research facility bears a lifetime price tag of approximately $100 billion dollars to the American taxpayers. Although this program is a long-term investment which will bring discoveries unimaginable to scientists today, it is our duty to protect the American people from the repeated inconsistent performance of the participating foreign partners, prime contractor, and program managers.

During the 105th Congress, I offered an important amendment to this legislation that would impose a price cap on the development costs of the International Space Station. The language would ensure maximum program flexibility by providing NASA additional funding for Space Shuttle flights to service the Station, and by exempting specific activities when development costs are 5 percent or less of the Station's annual budget. I will again personally encourage my Congressional colleagues to enact a cost-cap measure this year to impose some semblance of fiscal restraint, however, it is up to NASA to prove that it is a responsible steward of public resources.

The recent political and economic uncertainty in Russia has only exacerbated the development delay of the Russian components. Congress must pledge to work with NASA to bring further accountability to the Space Station if the United States is going to continue its leadership, both financially and managerially.

NASA is not, and should not become a one mission agency. Congress must ensure that the Space Station does not impede progress on NASA's other important programs such as the Reusable Launch Vehicle, commonly referred to as the RLV.

During the past year Congress has expressed its grave concerns about the alleged illegal transfers of U.S. missile technology to China and other nondemocratic nations. Yet, neither the

transferring of licensing control from the Commerce Department back to State, nor an embargo on foreign launches will solve the underlying issues which result in American companies choosing foreign launch sites. Additional work is needed to substantially change the current environment for the domestic commercial launch industry.

What the community needs is cheaper access to space including less expensive vehicles, launching costs, and insurance. The X–33, a joint venture between NASA and private industry, and X–34 programs are examples of promising flight demonstrators which will lead the path to stimulating the industry.

Mr. President, we are at a unique juncture in the history of space discovery. I urge my colleagues to support this legislation, and to help restore Congressional confidence in NASA and the Nation's valuable space program.

By Mr. CRAIG:

S. 341. A bill to amend the Internal Revenue Code of 1986 to increase the amount allowable for qualified adoption expenses, to permanently extend the credit for adoption expenses, and to adjust the limitations on such credit for inflation, and for other purposes; to the Committee on Finance.

HOPE FOR CHILDREN ACT

Mr. CRAIG. Mr. President, I rise to introduce the Hope for Children Act, which is also being introduced today in the House of Representatives by Congressman TOM BLILEY of Virginia.

I think all of us—no matter what party or philosophy—share the hope that every child in the world has a loving, permanent home. The Hope for Children Act is aimed at making that hope a reality for more children, by making it possible for more families to open their homes and hearts to a child through adoption.

In the past few years, Congress has taken a number of steps to promote adoption in this country. I commend my colleagues on both sides of the aisle and in both chambers for their dedication to this effort. As an adoptive father myself, and co-chair of the bipartisan, bicameral Congressional Coalition on Adoption, I've been pleased to see more and more American families formed through adoption, and I sincerely believe the work of Congress has been a contributing factor.

However, we have some unfinished business to take care of, and that's what I'm here to talk about today.

Many of my colleagues will remember back in 1996, we succeeded in enacting a tax credit for adoption expenses. We did so, because we realized that adopting families face extraordinary challenges: not only must they forge a new family unit while navigating a labyrinth of legal or regulatory requirements, but they also have financial challenges above and beyond the usual expenses of caring for and raising children. The cost of adoption can easily push into the tens of thousands of dollars, counting legal fees, travel, medical bills and other expenses. All too often, it is the financial challenge that becomes an insurmountable obstacle to bringing a child who is alone in the world together with a loving family.

We knew the adoption tax credit wouldn't eliminate the expense of adoption outright, but would only allow eligible adoptive families to keep a bit more of their own hard-earned income to devote to those expenses. As a result, adoptive parents may be eligible to receive a tax credit of $5000 to help cover out-of-pocket expenses related to each adoption, or a $6000 tax credit for the adoption of a ''special needs'' child.

If the comments I've been hearing from families across the nation are any gauge, the credit has helped make adoption a reality for a lot of children. As more individuals explore the adoption option, they are finding the credit a small but significant cushion against the financial impact. Even so, I've received a number of constructive suggestions from families as to how the adoption tax credit could be improved, to make it more effective in promoting adoption in the United States.

Furthermore, back in 1996 when we originally debated this matter, there were political and fiscal considerations that caused Congress to include a sunset provision for the adoption tax credit. Unless we act soon to extend this enormously helpful tool, it will expire.

For all of those reasons, I am introducing the Hope for Children Act. It builds on the work done by our previous Congress, to improve and extend the adoption tax credit.

Specifically, it would make the tax credit permanent, and adjust it for inflation. It would also exclude the credit from calculation of the alternative minimum tax. The full credit would be available for taxpayers with adjusted gross incomes under $150,000; those with adjusted gross incomes between $150,000 and $190,000 would be able to take a reduced credit. No credit would be available to those with adjusted gross incomes of more than $190,000.

I should say at this point that I do not think this bill is the final word on the subject. I intend to work with interested groups and individuals on additional legislation that will promote adoption—perhaps most important, that will do more to promote the adoption of children with special needs.

There are so many children in the United States and the world who can only hope for the loving, permanent home that should be their birthright—I invite all Senators to join me in supporting the Hope for Children Act to help make their dreams a reality.

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

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

S. 341

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 ''Hope for Children Act''.

SEC. 2. ADOPTION EXPENSES.

(a) INCREASE IN AMOUNTS ALLOWED.—

(1) DOLLAR AMOUNT OF ALLOWED EXPENSES.—Paragraph (1) of section 23(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking ''$5,000'' and all that follows and inserting ''$10,000.''.

(2) PHASE-OUT LIMITATION.—Clause (i) of section 23(b)(2)(A) of such Code (relating to income limitation) is amended by striking ''$75,000'' and inserting ''$150,000''.

(b) REPEAL OF SUNSET ON CHILDREN WITHOUT SPECIAL NEEDS.—

(1) IN GENERAL.—Paragraph (2) of section 23(d) of such Code (relating to definition of eligible child) is amended to read as follows:

''(2) ELIGIBLE CHILD.—The term 'eligible child' means any individual who—

''(A) has not attained age 18, or

''(B) is physically or mentally incapable of caring for himself.''.

(2) CONFORMING AMENDMENT.—Subsection (d) of section 23 of such Code (relating to definitions) is amended by striking paragraph (3).

(c) ADJUSTMENT OF DOLLAR AND INCOME LIMITATIONS FOR INFLATION.—Section 23 of such Code is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

''(h) ADJUSTMENTS FOR INFLATION.—In the case of a taxable year beginning after December 31, 2000, each of the dollar amounts in paragraphs (1) and (2)(A)(i) of subsection (b) shall be increased by an amount equal to—

''(1) such dollar amount, multiplied by

''(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1999' for 'calendar year 1992' in subparagraph (B) thereof.''.

(d) LIMITATION BASED ON AMOUNT OF TAX.—

(1) IN GENERAL.—Subsection (c) of section 23 of such Code is amended by striking ''the limitation imposed'' and all that follows through ''1400C)'' and inserting ''the applicable tax limitation''.

(2) APPLICABLE TAX LIMITATION.—Subsection (d) of section 23 of such Code (as amended by subsection (b)) is further amended adding at the end the following new paragraph:

''(3) APPLICABLE TAX LIMITATION.—The term 'applicable tax limitation' means the sum of—

''(A) the taxpayer's regular tax liability for the taxable year, reduced (but not below zero) by the sum of the credits allowed by sections 21, 22, 24 (other than the amount of the increase under subsection (d) thereof), 25, and 25A, and

''(B) the tax imposed by section 55 for such taxable year.''.

(3) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 26 of such Code (relating to limitation based on amount of tax) is amended by inserting ''(other than section 23)'' after ''allowed by this subpart''.

(B) Paragraph (1) of section 53(b) of such Code (relating to minimum tax credit) is amended by inserting ''reduced by the aggregate amount taken into account under section 23(d)(3)(B) for all such prior taxable years,'' after ''1986,''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

By Mr. BOND (for himself, Mr. BURNS, Ms. SNOWE, Mr. ENZI, Mr. COVERDELL, Mr. HAGEL, Mr. KYL, Mr. CRAIG, Mr. INHOFE, Mr. HELMS, Ms. COLLINS, Mr. SPECTER, Mr. JEFFORDS, Mr. ROBERTS, and Mr. HUTCHINSON):

S. 343. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for 100 percent of the health insurance costs of self-employed individuals; to the Committee on Finance.

SELF-EMPLOYED HEALTH INSURANCE FAIRNESS ACT OF 1999

By Mr. BOND (for himself, Mr. NICKLES, Ms. SNOWE, Mr. COVERDELL, Mr. BENNETT, and Mr. COCHRAN):

S. 344. A bill to amend the Internal Revenue Code of 1986 to provide a safe harbor for determining that certain individuals are not employees; to the Committee on Finance.

INDEPENDENT CONTRACTOR SIMPLIFICATION AND RELIEF ACT OF 1999

Mr. BOND. Mr. President, small businesses today face enormous burdens when it comes to taxes. Each year they pay a growing portion of their revenues on income, employment, and excise taxes. Yet even before they write the tax check, they spend more than 5% of their revenues just to comply with the tax laws. These revenues are spent on accountants, bookkeepers, and lawyers to sort out the countless pages of tax laws, regulations, forms, instructions, rulings, and other guidance published by the IRS. In addition, small business owners must dedicate valuable time and energy on day-to-day record-keeping and other compliance requirements, all of which keep them from doing what they do best—running their business.

As the Chairman of the Committee on Small Business, I have heard from small business owners in Missouri and across this country that they are more than willing to pay their fair share of taxes. But what they object to is paying high tax bills and vast amounts for professional tax assistance only to end up the victim of an unfair tax code.

Mr. President, I rise today to introduce legislation that will eliminate two major sources of that unfairness and provide a level playing field for the millions of men and women who work exceedingly hard to make their small enterprises a success. These bills are common-sense measures that respond to the calls from small businesses for tax fairness and simplicity.

My first bill, the ''Self-Employed Health Insurance Fairness Act of 1999,'' will end one of the most glaring inequities that has existed in our tax law—the deductibility of health-insurance costs for the self-employed. For nearly five years, I have been working to see that the self-employed receive equal treatment when it comes to the deductibility of health insurance.

During the 105th Congress, we made substantial progress. First, in the Taxpayer Relief Act of 1997, we broke through the long-standing cap on the deduction to provide 100% deductibility. Then, last Fall, we passed legislation that will speed up the date that self-employed persons can fully deduct their health-insurance costs to 2003. We also significantly increased the deductible amounts in the intervening years over the prior law. While I strongly supported these improvements, the self-employed still cannot wait four more years for 100% deductibility when their large corporate competitors have long been able to deduct such costs in full.

With the self-employed able to deduct only 60% of their health-insurance costs today, it comes as no surprise that nearly a quarter of the self-employed still do not have health insurance. In fact, five million Americans live in families headed by a self-employed individual and have no health insurance. And those families include 1.3 million children who lack adequate health-insurance coverage.

Mr. President, it is time to finish the job once and for all in this Congress. My bill will increase the deductibility of health insurance for the self-employed to 100% beginning this year. A full deduction will make health insurance more affordable to the self-employed and help them and their families get the health insurance coverage that they need and deserve.

The ''Self-Employed Health Insurance Fairness Act'' also corrects another inequity in the tax law affecting the self-employed who try to provide health insurance for themselves, their families, and their employees. Under current law, the self-employed lose all of the health-insurance deduction if they are eligible to participate in another health-insurance plan—whether or not they actually participate.

This provision affects self-employed individuals like Steve Hagan in my hometown of Mexico, Missouri. Mr. Hagan is a financial planner who runs his own small business. Although he has a group medical plan for his employees, Mr. Hagan cannot deduct the cost of covering himself or his family simply because his wife is eligible for health insurance through her employer. The inequity is clear. Why should he be able to deduct the insurance costs for his employees but not for himself and his family? What if the insurance available through his wife's employer does not meet the needs of their family?

Besides being patently unfair, this is also an enormous trap for the unwary. Imagine the small business owner who learns that she can now deduct 60% of her health-insurance costs this year, and with the extra deduction, she can finally afford a group medical plan for herself and her employees. Then later in the year, her husband gets a new job that offers health insurance. Suddenly, her self-employed health-insurance deduction is gone, and she is left with two choices. She can bear the entire cost of her family's coverage, or terminate the insurance coverage for all her employees. The tax code should not force small business owners into this kind of ''no win'' situation when they try to provide insurance coverage for their employees and themselves.

My bill eliminates this problem by clarifying that the self-employed health-insurance deduction is limited only if the self-employed person actually participates in a subsidized health insurance plan offered by a spouse's employer or through a second job. It's simply a matter of fairness, and a step we need to take now.

The second bill that I introduce today is the ''Independent Contractor Simplification and Relief Act of 1999.'' This bill will provide clear rules and relief for entrepreneurs seeking to be treated as independent contractors and for businesses needing to use independent contractors. As the Chairman of the Small Business Committee, I have heard from countless small business owners who are caught in the environment of fear and confusion that now surrounds the classification of workers. This situation is stifling the entrepreneurial spirit of many small business owners who find that they do not have the flexibility to conduct their businesses in a manner that makes the best economic sense and that serves their personal and family goals.

The root of this problem is found in the IRS' test for determining whether a worker is an independent contractor or an employee. Over the past three decades, the IRS has relied on a 20-factor test based on the common law to make this determination. On first blush, a 20-factor test sounds like a reasonable approach—if a taxpayer demonstrates a majority of the factors, he is an independent contractor. Not surprisingly, the IRS' test is not that simple. It is a complex set of extremely subjective criteria with no clear weight assigned to any of the factors. As a result, small business taxpayers are not able to predict which of the 20 factors will be most important to a particular IRS agent, and finding a certain number of these factors in any given case does not guarantee the outcome.

To make matters worse, the IRS' determination inevitably occurs two or three years after the parties have determined in good faith that they have an independent-contractor relationship. And the consequences can be devastating. The business recipient of the services is forced to reclassify the independent contractor as an employee and must pay the payroll taxes the IRS says should have been collected in the prior years. Interest and penalties are also piled on. The result for many small businesses is a tax bill that bankrupts the company. But that's not the end of the story. The IRS then goes after the service provider, who is now classified as an employee, and disallows a portion of her business expenses—again resulting in additional taxes, interest and penalties.

Mr. President, all of us in this body recognize that the IRS is charged with

the duty of collecting Federal revenues and enforcing the tax laws. The problem in this case is that the IRS is using a procedure that is patently unfair and subjective. And the result is that businesses must spend thousands of dollars on lawyers and accountants to try to satisfy the IRS' procedures, but with no certainty that the conclusions will be respected. That's no way for businesses to operate in today's rapidly changing economy.

For its part, the IRS has adopted a worker classification training manual, which according to the agency is an ''attempt to identify, simplify, and clarify the relevant facts that should be evaluated in order to accurately determine worker classification * * *.'' There can be no more compelling reason for immediate action on this issue. The IRS' training manual is more than 150 pages. If it takes that many pages to teach revenue agents how to ''simplify and clarify'' this small business tax issue, I think we can be sure how simple and clear it is going to seem to taxpayers who try to figure it out on their own.

The ''Independent Contractor Simplification and Relief Act'' is based on the provisions of my Home-Based Business Fairness Act, which I introduced at the start of the 105th Congress. My bill removes the need for so many pages of instruction on the 20-factor test by establishing clear rules for classifying workers based on objective criteria. Under these criteria, if there is a written agreement between the parties, and if an individual demonstrates economic independence and independence with respect to the workplace, he will be treated as an independent contractor rather than an employee. And the service recipient will not be treated as an employer. In addition, individuals who perform services through their own corporation or limited liability company will also qualify as independent contractors as long as there is a written agreement and the individuals provide for their own benefits.

The safe harbor is simple, straightforward, and final. To take advantage of it, payments above $600 per year to an individual service provider must be reported to the IRS, just as is required under current law. This will help ensure that taxes properly due to the Treasury will continue to be collected.

Mr. President, the IRS contends that there are millions of independent contractors who should be classified as employees, which costs the Federal government billions of dollars a year. This assertion is plainly incorrect. Classification of a worker has no cost to the government. What costs the government are taxpayers who do not pay their taxes. My bill has three requirements that I believe will improve compliance among independent contractors using the new rules I propose. First, there must be a written agreement between the parties—this will put the independent contractor on notice at the beginning that he is responsible for his own tax payments. Second, the new rules will not apply if the service recipient does not comply with the reporting requirements and issue 1099s to individuals who perform services. Third, an independent contractor operating through his own corporation or limited liability company must file all required income and employment tax returns in order to be protected under the bill.

In the last Congress, concerns were raised that permitting individuals who provide their services through their own corporation or limited liability company to qualify as independent contractors would lead to abusive situations at the expense of workers who should be treated as employees. To prevent this option from being abused, I have added language that limits the number of former employees that a service recipient may engage as independent contractors under the incorporation option. This limit will protect against misuse of the incorporation option while still allowing individuals to start their own businesses and have a former employer as one of their initial clients.

Another major concern of many businesses and independent contractors is the issue of reclassification. My bill provides relief to these taxpayers when the IRS determines that a worker was misclassified. Under my bill, if the business and the independent contractor have a written agreement, if the applicable reporting requirements were met, and if there was a reasonable basis for the parties to believe that the worker is an independent contractor, then an IRS reclassification will only apply prospectively. This provision gives important peace of mind to small businesses that act in good faith by removing the unpredictable threat of retroactive reclassification and substantial interest and penalties.

A final provision of this legislation, Mr. President, is the repeal of section 1706 of the 1986 Tax Reform Act. This section affects businesses that engage technical service providers, such as engineers, designers, drafters, computer programmers, and systems analysts. In certain cases, Section 1706 precludes these businesses from applying the reclassification protections under section 530 of the Revenue Act of 1978. When section 1706 was enacted, its proponents argued that technical service workers were less compliant in paying their taxes. Later examination of this issue by the Treasury Department found that technical service workers are in fact more likely to pay their taxes than most other types of independent contractors. This revelation underscores the need to repeal section 1706 and level the playing field for individuals in these professions.

In the last two Congresses, proposals to repeal section 1706 enjoyed wide bipartisan support. The bill I introduce today is designed to level the playing field for individuals in these professions by providing the businesses that engage them with the same protections that businesses using other types of independent contractors have enjoyed for more than 20 years.

Mr. President, the bills I introduce today are common-sense measures that answer small business' urgent plea for fairness and simplicity in the tax law. As we work toward the day when the entire tax law is based on these principles, we can make a difference today by enacting these two bills. Entrepreneurs have waited too long—let's get the job done!

Mr. President, I ask unanimous consent to include in the RECORD a copy of each bill and a description of its provisions.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 343

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 ''Self-Employed Health Insurance Fairness Act of 1999''.

SEC. 2. DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS INCREASED.

(a) IN GENERAL.—Section 162(l)(1) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, the taxpayer's spouse, and dependents.''

(b) CLARIFICATION OF LIMITATIONS ON OTHER COVERAGE.—The first sentence of section 162(l)(2)(B) of the Internal Revenue Code of 1986 is amended to read as follows: ''Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer participates in any subsidized health plan maintained by any employer (other than an employer described in section 401(c)(4)) of the taxpayer or the spouse of the taxpayer.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SELF-EMPLOYED HEALTH INSURANCE FAIRNESS ACT OF 1999—DESCRIPTION OF PROVISIONS

The bill amends section 162(l)(1) of the Internal Revenue Code to increase the deduction for health-insurance costs for self-employed individuals to 100% beginning on January 1, 1999. Currently the self-employed can only deduct 60% percent of these costs. The deduction is not scheduled to reach 100% until 2003, under the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, which was signed into law in October 1998. The bill is designed to place self-employed individuals on an equal footing with large businesses, which can currently deduct 100% of the health-insurance costs for all of their employees.

The bill also corrects a disparity under current law that bars a self-employed individual from deducting any of his or her health-insurance costs if the individual is eligible to participate in another health-insurance plan. This provision affects self-employed individuals who are eligible for, but

do not participate in, a health-insurance plan offered through a second job or through a spouse's employer. That insurance plan may not be adequate for the self-employed business owner, and this provision prevents the self-employed from deducting the costs of insurance policies that do meet the specific needs of their families. In addition, this provision provides a significant disincentive for self-employed business owners to provide group health insurance for their employees. The bill ends this disparity by clarifying that a self-employed person loses the deduction only if he or she actually participates in another health-insurance plan.

S. 344

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 ''Independent Contractor Simplification and Relief Act of 1999''.

SEC. 2. SAFE HARBOR FOR DETERMINING THAT CERTAIN INDIVIDUALS ARE NOT EMPLOYEES.

(a) IN GENERAL.—Chapter 25 (relating to general provisions relating to employment taxes) is amended by adding after section 3510 the following new section:

''SEC. 3511. SAFE HARBOR FOR DETERMINING THAT CERTAIN INDIVIDUALS ARE NOT EMPLOYEES.

''(a) SAFE HARBOR.—

''(1) IN GENERAL.—For purposes of this title, if the requirements of subsections (b), (c), and (d), or the requirements of subsections (d) and (e), are met with respect to any service performed by any individual, then with respect to such service—

''(A) the service provider shall not be treated as an employee,

''(B) the service recipient shall not be treated as an employer,

''(C) the payor shall not be treated as an employer, and

''(D) compensation paid or received for such service shall not be treated as paid or received with respect to employment.

''(2) AVAILABILITY OF SAFE HARBOR NOT TO LIMIT APPLICATION OF OTHER LAWS.—Nothing in this section shall be construed—

''(A) as limiting the ability of a service provider, service recipient, or payor to apply other provisions of this title, section 530 of the Revenue Act of 1978, or the common law in determining whether an individual is not an employee, or

''(B) as a prerequisite for the application of any provision of law described in subparagraph (A).

''(b) SERVICE PROVIDER REQUIREMENTS WITH REGARD TO THE SERVICE RECIPIENT.—For purposes of subsection (a), the requirements of this subsection are met if the service provider, in connection with performing the service—

''(1) has the ability to realize a profit or loss,

''(2) agrees to perform services for a particular amount of time or to complete a specific result or task, and

''(3) either—

''(A) incurs unreimbursed expenses which are ordinary and necessary to the service provider's industry and which represent an amount equal to at least 2 percent of the service provider's adjusted gross income attributable to services performed pursuant to 1 or more contracts described in subsection (d), or

''(B) has a significant investment in assets.

''(c) ADDITIONAL SERVICE PROVIDER REQUIREMENTS WITH REGARD TO OTHERS.—For the purposes of subsection (a), the requirements of this subsection are met if the service provider—

''(1) has a principal place of business,

''(2) does not primarily provide the service at a single service recipient's facilities,

''(3) pays a fair market rent for use of the service recipient's facilities, or

''(4) operates primarily from equipment not supplied by the service recipient.

''(d) WRITTEN DOCUMENT REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are met if the services performed by the service provider are performed pursuant to a written contract between such service provider and the service recipient, or the payor, and such contract provides that the service provider will not be treated as an employee with respect to such services for Federal tax purposes and that the service provider is responsible for the provider's own Federal, State, and local income taxes, including self-employment taxes and any other taxes.

''(e) BUSINESS STRUCTURE AND BENEFITS REQUIREMENTS.—For purposes of subsection (a), the requirements of this subsection are met if the service provider—

''(1) conducts business as a properly constituted corporation or limited liability company under applicable State laws, and

''(2) does not receive from the service recipient or payor any benefits that are provided to employees of the service recipient.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) FAILURE TO MEET REPORTING REQUIREMENTS.—If for any taxable year any service recipient or payor fails to meet the applicable reporting requirements of section 6041(a) or 6041A(a) with respect to a service provider, then, unless the failure is due to reasonable cause and not willful neglect, the safe harbor provided by this section for determining whether individuals are not employees shall not apply to such service recipient or payor with respect to that service provider.

''(2) CORPORATION AND LIMITED LIABILITY COMPANY SERVICE PROVIDERS.—

''(A) RETURNS REQUIRED.—If, for any taxable year, any corporation or limited liability company fails to file all Federal income and employment tax returns required under this title, unless the failure is due to reasonable cause and not willful neglect, subsection (e) shall not apply to such corporation or limited liability company.

''(B) RELIANCE BY SERVICE RECIPIENT OR PAYOR.—If a service recipient or a payor—

''(i) obtains a written statement from a service provider which states that the service provider is a properly constituted corporation or limited liability company, provides the State (or in the case of a foreign entity, the country), and year of, incorporation or formation, provides a mailing address, and includes the service provider's employer identification number, and

''(ii) makes all payments attributable to services performed pursuant to 1 or more contracts described in subsection (d) to such corporation or limited liability company,

then the requirements of subsection (e)(1) shall be deemed to have been satisfied.

''(C) AVAILABILITY OF SAFE HARBOR.—

''(i) IN GENERAL.—For purposes of this section, unless otherwise established to the satisfaction of the Secretary, the number of covered workers which are not treated as employees by reason of subsection (e) for any calendar year shall not exceed the threshold number for the calendar year.

''(ii) THRESHOLD NUMBER.—For purposes of this paragraph, the term 'threshold number' means, for any calendar year, the greater of (I) 10 covered workers, or (II) a number equal to 3 percent of covered workers.

''(iii) COVERED WORKER.—For purposes of this paragraph, the term 'covered worker' means an individual for whom the service recipient or payor paid employment taxes under subtitle C in all 4 quarters of the preceding calendar year.

''(3) BURDEN OF PROOF.—For purposes of subsection (a), if—

''(A) a service provider, service recipient, or payor establishes a prima facie case that it was reasonable not to treat a service provider as an employee for purposes of this section, and

''(B) the service provider, service recipient, or payor has fully cooperated with reasonable requests from the Secretary or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary.

''(4) RELATED ENTITIES.—If the service provider is performing services through an entity owned in whole or in part by such service provider, the references to service provider in subsections (b) through (e) shall include such entity if the written contract referred to in subsection (d) is with such entity.

''(g) DETERMINATIONS BY THE SECRETARY.—For purposes of this title—

''(1) IN GENERAL.—

''(A) DETERMINATIONS WITH RESPECT TO A SERVICE RECIPIENT OR A PAYOR.—A determination by the Secretary that a service recipient or a payor should have treated a service provider as an employee shall be effective no earlier than the notice date if—

''(i) the service recipient or the payor entered into a written contract satisfying the requirements of subsection (d),

''(ii) the service recipient or the payor satisfied the applicable reporting requirements of section 6041(a) or 6041A(a) for all taxable years covered by the contract described in clause (i), and

''(iii) the service recipient or the payor demonstrates a reasonable basis for determining that the service provider is not an employee and that such determination was made in good faith.

''(B) DETERMINATIONS WITH RESPECT TO A SERVICE PROVIDER.—A determination by the Secretary that a service provider should have been treated as an employee shall be effective no earlier than the notice date if—

''(i) the service provider entered into a contract satisfying the requirements of subsection (d),

''(ii) the service provider satisfied the applicable reporting requirements of sections 6012(a) and 6017 for all taxable years covered by the contract described in clause (i), and

''(iii) the service provider demonstrates a reasonable basis for determining that the service provider is not an employee and that such determination was made in good faith.

''(C) REASONABLE CAUSE EXCEPTION.—The requirements of subparagraph (A)(ii) or (B)(ii) shall be treated as being met if the failure to satisfy the applicable reporting requirements is due to reasonable cause and not willful neglect.

''(2) CONSTRUCTION.—Nothing in this subsection shall be construed as limiting any provision of law that provides an opportunity for administrative or judicial review of a determination by the Secretary.

''(3) NOTICE DATE.—For purposes of this subsection, the notice date is the 30th day after the earlier of—

''(A) the date on which the first letter of proposed deficiency that allows the service provider, the service recipient, or the payor an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, or

''(B) the date on which the deficiency notice under section 6212 is sent.

''(h) DEFINITIONS.—For the purposes of this section—

''(1) SERVICE PROVIDER.—The term 'service provider' means any individual who performs a service for another person.

''(2) SERVICE RECIPIENT.—Except as provided in paragraph (4), the term 'service recipient' means the person for whom the service provider performs such service.

''(3) PAYOR.—Except as provided in paragraph (4), the term 'payor' means the person who pays the service provider for the performance of such service in the event that the service recipient does not pay the service provider.

''(4) EXCEPTIONS.—The terms 'service recipient' and 'payor' do not include any entity in which the service provider owns in excess of 5 percent of—

''(A) in the case of a corporation, the total combined voting power of stock in the corporation, or

''(B) in the case of an entity other than a corporation, the profits or beneficial interests in the entity.

''(5) IN CONNECTION WITH PERFORMING THE SERVICE.—The term 'in connection with performing the service' means in connection or related to the operation of the service provider's trade or business.

''(6) PRINCIPAL PLACE OF BUSINESS.—For purposes of subsection (c), the term 'principal place of business' has the same meaning as under section 280A(c)(1) (as in effect for taxable years beginning after December 31, 1998).

''(7) FAIR MARKET RENT.—The term 'fair market rent' means a periodic, fixed minimum rental fee which is based on the fair rental value of the facilities and is established pursuant to a written contract with terms similar to those offered to unrelated persons for facilities of similar type and quality.''

(b) REPEAL OF SECTION 530(d) OF THE REVENUE ACT OF 1978.—Section 530(d) of the Revenue Act of 1978 (as added by section 1706 of the Tax Reform Act of 1986) is repealed.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 25 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 3511. Safe harbor for determining that certain individuals are not employees.''

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to services performed after the date of the enactment of this Act.

(2) DETERMINATIONS BY THE SECRETARY.—Section 3511(g) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to determinations after the date of the enactment of this Act.

(3) SECTION 530(d).—The amendment made by subsection (b) shall apply to periods ending after the date of the enactment of this Act.

INDEPENDENT CONTRACTOR SIMPLIFICATION AND RELIEF ACT OF 1999—DESCRIPTION OF PROVISIONS

The bill addresses the worker-classification issue (e.g., whether a worker is an employee or an independent contractor) by creating a new section 3511 of the Internal Revenue Code. The new section will provide straightforward rules for classifying workers and provide relief from the IRS' reclassification of an independent contractor in certain circumstances. The bill is designed to provide certainty for businesses that enter into independent-contractor relationships and minimize the risk of huge tax bills for back taxes, interest, and penalties if a worker is misclassified after the parties have entered into an independent-contractor relationship in good faith.

CLEAR RULES FOR WORKER CLASSIFICATION

Under the bill's new worker-classification rules, an individual will be treated as an independent contractor and the service recipient will not be treated as an employer if either of two tests is met—the ''general test'' or the ''incorporation test.''

General Test: The general test requires that the independent contractor demonstrate economic independence and workplace independence and have a written contract with the service recipient.

Economic independence exists if the independent contractor has the ability to realize a profit or loss and agrees to perform services for a particular amount of time or to complete a specific result or task. In addition, the independent contractor must either incur unreimbursed expenses that are consistent with industry practice and that equal at least 2% of the independent contractor's adjusted gross income from the performance of services during the taxable year, or have a significant investment in the assets of his or her business.

Workplace independence exists if one of the following applies: the independent contractor has a principal place of business (including a ''home office'' as expanded by the Taxpayer Relief Act of 1997); he or she performs services at more than one service recipient's facilities; he or she pays a fair-market rent for the use of the service recipient's facilities; or the independent contractor uses his or her own equipment.

The written contract between the independent contractor and the service recipient must provide that the independent contractor will not be treated as an employee and is responsible for his or her own taxes.

Incorporation Test: Under this test, an individual will be treated as an independent contractor if he or she conducts business through a corporation or a limited liability company. In addition, the independent contractor must be responsible for his or her own benefits, instead of receiving benefits from the service recipient. The independent contractor must also have a written contract with the service provider stating that the independent contractor will not be treated as an employee and is responsible for his or her own taxes.

To prevent the incorporation test from being abused, the bill limits the number of former employees that a service recipient may engage as independent contractors under this test. The limitation is based on the number of people employed by the service recipient in the preceding year and is equal to the greater of 10 persons or 3% of the service recipient's employees in the preceding year. For example, Business X has 500 employees in 1998. In 1999 up to 15 employees (the greater of 3% of Business X's 1998 employees or 10 individuals) could incorporate their own businesses and still have Business X as one of their initial clients. This limitation would not affect the number of incorporated independent contractors who were not former employees of the service recipient or independent contractors meeting the general test.

Additional Provisions: The new worker-classification rules also apply to three-party situations in which the independent contractor is paid by a third party, such as a payroll company, rather than directly by the service recipient. The new worker-classification rules, however, will not apply to a service recipient or a third-party payor if they do not comply with the existing reporting requirements and file 1099s for individuals who work as independent contractors. A limited exception is provided for cases in which the failure to file a 1099 is due to reasonable cause and not willful neglect.

New Worker-Classification Rules Do Not Replace Other Options: In the event that the new worker-classification rules do not apply, the bill makes clear that the independent contractor or service recipient can still rely on the 20-factor common law test or other provisions of the Internal Revenue Code applicable in determining whether an individual is an independent contractor or employee. In addition, the bill does not limit any relief to which a taxpayer may be entitled under Section 530 of the Revenue Act of 1978. The bill also makes clear that the new rules will not be construed as a prerequisite for these other provisions of the law.

RELIEF FROM RECLASSIFICATION

The bill provides relief from reclassification by the IRS of an independent contractor as an employee. For many service recipients who make a good-faith effort to classify the worker correctly, this event can result in extensive liability for back employment taxes, interest, and penalties.

Relief Under the New Worker-Classification Rules: The bill provides relief for cases in which a worker is treated as an independent contractor under the new worker-classification rules and the IRS later contends that the new rules do not apply. In that case, the burden of proof will fall on the IRS, rather than the taxpayer, to prove that the new worker-classification rules do not apply. To qualify for this relief the taxpayer must demonstrate a credible argument that it was reasonable to treat the service provider as an independent contractor under the new rules, and the taxpayer must fully cooperate with reasonable requests from the IRS.

Protection Against Retroactive Reclassification: If the IRS notifies a service recipient that an independent contractor should have been classified as an employee (under the new or old rules), the bill provides that the IRS' determination can become effective only 30 days after the date that the IRS sends the notification. To qualify for this provision, the service recipient must show that:

there was a written agreement between the parties;

the service recipient satisfied the applicable reporting requirements for all taxable years covered by the contract; and

there was a reasonable basis for determining that the independent contractor was not an employee and the service provider made the determination in good faith.

The bill provides similar protection for independent contractors who are notified by the IRS that they should have been treated as an employee.

The protection against retroactive reclassification is intended to remove some of the uncertainty for businesses contracting with independent contractors, especially those who must use the IRS's 20-factor common law test. While the bill would prevent the IRS from forcing a service recipient to treat an independent contractor as an employee for past years, the bill makes clear that a service recipient or an independent contractor can still challenge the IRS's prospective reclassification of an independent contractor through administrative or judicial proceedings.

REPEAL OF SECTION 1706 OF THE REVENUE ACT OF 1978

The bill repeals section 530(d) of the Revenue Act of 1978, which was added by section 1706 of the Tax Reform Act of 1986. This provision precludes businesses that engage technical service providers (e.g., engineers, designers, drafters, computer programmers, systems analysts, and other similarly qualified individuals) in certain cases from applying the reclassification protections under section 530. The bill is designed to level the

playing field for individuals in these professions by providing the businesses that engage them with the same protections that businesses using other types of independent contractors have enjoyed for more than 20 years.

EFFECTIVE DATES

In general, the independent-contractor provisions of the bill, including the new worker-classification rules, will be effective for services performed after the date of enactment of the bill. The protection against retroactive reclassification will be effective for IRS determinations after the date of enactment, and the repeal of section 530(d) will be effective for periods ending after the date of enactment of the bill.

By Mr. ALLARD:

S. 345. A bill to amend the Animal Welfare Act to remove the limitation that permits interstate movement of live birds, for the purpose of fighting, to States in which animal fighting is lawful; to the Committee on Agriculture, Nutrition, and Forestry.

AMENDMENT TO ANIMAL WELFARE ACT

Mr. ALLARD. Mr. President, today I am introducing a bill to amend the Animal Welfare Act to remove the limitation that permits interstate movement of live birds for the purpose of fighting to States in which animal fighting is lawful.

Currently, the Animal Welfare Act makes it unlawful for any person to knowingly sponsor or exhibit an animal in any animal fighting venture to which the animal was moved in interstate or foreign commerce. This means that if an animal crosses state lines and then fights in a state where cockfighting is not legal, that is a crime. However, the law further states, ''the activities prohibited by such subsections shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof.'' This means that the law applies to all animals involved in all types of fighting—except for birds being transported for cockfighting purposes to a state where cockfighting is still legal. Because of the loophole, law enforcement officers have a more difficult time prosecuting under their state cockfighting bans.

As introduced this legislation will close the loophole on cockfighting, and prohibit interstate movement of birds for the purpose of fighting from states where cockfighting is illegal to states where cockfighting is legal. This legislation will clarify that possession of fighting birds in any of the 47 states would then be illegal, as shipping them out for cockfighting purposes would be illegal.

I believe that my colleague from states where cockfighting is illegal will benefit from this change because it will make law enforcement easier. I also believe that my colleagues from states or territories where cockfighting is currently legal should not oppose this change as it merely confines cockfighting to within that state's borders.

By Mrs. HUTCHISON (for herself, Mr. GRAHAM, Mr. VOINOVICH, Mr. ABRAHAM, Mr. MCCONNELL, Mr. MCCAIN, Mr. LOTT, Mr. LEAHY, Mr. SMITH of Oregon, Mr. GORTON, Mrs. MURRAY, Mr. ALLARD, Mr. BURNS, Mr. FRIST, Mr. COCHRAN, Mr. CRAIG, Mr. BUNNING, Mr. KYL, Mr. LUGAR, Mr. INHOFE, Mr. HUTCHINSON, Mr. MACK, Mrs. LINCOLN, Mr. TORRICELLI, Mr. BAYH, Mr. MURKOWSKI, Mr. GRAMM, and Mr. THOMPSON):

S. 346. A bill to amend title XIX of the Social Security Act to prohibit the recoupment of funds recovered by States from one or more tobacco manufacturers; to the Committee on Finance.

STATES RIGHTS PROTECTION ACT OF 1999

Mrs. HUTCHISON. Mr. President, I am pleased to introduce this bill, along with 27 other cosponsors. The prime one is Senator BOB GRAHAM of Florida, who has worked very hard with me over the last year to make sure that the State tobacco settlements which our States have worked so hard to achieve will remain in control of the States because, in fact, the President's budget which was just released this week assumes that it will still seize $18.9 billion of the State tobacco settlement funds for Medicaid recoupment. Mr. President, that is just not right, and the bill I am introducing with Senator GRAHAM of Florida, Senator GORTON, and 26 others, on a bipartisan basis, will keep that from happening.

The bill is strongly supported by the National Governors' Association, the National Association of Attorneys General, the National Conference of State Legislators, and several other groups.

I ask unanimous consent that letters of support from these groups be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL GOVERNORS ASSOCIATION,
Washington, DC, February 3, 1999.

Hon. KAY BAILEY HUTCHISON,
U.S. Senate, Washington, DC.

Hon. BOB GRAHAM,
U.S. Senate, Washington, DC.

DEAR SENATORS HUTCHISON AND GRAHAM: A major priority for the nation's Governors during the 106th Congress is ensuring that state tobacco settlement funds are protected from unwarranted seizure by the federal government. The Governors believe it is critical that access to full, unencumbered recoupment protection be afforded to all states. We are pleased that you have introduced legislation to accomplish this goal. Your legislation would prohibit the federal government from attempting to recover a staggering 57% of the entire settlement amount.

Our states' Attorneys General carefully crafted the tobacco agreement to reflect only state costs. Medicaid costs were not a major issue in negotiating the settlement. In fact, the final agreement reached by the Attorneys General on November 23, 1998 does not mention Medicaid. Therefore, there is no legitimate federal claim on the settlement.

Without the states' leadership and years of commitment to initiating state lawsuits, the nation would not have achieved one of its major goals—a comprehensive settlement with the tobacco industry. After bearing all of the risks and expenses in the arduous negotiations and litigation necessary to have proceeded with their lawsuit, states are now entitled to all of the funds awarded to them in the tobacco settlement agreement without federal seizure.

We look forward to working with you and other Members of Congress to enact this legislation and prevent federal seizure of state tobacco settlement funds.

Sincerely,

THOMAS R. CARPER.
MICHAEL O. LEAVITT.

NATIONAL CONFERENCE OF
STATE LEGISLATURES,
Washington, DC, February 1, 1999.

Hon. KAY BAILEY HUTCHISON,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR HUTCHISON: On behalf of the National Conference of State Legislatures (NCSL), I write in support of bipartisan legislation that Senator Bob Graham and you will soon introduce to ensure that states retain all of their tobacco settlement funds. NCSL has made this legislation its top priority for 1999. NCSL is very appreciative of the leadership you provided on this issue during the 105th Congress. I am grateful for your willingness to lead the way again in 1999. The nation's state legislators will work steadfastly with you and all of your Senate colleagues to ensure that this legislature is enacted.

It is through the sole efforts of states that the historic settlement of November 23, 1998 and four prior individual state settlements were finalized. States initiated the suits that led to the settlements without any assistance from the federal government. States consumed their own resources and accepted all of the risks with their suits. Additionally, the November 23, 1998 agreement makes no mention of Medicaid, which is the program cited by those who want to establish a basis for seizing state tobacco settlement funds. It is clear to me that the federal government has no claim to these funds. I fully appreciate, however, the need for clarification that federal legislation would provide.

As you well know, states are no finalizing the settlement, carrying out the terms of the accord and making final fiscal determinations about how to most responsibly apply settlement funds to public health and other needs. Threats of recoupment and related uncertainties only compromise our ability to progress with finalizing the settlement and working to reduce youth smoking, abating youth access to tobacco products and addressing the economic impact of anticipated reduced demand for tobacco products. Enactment of your federal legislation would eliminate these threats and permit states to move forward.

I look forward to working closely with you to a successful and mutually acceptable resolution of this issue.

Sincerely,

DAN BLUE,
President, North Carolina House of Representatives.

NATIONAL ASSOCIATION OF
ATTORNEYS GENERAL,
Washington, DC, February 1, 1999.

Hon. KAY BLILEY HUTCHISON,
U.S. Senate, Washington, DC.

DEAR SENATOR HUTCHISON: Your support at the recent press conference for protecting the state tobacco settlements from seizure by the federal government was much appreciated. On behalf of the Association, thank you for your leadership early in the new session on this issue.

Building on the strong bipartisan support evidenced on January 21, we want to continue to work with you and your colleagues on legislation that will ensure that the states retain all of their tobacco settlement funds. We hope this legislation will be enacted as early as possible in the 106th Congress.

Sincerely yours,

CHRISTINE O. GREGOIRE,
Attorney General of Washington.
BETTY MONTGOMERY,
Attorney General of Ohio.

NATIONAL ASSOCIATION OF COUNTIES,
Washington, DC, January 27, 1999.

Hon. KAY BAILEY HUTCHISON,
Russell Building, Washington, DC.

DEAR SENATOR HUTCHISON: I am writing to let you know that the National Association of Counties (NACo) strongly endorses the bill to be introduced by you and Senator Bob Graham (D–FL) that would prevent the federal recoupment of states' tobacco settlement funds. NACo is adamantly opposed to any attempt by the federal government to go after these funds and applauds the introduction of this straightforward, bipartisan legislation.

The $206 billion settlement agreed to on November 23, 1998 by the state Attorneys General and the major United States tobacco companies settles more than 40 pending lawsuits. These lawsuits, which were initiated by state and local governments with no assistance, in any form, from the federal government, were based on a variety of claims, including consumer fraud, antitrust protections, conspiracy, and racketeering. In addition, the state Attorneys General negotiated the settlement to reflect only state costs and damages. Therefore, the federal government's claim that these settlement monies represent Medicaid funds and should be returned to federal coffers is simply not an accurate portrayal of the settlement agreement. The agreement does not claim to or intend to recover Medicaid costs. Attempts by the federal government to claim these funds would likely result in lengthy and costly legal battles between the states and the federal government and would not be a wise use of government resources.

NACo applauds your efforts and those of Senator Graham to protect these funds. We will continue to work to prevent the federal recoupment of the states' tobacco settlement monies, and we support this legislation.

Sincerely,

BETTY LOU WARD,
President.

NATIONAL LEAGUE OF CITIES,
Washington, DC, February 3, 1999.

Hon. KAY BAILEY HUTCHISON,
U.S. Senate, Washington, DC.

DEAR SENATOR HUTCHISON: On behalf of 135,000 cities and towns, I would like to express the National League of Cities' support for the legislation you are introducing today along with Senator Bob Graham that would prevent the federal government from taking a portion of state tobacco settlement revenues.

If the federal government were able to take a portion of state settlement funds, cities and towns would bear the brunt of this loss. This could mean that local tobacco cessation programs and teenage smoking prevention programs would not be funded and indigent care costs would not be compensated. Cities and towns are often the last means of defense in covering health care costs, particularly indigent care costs.

For example, California's cities and counties stand to receive half of the state's share of the settlement. This money will directly assist cities and towns in helping to pay for health care programs and costs. Other local governments are currently working with their state legislatures to address uncompensated costs related to tobacco illnesses and to address local health care needs with settlement funds.

The National League of Cities adopted a resolution at the December 1998 Congress of Cities in Kansas City, Missouri, that addresses municipal interests in the tobacco settlement. A provision in the resolution states that any revenues received by states or municipalities from any settlement with the tobacco industry should not be required to be paid to the federal government for Medicaid/Medicare or any other program.

We support the legislation introduced today, and your continued effort to protect the interest of our nation's cities and towns.

Sincerely,

CLARENCE E. ANTHONY,
NLC President and Mayor, South Bay, FL.

Mrs. HUTCHISON. Mr. President, 46 States reached a settlement last November which added them to the other States that already had settled with the tobacco companies, making every State in America now in a settlement with the tobacco companies. These States have not just chosen to put the money that is coming in from the tobacco settlement on Medicaid and health care issues. There are myriad State issues that this money is going to be used for. But that is in limbo today because the President has given notice that he is going to seize this money from them. So everything is going to be held in abeyance until we settle this issue once and for all.

That is what our bill will do. There is no reason—no reason whatsoever—that we should take money from the Medicaid funds that go to the States which provide a safety net for the millions of low-income and disabled Americans who depend on Medicaid for their health care needs. We cannot allow that to happen, and we will not.

I intend to work with the cosponsors of this bill to find the first available vehicle to attach it so that we can make sure that this money that our States have worked alone to achieve, with no help from the Federal Government, will remain in their sole jurisdiction; that they will be able to make the choices on what their States need and not have dictated to them by the Federal Government what they will spend this money for.

Many States—I was talking to Senator ABRAHAM from the State of Michigan, and they are going to create scholarship funds for low-income students in Michigan, a very worthy cause. Other States are going to be doing education to try to encourage teenagers not to smoke. We don't want to substitute our judgment for the judgment that the States are making for their best and most important priorities.

So I am pleased to have the 28 cosponsors of this bill. I think we will pass it. I hope that we can do it quickly so that these States will have the freedom to spend this money on the much needed programs in those States.

I am happy to yield to Senator GORTON.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, the federal government has done quite enough to impede states efforts to recover damages from and change the practices of tobacco manufacturers. Though they asked, the state Attorneys General received no help from the federal government in their litigation. When, despite this, the states in mid-1997 proposed to settle their claims for almost $400 billion and asked the Administration and Congress to codify the agreement, the federal government instead blew it up by spending the states' money, and then some, on this Administration's pet social projects. It was only through the ingenuity, hard work, and unwavering perseverance of people like Washington state Attorney General Christine Gregoire that states were able to take the tobacco manufacturers back to the table in late 1998 and obtain a settlement agreement for $206 billion.

Though it did none of the work, the Administration now wants to share in the reward. Using an old provision in the Social Security Act, a provision that I understand was intended to permit federal Medicaid recoupment in cases of fraud or over billing, the federal government is now claiming over 50% of the states' settlement money. To exact what it claims is its share, the Administration intends to withhold Medicaid payments, payments that go to the neediest residents of Washington and other states.

This is no idle threat: three days ago, the President sent us a budget in which he spent $16 billion of the states' settlement money in the next five years. The President did indicate, however, that he would relinquish this claim to the money for one year if states agree to spend the money as he and other Washington, D.C. bureaucrats see fit. This is just wrong.

The bill that we are introducing today rights this wrong. It allows states to keep the monies they fought for. No strings attached. The federal government has not earned this money, and does not know better than states how it should be spent. I urge my colleagues to join me and my friends from Texas and Florida in seeing that this bill is passed this session.

Mrs. LINCOLN. Mr. President, I rise to join my colleagues in support of the ''States Rights Protection Act of 1999.'' I believe that states are entitled to retain the tobacco funds that were agreed upon under their settlement agreements.

These funds result from an historic accord reached in November 1998 between 46 states, U.S. Territories and commonwealths, the District of Columbia, and tobacco industry representatives. State Attorneys General worked diligently to initiate and negotiate a settlement with the tobacco industry. States are now in the midst of finalizing the settlement, carrying out the

terms of the settlement agreement and making fiscal decisions about how to apply settlement funds to public health and other needs.

Although the U.S. Department of Health and Human Services initially notified states in the fall of 1997 of its intention to recoup the federal match from funds states received through the suits, citing a provision in existing Medicaid law, it has suspended recoupment activities. For this reason, I join my Senate colleagues in introducing this legislation to prohibit the federal government from trying to recoup any funds from state governments recovered from tobacco companies as part of their tobacco settlement or from determining how these funds should be spent.

I strongly believe that each state should have the right to determine where this money is needed and how it is best spent. In my own state of Arkansas, Governor Mike Huckabee has reached an agreement with the Speaker of the Arkansas House of Representatives, Bob Johnson, the President Pro Tempore of the Arkansas Senate, Jay Bradford, and the Arkansas Attorney General, Mark Pryor, regarding the use of this money solely for health-related purposes. Specifically, the settlement funds will be used to prevent smoking by young people, to treat tobacco related illnesses, and to establish a foundation to provide for continued funding of these programs even when the tobacco settlement money expires. I'm proud that my home state of Arkansas will use these funds towards such valuable programs.

I support the Arkansas state government and all other state governments in retaining their tobacco settlement funds and exercising their authority to determine how the funds are spent.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

PRIVILEGE OF THE FLOOR

Mr. GRAHAM. Mr. President, I ask unanimous consent that Mr. Matt Barry of our staff be given floor privileges for the remainder of the consideration of this issue during this session of the Senate.

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

Mr. GRAHAM. Thank you Mr. President.

Mr. President, I rise today along with Senator HUTCHISON and 21 original cosponsors—Republicans and Democrats—to introduce legislation designed to prevent the federal government from seizing the State settlement proceeds negotiated with the tobacco industry.

Just over 1 year has passed since the State of Florida received an ominous warning from the federal government which said in essence: ''Prepare to hand over half of your money or we will be prepared to withhold your Medicaid funds.''

This action was a slap in the face to States like Florida—a State which spent countless hours and millions of dollars preparing to wage war against the tobacco industry in court—with no guarantee of success and with no assistance from anyone—including the federal government. The State of Florida specifically asked the Federal Government to assist us, to join in a joint lawsuit. We the States will assume the responsibility of suing the tobacco industry for the Medicaid and other nonspecific medical program costs. The Federal Government will assume the responsibility for Medicare, the Veterans Administration, and other Federal health program costs. What was the response to that request for joint action? ''Not interested.''

In fact, only after it became clear that States were going to be successful in their lawsuits did the federal government become interested in the State settlements.

And so the Health Care Financing Administration sent collection notices to States based on a twisted reading of an obscure provision in Medicaid law—section 1903(D) of the Social Security Act.

Mr. President, I ask unanimous consent that a copy of a letter dated November 3, 1997, from Ms. Sally K. Richardson, Director, Center for Medicaid and State Operations to the State Medicaid director of each of the 50 States be printed in the RECORD immediately after my remarks.

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

(See exhibit 1.)

Mr. GRAHAM. Mr. President, the federal government is attempting to collect almost $19 billion over 5 years, and, presumably almost $100 billion over the 25 year settlement agreement period, based on a little known provision in Medicaid which was never intended to apply to a lawsuit of this magnitude or character.

The regulations interpreting the Statutory language of 1903(D) read as follows:

Subpart F—Refunding of Federal Share of Medicaid Overpayments to Providers

This Subpart Implements Section 1903(d)(2)(C) and (D) of the Act, which provides that a State has 60 days from discovery of an overpayment for Medicaid services to recover or attempt to recover the overpayment from the provider.

The regulation then goes on to define ''overpayment'': Overpayment means the amount paid by a Medicaid agency to a provider which is in excess of the amount that is allowable for services furnished under section 1902 of the act.

Mr. President, applying the provisions of this statute which was designed to collect overpayments paid by a Medicaid State agency to a provider, to attempt to apply this provision to the State tobacco lawsuits is absurd. This provision was intended and has been used to apply to billing errors made by providers.

As an example, if a State finds that a provider has over billed Medicaid, the State collects the overpayment, then remits the commensurate share back to the federal government.

Essentially, the federal government is stating that the revenues from the lawsuits should be interpreted as ''overpayments'' made to medical providers by state Medicaid agencies—that the services rendered by these providers to Medicaid beneficiaries should not have been rendered under the statute.

This logic is twisted and absurd.

The State lawsuits were not premised on a technical collections process—providers overbilling Medicaid. Rather, they were premised on the fact that the tobacco industry defrauded the taxpayer, violated the State civil racketeering statutes, and subjected the taxpayers to enormous smoking-related illness costs.

Further, as an example, Mr. President, the suit of the State of Iowa, which was premised on Medicaid, was thrown out of court, but Iowa is still 1 of the 46 States which will receive their share of the proceeds under the nationwide settlement.

How could the Federal Government lay any claim to Iowa's proceeds based on the overpayment provision in Medicaid since the court had specifically thrown out its suit based on Medicaid? The answer is, it cannot.

The legislation that Senator HUTCHISON and my colleagues are introducing today is simple. It clarifies that the overpayment provision does not apply to either the comprehensive settlement agreed to in November of 1998, nor does it apply to any of the State settlements agreed to prior to the comprehensive settlement.

Here is what the bill will do. It will prevent the Federal Government from stifling important bipartisan public health initiatives which will be paid for through the settlements.

In my State of Florida, for instance, our former colleague and good friend, Democratic Governor Lawton Chiles, provided health insurance to over 250,000 previously uninsured poor children. Just 2 weeks ago, Florida's new Governor, Republican Jeb Bush, announced the establishment of a $2 billion endowment fund which will be named in honor of Governor Chiles. This fund will assure that the tobacco funds will be used exclusively for children's health, child welfare, and seniors' health programs.

Mr. President, as you know, Florida is not unique. Other States will be just as innovative and be held to just as high standards of accountability by their citizens for the use of these tobacco settlement funds. It is important that States be given the green light to move forward on important public health initiatives and to do so as soon as possible. If we do not pass this legislation, funds that could otherwise be spent on improving America's health will be tied up in litigation between States and the Federal Government for the foreseeable future.

So I urge my colleagues to join us in this effort, to support this legislation,

and I urge that it be adopted by this Senate and by the Congress and signed by the President of the United States at the earliest possible date.

EXHIBIT 1

CENTER FOR MEDICAID AND
STATE OPERATIONS,
November 3, 1997.

DEAR STATE MEDICAID DIRECTOR: A number of States have settled suits against one or more tobacco companies to recoup costs incurred in treating tobacco-related illnesses. This letter describes the proper accounting and reporting for Federal Medicaid purposes of amounts received from such settlements that are subject to Section 1903(d) of the Social Security Act.

As described in the statute, States must allocate from the amount of any Medicaid-related expenditure recovery ''the pro-rata share to which the United States (Federal government) is equitably entitled.'' As with any recovery related to a Medicaid expenditure, payments received should be reported on the Quarterly Statement of Expenditures for the Medicaid Assistance Program (HCFA–64) for the quarter in which they are received. Specifically, these receipts should be reported on the Form HCFA–64 Summary Sheet, Line 9E. This line is reserved for special collections. The Federal share should be calculated using the current Federal Medicaid Assistance Percentage. Please note that settlement payments represent a credit applicable to the Medicaid program whether or not the monies are received directly by the State Medicaid agency. States that have previously reported receipts from tobacco litigation settlements must continue to report settlement payments as they are received.

State administrative costs incurred in pursuit of Medicaid cost recoveries from tobacco firms qualify for the normal 50 percent Federal financial participation (FFP). They should be reported on the Form HCFA–64.10, Line 14 (Other Financial Participation).

Only Medicaid-related expenditure recoveries are subject to the Federal share requirement. To the extent that some non-Medicaid expenditures and/or recoveries were also included in the underlying lawsuits, HCFA will accept a justifiable allocation reflecting the Medicaid portion of the recovery, as long as the State provides necessary documentation to support a proposed allocation.

Under current law, tobacco settlement recoveries must be treated like any other Medicaid recoveries. We recognize that Congress will consider the treatment of tobacco settlements in the context of any comprehensive tobacco legislation next year. Given the States' role in initiating tobacco lawsuits and in financing Medicaid programs, States will, of course, have an important voice in the development of such legislation, including the allocation of any resulting revenues. The Administration will work closely with States during this legislative process as these issues are decided.

If you would like to discuss the appropriate reporting of recoveries with HCFA, please call David McNally of my staff at (410) 786–3292 to arrange for a meeting or conversation. We look forward to providing any assistance needed in meeting a State's Medicaid obligation.

Sincerely,

SALLY K. RICHARDSON,
Director.

Mr. MCCONNELL. Mr. President, I rise today to join my esteemed colleagues—Senators HUTCHISON, GRAHAM, VOINOVICH, ABRAHAM, and others—in sponsoring legislation to protect the States' tobacco settlement funds from the Clinton Administration's spurious recoupment claims.

Members of the U.S. Senate will recall quite vividly that this chamber engaged in a lengthy, detailed debate on a national tobacco settlement bill last year. While those discussions proved inconclusive, the States—on their own—achieved much of what Congress and the White House identified as priorities through direct settlement agreements with the tobacco companies.

As part of the comprehensive settlement with 46 states and the prior individual State agreements, the tobacco companies are required to take specific action to address public health concerns regarding teen smoking. First, they must fund a major anti-smoking advertising campaign to prevent youth smoking and to educate consumers about tobacco-related illnesses. Second, they must establish a charitable foundation to support the study of programs to reduce teen smoking and substance abuse. Third, the settlement prohibits tobacco advertising that may target youth, like the commercial use of cartoon characters like ''Joe Camel'' and outdoor advertising such as billboard, stadium and transit ads as well as tobacco sponsorship of sporting and cultural events. In addition, the States have plans to spend their tobacco settlement funds for advancing the public health and welfare.

Much to the dismay of the nation's governors and state legislators, instead of receiving a commendation from the President for a job well done, they got a multi-billion dollar collection notice. Despite the fact that the States filed lawsuits asserting a number of non-Medicaid claims, the Clinton Administration argues that every state who agreed to the $206 billion settlement should fork over from 50 to 79 percent of their share to the federal government—including states like Kentucky who didn't even file a lawsuit but joined the settlement. As such, the President's FY 2000 budget states that the federal government has the right to withhold at least $16 billion Medicaid dollars from the States over the next five years.

Simply put, Mr. President, this bogus claim will deny Kentucky's most needy citizens over $2.4 billion in Medicaid funds over the term of the settlement agreement. I cannot excuse the fundamental conflict created by an Administration that claims it is fighting for the health of our children while it gobbles up the money specifically designated for them. This effort to hold state Medicaid programs hostage in exchange for federal strings on how the States spend their own money is intolerable and unacceptable.

Unlike the Administration, I believe all wisdom does not reside in Washington. It's clear to me that our state's elected officials are in a better position to determine Kentucky's needs than a federal bureaucrat sitting 600 miles away in Washington. I am proud to serve as an original sponsor to this legislation which makes clear that the federal government has no claim to the tobacco settlement funds attained by the States. I commend my fellow sponsors for their commitment to preserving common-sense in government, and urge my colleagues to approve this legislation expediently and without compromise.

Mr. MCCAIN. Mr. President, I am pleased to be a co-sponsor of the States' Rights Protection Act. This bill will ensure that the states retain the use of the settlement proceeds from the tobacco litigation settlement announced in November, 1998, as well as the prior settlements with Mississippi, Texas, Florida, and Minnesota. The bill will entitle the states to keep all of the money from the settlement, without federal recoupment of a Medicaid share.

I believe this is the right thing to do for several reasons. First, and foremost, the settlement was of litigation initiated and pursued by the states. The President announced in his State of the Union address that the Department of Justice will be filing an action on behalf of the United States against the tobacco companies. This is the right way for federal claims to be addressed, rather than taking this hard-fought, negotiated money from the states.

Second, not all of the states raised Medicaid claims in their lawsuits. The courts dismissed the Medicaid claims in other cases. Thus, in some states, the federal government is not truly entitled to share in the settlement proceeds. Allowing recoupment from some of the states, but not all of the states, will lead to disparate and unfair results.

Finally, federal and state governments alike share in the goal of addressing public health needs. It is not necessary that this goal only be accomplished through federally mandated programs. The states' settlement also includes funding for counter-advertising and cessation efforts. These efforts may be complemented by federal programs, but do not need to be duplicated simply to give the federal government an excuse to spend money. In addition, many states have other existing public health programs related to tobacco use or children's health on the books. The federal government does not need to attempt to duplicate those programs through federal mandates. Most importantly, I am confident that the state will spend their settlement money wisely and in the best interests of their citizens. These decisions are best reached through discussion and consensus reached at the state and local levels.

I regret that Congress was unwilling to accept the opportunity presented to us with the 1997 proposed settlement agreement. Comprehensive legislation would have benefited the nation by addressing kids smoking and limiting the excessive attorney's fees paid in these cases. Nevertheless, I applaud the Attorneys General for reaching settlement of their litigation and for the

public health advances they have made in the settlement agreement. They have ensured a win for every state, without years of litigation and varied results. They have ensured an end to Joe Camel on billbroads throughout the country. They have established a mechanism to police advertising. They have achieved more in this joint settlement than any one state could have achieved alone with a court verdict.

I thank my colleague, Senator HUTCHISON, for introducing this bill, and am pleased to join with so many other distinguished friends in sponsoring this important piece of states' rights legislation.

Mr. LEAHY. Mr. President, I am pleased to join Senator HUTCHISON and Senator GRAHAM and a bipartisan group of my colleagues to introduce legislation to prohibit the Federal government from recouping any part of the multi-state settlement between the tobacco industry and the State Attorneys General.

To the surprise of many state officials, the Health Care Financing Administration has threatened to seek reimbursement for its share of Medicaid costs for treating tobacco-related diseases from the multi-state tobacco settlement. In other words, the Federal government may want to take more than half of the total multi-state settlement based on the federal share of Medicaid, which is approximately 60 percent of total Medicaid costs.

For my home State of Vermont, that means the Federal government may try to take more than $15 million annually out of Vermont's share of the settlement. Vermont Attorney General William Sorrell settled with the tobacco industry for more than $800 million to be distributed over the next 25 years. But now the Federal government may seek more than $400 million of Vermont's tobacco settlement for its own use.

Washington State Attorney General Christine Gregoire, one of the lead attorneys generals in the settlement negotiations with the tobacco industry, recently stated: ''These lawsuits were brought by the States based on violations by the industry of state laws. The settlement was won by the states without any assistance from Congress or the Administration. As far as we are concerned the States did all the work and are entitled to every dollar of their allocated share to invest in the future health care of their citizens.'' I could not agree more with General Gregoire.

The States, not the Federal government, deserve the full amount of their settlements because the States and their Attorneys General took the risks in bringing the novel lawsuits against Big Tobacco. Without the willingness of the State Attorneys General acting on behalf of the citizens of their states and taking significant financial and professional risks and pursuing these matters so diligently, we would not have any legal settlements by the tobacco industry. These State Attorneys General deserve our gratitude and our respect for their extraordinary efforts. I commend them all for their diligence on behalf of the public.

When tobacco companies were fighting any and all lawsuits against them, the State Attorneys General pursued their legal challenges against great odds. Men and women whose lives were cut short by cancer and other adverse health consequences from tobacco deserved better treatment than the years of obstruction and denial by the tobacco industry. Only now as the internal documents are being disclosed and the legal tide is beginning to turn have tobacco companies decided to change their strategy and pursue settlements. The tobacco industry did not agreed to these settlements out of some new found sense of public duty. The truth is that giant tobacco corporations came to the bargaining table only after they realized that they might lose in court.

In my home state, General Sorrell took the financial and legal risks in bringing suit against the tobacco industry on behalf of the people of Vermont. General Sorrell and his legal team put together a powerful case in support of the public health of all Vermonters. General Sorrell did this without any assistance from the Federal government. As a result, the people of Vermont deserve the full amount of their tobacco settlement.

If the Federal government wants to recover its costs for tobacco-related diseases, the appropriate avenue to do that is a Federal lawsuit. Indeed, President Clinton announced during the recent State Of The Union address that the Department of Justice is planning litigation against the tobacco industry. I applaud the President and Attorney General Reno for pursuing legal action against the tobacco industry so that the Federal government may recoup its costs for tobacco-related diseases. That is the proper approach for the Federal government.

The multi-state tobacco settlement provides an historic opportunity to improve the public health in Vermont and across the nation. I believe that the States, not the Federal government, are in the best position to determine their public health needs. Our bipartisan bill grants the States that flexibility by permitting each state to use its settlement payments in whatever way that state deems best.

That is why the National Governors Association, National Association of Attorneys General, National Conference of State Legislatures, National Association of Counties, National League of Cities, and U.S. Conference of Mayors support our bipartisan legislation. In my home state, our bipartisan bill is supported by Governor Dean, Attorney General Sorrell, the Vermont Health Access Oversight Committee, and the Vermont Association of Hospitals and Health Systems.

I want Governor Dean and the Vermont legislature to have the flexibility to use Vermont's settlement funds in whatever way they deem is best for the public health of Vermonters. It is only fair for the other 49 Governors and state legislatures to have that same flexibility to use their settlement funds in whatever way they deem is best for their citizens.

In the final analysis, I trust the people of Vermont and the other 49 States to determine how best to use their tobacco settlement funds. I look forward to working with my colleagues as Congress moves forward on legislation to ensure that the interests of Vermont and the other States are protected in the multi-state tobacco settlement.

Mr. BAYH. Mr. President, I rise today as an original cosponsor of the State tobacco settlement protection bill, a bill to protect state tobacco settlement funds from seizure by the federal government. I want to thank Senators HUTCHISON and GRAHAM for their leadership on this issue. I stand today for fiscal responsibility, local control and fairness. I stand today to protect our children's health, to assist those who have become addicted to tobacco.

This is really about fairness. Is it fair for the federal government, having sat on the sidelines during this uphill battle against Big Tobacco, to come in after the fact and claim a large share of the victory? If nothing else, this proves the old adage that victory has many parents, while defeat is an orphan.

I have said repeatedly that the federal government does not have all the answers. Much of what has gone right in this country in the last several years is a direct result of moving decisions and power out of this city and into small towns and communities. I came to Washington to stand up for what is right, to protect Indiana's values, and to speak up when the federal government oversteps its bounds.

Does the federal government have a right to take more than 60% of Indiana's tobacco settlement to spend on federal priorities? Absolutely not. Indiana's share of the settlement is $4 billion over 25 years, but the federal government's claim could take two and a half billion away. While the President's budget acknowledges the difficulty in collecting this money in the coming fiscal year, I am disappointed they have laid claim to a substantial share of state settlement funds in their budget for use on federal discretionary programs in years to come. The fiscally responsible approach is to ensure this money is spent wisely at the local level, not to allow it to be dumped into the black pit of the federal bureaucracy in Washington.

Indiana began this fight to protect our kids from the dangers of an addictive, life-threatening habit. The State fought a lonely battle, without any federal assistance and invested considerable resources in prosecuting this case.

The Governor of Indiana, Frank O'Bannon, is in the planning stages for using this money to improve public health, promote teen smoking cessation programs and children's health

care, the purposes originally outlined in the lawsuit. But with more than 60% of the funds at risk it is hard to sketch out a reliable plan.

The confrontation between states and the federal government that would result from an attempt by the Health Care Financing Administration to take these state settlement funds would only hurt the people in each of our states. It would tie us up in needless court actions over who has the legal right to these funds. That is wasted time. While the courts decide what to do with the funds, we lose the opportunity to cover uninsured children, start anti-smoking campaigns and improve the lives of Hoosiers and the people in all our states.

Mr. President, I hope all my colleagues become a part of this bipartisan coalition. I hope we can all—Democrats and Republicans, States and the federal government—work together to ensure these funds are used in the states to improve health, deter smoking and educate kids about the dangers of this addiction. I look forward to working to pass this very important legislation this year.

By Mr. GRAMS:

S. 347. A bill to redesignate the Boundary Waters Canoe Area Wilderness, Minnesota, as the ''Hubert H. Humphrey Boundary Waters Canoe Area Wilderness''; to the Committee on Energy and Natural Resources.

HUBERT H. HUMPHREY BOUNDARY WATERS CANOE AREA WILDERNESS

Mr. GRAMS. Mr. President, I rise today to introduce legislation to rename the Boundary Waters Canoe Area Wilderness (BWCA) in Minnesota and in doing so, salute the father of our Nation's wilderness system, the late Senator from Minnesota and Vice President, Hubert H. Humphrey. My bill would redesignate the BWCA as ''The Hubert Humphrey Boundary Waters Canoe Area Wilderness.''

Mr. President, my home state is known for a number of things uniquely Minnesotan. If you've seen the movie ''Grumpy Old Men'' you're aware of our love of ice fishing. If you've flown into Minneapolis, you've seen the Mall of America. If you watched the national weather maps, you've seen our bonechilling winter temperatures. And our new Governor—well, we are proud to say that he is uniquely Minnesotan as well. But if you've ever visited one of our Nation's wilderness areas, you would not necessarily have realized that its creation was due in large part to another uniquely Minnesotan individual, Senator Hubert H. Humphrey.

In the early 1960s, right here in these halls and in this Chamber, then-Senator Humphrey lead the charge in helping Congress recognize the wisdom of creating a wilderness preservation system in the United States. Senator Humphrey, as a member of the Senate Committee on Agriculture and Forestry, authored the 1964 Wilderness Preservation Act, and by doing so, created the BWCA. Many in our state feel that if it weren't for Senator Humphrey's tireless commitment, there would be no wilderness system and no BWCA. Senator Humphrey worked closely with the people of Northern Minnesota to win their trust and gain their acceptance of a federally designated wilderness area—one that would surely change the way they recreated and the way they lived. In fact, Senator Humphrey's legislation was very controversial and took several years to complete. Last year's passage of legislation to restore two motorized portages in the BWCA was consistent with both Senator Humphrey's vision for the BWCA and his promises to the people of northern Minnesota. Through his dedication and willingness to address the concerns of everyone, we now have a wilderness system that is the envy of the world.

Through Senator Humphrey's hard work and dedication to the National Wilderness Preservation System, Americans today have countless protected wilderness areas throughout this country in which they can experience nature as it was 50, 75, or 100 years ago, knowing with certainty that these precious areas will be left intact for generations to come.

Senator Humphrey's vision endures to this very day, and Minnesotans are proud to claim the BWCA, one of the nation's true national treasures, as our own. Boy Scouts wait every year for their trip into the Boundary Waters. Families know that every summer they can get away from their jobs, their studies, their cars and their phone, and enjoy at least a few days of peace and quiet. And elderly folks know that their favorite fishing hole is still a fishing hole and still accessible for them and their grandchildren.

Like Paul Bunyan, lutefisk, and our State Fair, the Boundary Waters is something uniquely Minnesotan and uniquely identifiable as our own across the country. It is for that reason that I believe it should bear the name of the father of the Wilderness system and be redesignated, ''The Hubert H. Humphrey Boundary Waters Canoe Area Wilderness.''

By Mr. HAGEL (for himself and Mr. REED):

S. 349. A bill to allow depository institutions to offer negotiable order of withdrawal accounts to all businesses, to repeal the prohibition on the payment of interest on demand deposits, and for other purposes, to the Committee on Banking, Housing, and Urban Affairs.

THE SMALL BUSINESS BANKING ACT OF 1999

Mr. HAGEL. Mr. President, I rise today to introduce the Small Business Banking Act of 1999. I am again joined in the effort by my distinguished colleague Senator REED of Rhode Island, who is the principal cosponsor of this important legislation.

We originally introduced this legislation during the last Congress. This legislation was incorporated into a more comprehensive financial regulatory relief bill that was unanimously reported out of the Senate Committee on Banking, Housing, and Urban Affairs. We fully expect it will be enacted into law during this Congress.

Passage of this bill will remove one of the last vestiges of an obsolete interest rate control system. Abolishing the statutory requirement that prohibits incorporated businesses from owning interest bearing checking accounts will provide America's small business owners, farmers, and farm cooperatives with a funds management tool that is long overdue.

Passage of this bill will ensure America's entrepreneurs can compete effectively with larger businesses. My experience as a businessman has shown me, firsthand, that it's extremely important for anyone trying to maximize profits to be able to invest funds wisely for maximum efficiencies. Let me quote from a December, 1997 letter I received from a constituent, Mary Jo Bousek. Mary Jo owns a commercial property company. She writes:

''I was very pleased to see that you sponsored a bill to allow banks to pay interest on checking accounts for partnerships and corporations. When we changed our rental properties from a sole proprietorship to a Limited Liability Company, we suddenly began losing about $1500 a year in interest on our bank account. This seems totally unreasonable and unfair.''

Mary Jo is right. It is unfair.

During President Ronald Reagan's first term, one of his early actions was to abolish many provisions of the antiquated interest rate control system the banking system was required to use. With this change to the laws, Americans were finally able to earn interest on their checking accounts deposited in banks. Unfortunately, one aspect of the old system left untouched by the change in law was not allowing America's businesses to share in the good fortune.

Complicating matters is the growing impact of nonbanking institutions that offer deposit-like money accounts to individuals and corporations alike. Large brokerage firms have long offered interest on deposit accounts they maintain for their customers. This places these firms at an advantage over community banks that can't offer their corporate customers interest on their checking accounts.

While I support business innovation, I don't believe it's fair when any business gains a competitive edge over another due to government interference through overregulation. This is exactly the case we have with banking laws that stifle bankers, especially America's small community bankers, and give an edge to another segment of the financial community. The Small Business Banking Act of 1999 seeks to correct this imbalance and allow community banks to compete fairly with brokerage firms.

I'm pleased to say our bill has the strong support of America's Community Bankers, the National Federation

of Independent Businesses, the U.S. Chamber of Commerce, and the American Farm Bureau Federation. This bill has the support of many of the banks, thrifts, and small businesses in my home state of Nebraska. These important organizations represent a cross-current of the type of support Senator REED and I have for our bill. Senator REED and I also have the support of the Federal banking regulators. In their 1996 Joint Report, ''Streamlining of Regulatory Requirements'', the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, stated they believe the statutory prohibition against payment of interest on business checking accounts no longer serves a public purpose. I heartily agree.

Mr. President, this is a straightforward bill that will do away with an unnecessary regulation that burdens American business. I urge my colleagues to support it.

Mr. REED. Mr. President, I am pleased to join my colleague Senator HAGEL in introducing the Small Business Banking Act of 1999, legislation that eliminates a Depression-era federal law prohibiting banks from paying interest on commercial checking accounts. Last year, I cosponsored a similar bill with Senator HAGEL that was incorporated into a financial institutions regulatory relief bill which passed the Banking Committee.

The prohibition against the payment of interest on commercial accounts was originally part of a broad prohibition on the payment of interest on any deposit account. At the time of enactment in 1933, it was the popular view that payment of interest on deposits created an incentive for rural banks to shift excess deposits to urban money center banks which made loans that fueled speculation. Moreover, it was believed that such transfers created liquidity crises in rural communities. However, a number of changes in the banking system since enactment of the prohibition have called into question its usefulness.

First, with the passage of the Depository Institutions Deregulatory and Monetary Control Act of 1980, Congress allowed financial institutions to offer interest-bearing accounts to individuals—a change which has not adversely affected safety and soundness. Second, many banks have developed complex mechanisms called sweep accounts to circumvent the interest rate prohibition. Because of the costs associated with developing sweep accounts, large banks have become the primary offerors of these accounts. As a result, many smaller banks are at a competitive disadvantage with larger banks which can offer their commercial depositors interest-bearing accounts. Most importantly, the vast majority of small businesses cannot afford to utilize sweep accounts because the cost of opening these accounts is relatively high and most small businesses do not have a large enough deposit base to justify the administrative costs.

In light of these developments, it has become clear that the prohibition on interest-bearing commercial accounts is nothing more than a relic of the Depression-era that has effectively disadvantaged small businesses and small banks, and led large banks to dedicate significant resources to circumventing the prohibition. I am, therefore, pleased to cosponsor this legislation that will eliminate this prohibition and level the playing field for small banks and small business.

Mr. President, as we move into a new millennium, I think it appropriate that we eliminate this vestige of the early twentieth century that is no longer useful and is indeed burdensome.

By Mrs. HUTCHISON:

S. 350. A bill to amend title 10, United States Code, to improve the health care benefits under the TRICARE program and otherwise improve that program, and for other purposes; to the Committee on Armed Services.

THE MILITARY HEALTH CARE IMPROVEMENT ACT OF 1999

Mrs. HUTCHISON. Mr. President, today I am introducing the Military Health Care Improvement Act of 1999. This bill is a first step to reform the military health care system known as TRICARE. We are trying to recruit and retain the best people for our nation's military. To do this, we must pay them better, maintain good retirement benefits and improve the health care we provide them and their families.

Mr. President, there is a growing perception among active duty military, their dependents and military retirees that the military health care benefit is no longer much of a benefit. We have not done a very good job of keeping the promise the government made to military personnel: That in return for their service and sacrifices, the government will provide health care to active-duty members and their families even after they retire. In the past 10 years, the military has downsized by over one-third, and the military health care system has downsized by one-third as well. While hospitals have been closed as a result of BRAC or downsized in the past decade, the number of personnel that rely on the military and the military health care system has remained constant. Today, our armed forces have more married service members with families than ever before. In addition, those who have served and are now retired were promised quality health care as well.

In place of the promise, these individuals and families have been given, instead, a system called ''TRICARE.'' TRICARE is not health care coverage, but a health care delivery system that provides varying levels of benefits depending largely on where a member of the military or a retiree lives.

Unfortunately, what we find is that the TRICARE program often provides spotty coverage. My offices and those offices of my colleagues in the Senate no doubt have received thousands of complaints regarding access to care, unpaid bills, inadequate providers and difficulties with claims.

For their part, the doctors who participate in TRICARE complain about a host of administrative problems including delayed payments and a very cumbersome claims process. Many doctors have simply left the program, and in some locations, there are simply no providers at all in certain specialties. This is unacceptable.

Mr. President, I am introducing this bill to improve the health care benefits under the TRICARE program by ensuring that the health care and dental coverage available under TRICARE is substantially similar to the health care coverage and dental care coverage available under the Federal Employees Health Benefits program. This bill will:

Raise reimbursement levels for TRICARE, the military health-care delivery system, to attract and retain more participating doctors to the program.

Expedite and reduce the costs of TRICARE claims processing, which has been a thorn in the side of both beneficiaries and providers.

Require portability of benefits between regions. This would make it easier for military personnel and their families to receive health care benefits when they travel to different regions.

Minimize the cumbersome pre-authorization requirements for access to care.

Mr. President. This bill will help break down the bureaucracy that exists in the current system. There is no single solution to this problem, but we must begin now to ensure we honor our commitments. This is a critical issue to recruiting and retaining qualified people in the military—which is critical to the security of our country.

I am pleased to be joined in this effort by Senators ALLARD and HAGEL and look forward to working with my colleagues to keep the promise and improve the military health care system.

By Mr. GRAMS (for himself, Mr. JOHNSON, Mr. SESSIONS, and Mr. BENNETT):

S. 351. A bill to provide that certain Federal property shall be made available to States for State and local organization use before being made available to other entities, and for other purposes; to the Committee on the Judiciary.

TAXPAYER OVERSIGHT OF SURPLUS PROPERTY ACT

Mr. GRAMS. Mr. President, I rise today to introduce the Taxpayer Oversight of Surplus Property Act. I am pleased that Congressman JOHN PETERSON of Pennsylvania will soon introduce companion legislation in the House of Representatives.

Among the many programs administered by hundreds of federal agencies, there are some initiatives that depend

upon the active involvement of both the federal government and the states in order to ensure the wisest use of taxpayer dollars and meet the needs of the American people. One such effective partnership involves the distribution of federal surplus personal property to states and local organizations.

In 1976, President Ford signed legislation which established the current system for the fair and equitable donation of federal surplus personal property. Personal property declared ''surplus'' consists of items other than land or real property, naval vessels, and records of the federal government. This includes office supplies, furniture, medical supplies, hardware, motor vehicles, boats, airplanes, and construction equipment.

Under the federal personal property utilization and donation program, the General Services Administration is responsible for the transfer of federal surplus personal property to the states. Each state agency for surplus property receives the transfer of property and distributes these items to eligible recipients. Property that is not selected by the states is offered for sale to the general public. Importantly, the interests of the American taxpayers guide this entire process.

Mr. President, there are close to 70,000 recipients of federal surplus property located throughout the United States. Each day, cities, counties, Indian tribes, hospitals, schools, and public safety agencies are among the public and nonprofit organizations that look toward the state agencies for surplus property to help meet their needs.

Last April, I had the opportunity to visit the Minnesota surplus property agency, where I was joined by the lieutenant governor, the executive director of the Minnesota Sheriffs Association, and the commissioner of the state Department of Corrections. While there, I quickly became more familiar with the success of the donation program throughout Minnesota. I am very confident that my Senate colleagues will find that the donation program has achieved a comparable level of success in each of their states.

In fiscal year 1997, the Minnesota surplus property agency donated equipment and supplies with an original federal acquisition cost of $7.7 million to 1,700 eligible recipients, saving precious tax dollars if these items had been purchased new or on the open market. I was impressed to learn that 414 cities, 80 medical institutions, 19 museums, 237 public schools, 110 county entities, 160 State agencies, and 353 townships are among the active participants in the donation program.

Equally impressive is how effectively the state agencies for surplus property and the GSA have worked together to respond quickly and efficiently during times of natural disasters. Together they have successfully identified and transported sandbags, blankets, cots, tools, trucks and other items to disaster sites. I know that Minnesotans who suffered through the 1997 Midwest floods are gratified to have received over $3.7 million worth of federal surplus property to assist flood relief efforts during that horrible time.

Quite simply, the donation program has provided taxpayers with the equipment, supplies and material used to educate our children, maintain roads and streets, keep utility rates reasonable, train the workers of tomorrow, protect families from crime, provide needed relief during natural disasters, and treat the health of our nation's sick and needy. In fact, the original acquisition value of property distributed through the state agencies for surplus property totaled over $1.5 billion between fiscal years 1995 through 1997.

Because of the importance my constituents place upon the availability of this property, I am very concerned about current programs which limit the donation of property to the states. My concern is based in part upon comments expressed to me by constituents such as Mayor Richard Nelson of Warren, Minnesota.

Mayor Nelson recently wrote,

> When we inquired about the shortage of heavy equipment we were told that a large majority of that equipment is shipped overseas to other countries for humanitarian aid. I feel that our taxes paid for this equipment and it seems only fair that we should have the first opportunity to benefit from it. Being the mayor of a community that has suffered from four floods within two years, I believe that we have unmet needs in this country that need to be addressed before we can look at any outside interests.

Mr. President, Mayor Nelson's concerns go to the heart of the legislation that I am introducing today. I believe that the volume of distributed federal surplus property would increase if the intent of Congress when it passed the 1976 reforms was more closely followed.

If Congress continues to allow surplus federal property to go abroad, or not make its way through proper channels to eligible recipients, taxpayers such as those in the community of Warren will stand to lose. As someone who has always worked to ensure the wisest possible use of taxpayer dollars, this gives me great concern. The legislation I am introducing will help to address these concerns through the following provisions.

First, this measure would ensure that when distributing surplus federal personal property, domestic needs are met before we consider foreign interests. It would, however, grant the President the authority to make supplies available for humanitarian relief purposes before going to the states, in the case of emergencies or natural disasters.

Under the Humanitarian Assistance Program (HAP), the Secretary of Defense is permitted to make nonlethal Department of Defense supplies available by the State Department to foreign countries as part of humanitarian relief activities. I was disturbed to learn that over $1 billion worth of excess supplies was made available to the State Department between fiscal years 1987 through 1997 before GSA had been given an opportunity to review the property and make it available for donation to the states.

Mr. President, I understand that some officials may argue that the Humanitarian Assistance Program is an important part of our nation's foreign assistance efforts. Many foreign countries and organizations clearly have benefited from nonlethal Department of Defense excess property finance by American taxpayers. Although I have serious concerns about this initiative, my legislation does not eliminate the Humanitarian Assistance Program.

However, I believe we must prioritize the needs of disaster victims in Minnesota, rural hospitals in Arkansas, police departments in Washington state, school districts in Idaho, homeless assistance providers in Florida, and other communities and organizations which have invested their tax dollars in government property and the donation program. For these reasons, I oppose the continued priority status granted to foreign recipients under programs such as the Humanitarian Assistance Program.

Second, my bill would amend the Foreign Assistance Act of 1961 to prohibit the transfer of Government-owned excess property to foreign countries or international organizations for environmental protection activities in foreign countries unless GSA determined that there is no federal or state use for the property.

Third, this legislation would require GSA to report to Congress on the effectiveness of all statutes relating to the disposal and donation of personal property and recommend any changes that would further improve the Donation Program.

Mr. President, my bill is based on the principle that eligible recipients should be able to maximize their tax dollars through expendable federal property that meets their needs. It takes an important step toward stopping publicly-owned property from being shipped abroad and given to other organizations before it is distributed through each state agency for surplus property.

My legislation will fulfill the public's right to know how and where their tax dollars are being spent. In many ways, it will serve as the second phase of the reforms overwhelmingly passed by Congress in 1976, by preserving the active role of states in the handling and distribution of surplus federal property.

Members of Congress and state and local officials all have an obligation to see that the government distributes this property fairly and equitably, ensuring accountability to the taxpayers. Too often, federal agencies forget that the owners of this property are the American people—the federal government is merely its public custodian.

Mr. President, the best interests of America's taxpayers have always been at the top of my agenda. I look forward to improving Congressional oversight

of government property and securing passage of this legislation during the 106th Congress.

By Mr. THOMAS (for himself, Mr. NICKLES, Mr. CRAIG, Mr. HELMS, Mr. CRAPO, Mr. GRAMS, and Mr. ENZI):

S. 352. A bill to amend the National Environmental Policy Act of 1969 to require that Federal agencies consult with State agencies and county and local governments on environmental impact statements; to the Committee on Environmental and Public Works.

STATE AND LOCAL GOVERNMENT PARTICIPATION ACT OF 1999

Mr. THOMAS. Mr. President, I rise today, along with Senators NICKLES, CRAIG, HELMS, CRAPO, GRAMS, and ENZI, to introduce the State and Local Government Participation Act of 1999 which would amend the National Environmental Policy Act (NEPA). This bill is designed to guarantee that federal agencies identify state, county and local governments as cooperating agencies when fulfilling their environmental planning responsibilities under NEPA.

NEPA was designed to ensure that the environmental impacts of a proposed federal action are considered and minimized by the federal agency taking that action. It was supposed to provide for adequate public participation in the decision making process on these federal activities and document an agency's final conclusions with respect to the proposed action.

Although this sounds simple and quite reasonable, NEPA has become a real problem in Wyoming and many states throughout the nation. A statute that was supposed to provide for additional public input in the federal land management process has instead become an unworkable and cumbersome law. Instead of clarifying and expediting the public planning process on federal lands, NEPA now serves to delay action and shut-out local governments that depend on the proper use of these federal lands for their existence.

The State and Local Government Participation Act is designed to provide for greater input from state and local governments in the NEPA process. This measure would simply guarantee that state, county and local agencies be identified as cooperating entities when preparing land management plans under NEPA. Although the law already provides for voluntary inclusion of state and local entities in the planning process, to often, the federal agencies choose to ignore local governments when preparing planning documents under NEPA. Unfortunately, many federal agencies have become so engrossed in examining every environmental aspect of a proposed action on federal land, they have forgotten to consult with the folks who actually live near and depend on these areas for their economic survival.

Mr. President, states and local communities must be consulted and included when proposed actions are being taken on federal lands in their state. Too often, federal land managers are more concerned about the comments of environmental organizations located in Washington, D.C. or New York City than the people who actually live in the state where the proposed action will take place. This is wrong. The concerns, comments and input of state and local communities is vital for the proper management of federal lands in the West. The State and Local Government Participation Act of 1999 will begin to address this troubling problem and guarantee that local folks will be involved in proposed decision that will affect their lives.

Mr. CRAIG. Mr. President, I join my colleagues today in introducing the State and Local Government Participation Act.

This legislation would amend the National Environmental Policy Act (NEPA) to provide the opportunity for State, local, and county agencies to participate in land management decisions by identifying them as cooperating agencies in the NEPA process.

NEPA was passed in 1969 to, among other things, ''declare a national policy which will encourage harmony between man and his environment.'' I support the intent of NEPA, to protect our public resources from environmental degradation. However, in the last twenty years, the NEPA process has become a very time consuming and cumbersome public process. In almost every instance, an Environmental Impact Statement or Environmental Assessment must be completed under NEPA before any action can take place on the public lands.

My state, Idaho, is 63 percent federal land, and management of those lands is of vital importance, especially to the communities that are economically dependent on the public lands. In far too many instances, land management decisions are being made without allowing those most affected by a land management decision or in many cases, those most knowledgeable about the resource, to play a meaningful role in the NEPA process.

In the Pacific Northwest, the Forest Service and the Bureau of Land Management are currently working on a comprehensive ecosystem management plan for the Columbia River Basin, the Interior Columbia Basin Ecosystem Management Plan (ICBEMP). This plan, in the form of a draft EIS, has been in the works for four years at an expense of more than $40 Million. County governments and state officials in my state feel alienated by the process to date. The situation has gotten so bad that in last year's omnibus appropriations act, I worked to have report language encouraging the administration to include affected state and county governments in this process as cooperating agencies.

I would submit that every western Senator has at least one horror story involving a public land managing agency that ran roughshod over the local government in the NEPA process. Rather than legislating that Federal agencies must work with the local governments on a case-by-case basis, this bill would provide the opportunity to fix a problem that has arisen with the original NEPA legislation.

Mr. GRAMS. Mr. President, I rise today in support of the State and Local Government Participation Act of 1999. I would like to thank Senator THOMAS for introducing this simple, but very important piece of legislation.

As Senator THOMAS said in his introductory remarks, this legislation would make state and county governments ''cooperating agencies'' in the National Environmental Policy Act process. For example, when the Forest Service decides to undertake a timber sale, it will have to by law consult and obtain the input of state and county governments during the NEPA process. Current law, however, only requires the federal government to consult with other federal agencies.

The underlying concept of this legislation is something most people would assume already takes place. Average Americans assume that the federal government considers state and local governments partners in all land-use and environmental decisions. After all, it is an established fact that local citizens and officials can best meet local problems with local solutions. And in those matters, people expect the federal government to help out where needed and take the lead where appropriate. But average Americans, unfortunately, often aren't aware of the complete picture.

Too often, the federal government adopts its ''I know best'' philosophy and ignores the input of local officials or even excludes them from the decision making process. One of the first things locally elected officials in the northern part of my state—an area which deals with the National Environmental Policy Act regularly—say to me when we sit down to talk is that the federal government doesn't care about their needs. They feel the federal government, be it the Forest Service, Park Service, or EPA, just doesn't seem to realize that counties are having a tough time making ends meet and providing basic services to its residents in an era of increased land-regulation and decreased logging, mining, and access. And when they show you the numbers and make their case, it is impossible to disagree with them.

There are a number of counties in northern Minnesota which are predominantly federally owned. St. Louis County is 62 percent federally owned, Cook County is 82 percent federally owned, and Lake County is 92 percent federally owned. They are home to the Superior National Forest and the Boundary Waters Canoe Area Wilderness. Not far away is Voyageurs National Park and not far from that is the Chippewa National Forest. Not surprisingly, they are often placed in the

middle of many disputes over land-uses. They continue to see their PILT payments funded at barely 50 percent of authorized amounts. They continue to witness more and more restrictions on the use of lands within their counties and the Forest Services declining timber sales. And they continue to see their populations declining as a result of lost economic opportunities. They deserve to be heard when the federal government is going to take actions in their communities.

Mr. President, it is clear that in the last half of this century power has shifted from our nation's cities and states to Washington, DC. No one disputes that. And while many of us would like to see that shift back the other way, it may take some time to get it done. But what we should all be able to agree upon, is that locally elected officials should have a seat at the table and should be treated as equals and as partners by federal agencies. They know what is happening on their land and they know the people who will be impacted by changes in the law. They also know what the impact will be on a county or state budget. But most importantly, Mr. President, county and state officials are closer to the people. Their phone numbers are actually in the phone book and they aren't a long distance call away. They answer their door when someone comes knocking. And they aren't a bureaucrat hidden away in Washington, DC, making one size fits all policy decisions.

As I stated earlier, I think those people deserve a role in the NEPA process and I think the American people would agree. I urge my colleagues to protect their state and local government's right to participate by supporting this important piece of legislation.

By Mr. GRASSLEY (for himself, Mr. KOHL, and Mr. THURMOND):

S. 353. A bill to provide for class action reform, and for other purposes; to the Committee on the Judiciary.

THE CLASS ACTION FAIRNESS ACT OF 1999

Mr. GRASSLEY. Mr. President, I rise today to introduce, along with Senators KOHL and THURMOND, the Class Action Fairness Act of 1999, a bill that will help curb class action lawsuit abuse. Last year, Senator KOHL and I introduced the Class Action Fairness Act of 1998, S. 2083. That bill was marked up in the Administrative Oversight and the Courts Subcommittee on September 10, 1998, and we favorably voted out of subcommittee a substitute amendment to the bill. Unfortunately, this legislation was not considered further by the Senate because of the press of other legislative business scheduled before the full Judiciary Committee.

We are now reintroducing the substitute amendment to last year's class action bill, with minor modifications, as the Class Action Fairness Act of 1999. This modest bill will go a long way toward ending class action lawsuit abuses where the plaintiffs receive very little and their lawyers receive a whole lot. This bill will preserve class action lawsuits as an important tool that brings representation to the unrepresented and result in important discrimination and consumer decisions.

In October 1997, my Judiciary Subcommittee held a hearing on the problem of certain class action lawsuit settlements. I found one example of class action lawsuit abuse to be particularly disturbing. In an antitrust case settled in the Northern District of Illinois in 1993, the plaintiff class alleged that multiple domestic airlines participated in price-fixing, which resulted in plaintiffs paying more for airline tickets than they otherwise would have had to pay.

In the settlement, all of the class plaintiffs were awarded a book of coupons which could be used toward the purchase of future airline tickets. These coupons varied in amount and number, based on how many plane tickets a particular plaintiff had purchased. The catch was that the plaintiff still had to pay for most of any new airline ticket out of his or her own pocket. This meant that only $10 worth of coupons could be used toward the purchase of a $100 ticket; up to $25 worth of coupons for a $250 ticket; up to $50 worth of coupons for a $500 ticket, and so on. In addition, these coupons could not be used on certain blackout dates, which appeared to include all holidays and peak travel times.

Interestingly enough, the attorneys did not get paid with these coupon books. Rather, the attorneys were paid cash—$16 million in cash. Now, if the coupons were good enough for their clients—the people that actually got ripped off—I wonder why those same coupons were not good enough for their lawyers.

Another example of an egregious class action lawsuit settlement was highlighted at the subcommittee hearing. Mrs. Martha Preston was a member of the plaintiff class in the case Hoffman versus Banc Boston, where some plaintiffs received under $10 each in compensation for their injuries, yet were docked from $75 to $90 for attorneys' fees. This means that attorneys who were supposed to be representing these people's best interests, agreed to a settlement that cost some of the plaintiffs more money than they received in compensation for being wronged.

These class action lawsuit abuses happen for a number of reasons. One reasons is that plaintiffs' lawyers negotiate their own fees as part of the settlement. This can result in distracting lawyers from focusing on their client's needs, and settling or refusing to settle based on the amount of their own compensation.

During our hearing, evidence was presented that at least one group of plaintiffs' lawyers meets on a regular basis to discuss initiating class action lawsuits. They scan the Federal Register and other publications to get ideas for lawsuits, and only after they have identified a wrong, do they find clients for their lawsuits. Instead of having clients who complain of harms going to hire attorneys, these attorneys find the harms first and then recruit potential clients with the promise of compensation.

On the other hand, the defendants do not always have clean hands. Plaintiffs' lawyers say that they are approached by lawyers from large corporations who urge them to find a class and sue the corporation. The corporations may use the class action lawsuit as a tool to limit their liability. Once a lawsuit is initiated and settled, no member of the class may sue based on that claim. In other words, if a corporation settle a class action lawsuit by paying all class members $10 as compensation for a faulty product, the plaintiffs can no longer sue for any harm caused by the faulty product. This is one way of buying immunity for liability.

A Rand study on class action litigation stated that,

> It is generally agreed that fees drive plaintiffs' attorney's filing behavior, that defendants' risk aversion in the face of large aggregate exposures drives their settlement behavior. . . . In other words, the problems with class actions flow from incentives that are embedded in the process itself.

The Rand study also found that the number of class actions is rising significantly, with most of the increase concentrated in State courts. State courts often are used in nationwide class actions to the detriment of class members and sometimes defendants. In fact, State courts are more likely to certify class actions without adequately considering whether a class action would be fair to all class members. In addition, class lawyers sometimes manipulate pleadings to avoid removal of the lawsuit to the Federal courts, even to the extent that they minimize their client's potential claims. Class lawyers also sometimes defeat the complete diversity requirement by ensuring that at least one named class member is from the same State as a defendant, even if every other class member is from a different State.

The Class Action Fairness Act of 1999 does a number of things. First, it requires that notice of proposed settlements in all class actions, as well as all class notices, must be in clear, easily understood English and must include all material settlement terms, including the amount and source of attorneys' fees. The notices most plaintiffs receive are written in small print and confusing legal jargon. In fact, a lawyer testified before my subcommittee that even he could not understand the notice he received as a plaintiff in a class action lawsuit. Since plaintiffs are giving up their right to sue, it is imperative that they understand what they are doing and the ramifications of their actions.

Second, our bill requires that State attorneys general be notified of any

proposed class settlement that would affect residents of their States. The notice would give a State attorney general the opportunity to object if the settlement terms are unfair.

Third, our bill requires that attorneys' fees in class actions are to be based on a reasonable percentage of damages actually paid to class members, the actual costs of complying with the terms of a settlement agreement, as well as any future financial benefits. In the alternative, the bill provides that, to the extent the law permits, fees may be based on a reasonable hourly (lodestar) rate. This provision would discourage settlements that give attorneys exorbitant fees based on hypothetical overvaluation of coupon settlements, yet allows for reasonable fees in all kinds of cases, including cases that primarily involve injunctive relief.

Fourth, our bill allows more class action lawsuits to be removed from State court to Federal court, either by a defendant or an unnamed class member. A class action would qualify for Federal jurisdiction if the total damages exceed $75,000 and parties include citizens from multiple States. Currently, class lawyers can avoid removal if individual claims are for just less than $75,000—even if hundreds of millions of dollars in total are at stake—or if just one class member is from the same State as a defendant. However, the bill provides that cases remain in State court where the substantial majority of class and primary defendants are from the same State and that State's law would govern, or the primary defendants are States and a Federal court would be unable to order the relief requested.

Fifth, our bill will reduce frivolous lawsuits by requiring that a violation of rule 11 of the Federal rules of civil procedure, which penalizes frivolous lawsuits, will require the imposition of sanctions. However, the nature and extent of sanctions will remain discretionary.

We need class action reform badly. Both plaintiffs and defendants are calling for change in this area. The Class Action Fairness Act of 1999 is not just procedural reform, it is substantive reform of our court system. This bill will remove the conflict of interest that lawyers face in class action lawsuits, and will ensure the fair settlement of these cases. This bill will preserve the process, but put a stop to the more egregious abuses. I urge all my colleagues to join Senators KOHL, THURMOND, and me and support this important piece of legislation.

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

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

S. 353

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 ''Class Action Fairness Act of 1999''.

SEC. 2. NOTIFICATION REQUIREMENT OF CLASS ACTION CERTIFICATION OR SETTLEMENT.

(a) IN GENERAL.—Part V of title 28, United States Code, is amended by inserting after chapter 113 the following new chapter:

''CHAPTER 114—CLASS ACTIONS

''§ 1711. Definitions

''In this chapter the term—

''(1) 'class' means a group of persons that comprise parties to a civil action brought by 1 or more representative persons;

''(2) 'class action' means a civil action filed pursuant to rule 23 of the Federal Rules of Civil Procedure or similar State rules of procedure authorizing an action to be brought by 1 or more representative persons on behalf of a class;

''(3) 'class certification order' means an order issued by a court approving the treatment of a civil action as a class action;

''(4) 'class member' means a person that falls within the definition of the class;

''(5) 'class counsel' means the attorneys representing the class in a class action;

''(6) 'plaintiff class action' means a class action in which class members are plaintiffs; and

''(7) 'proposed settlement' means a settlement agreement between or among the parties in a class action that is subject to court approval before the settlement becomes binding on the parties.

''§ 1712. Application

''This chapter shall apply to—

''(1) all plaintiff class actions filed in Federal court; and

''(2) all plaintiff class actions filed in State court in which—

''(A) any class member resides outside the State in which the action is filed; and

''(B) the transaction or occurrence that gave rise to the class action occurred in more than 1 State.

''§ 1713. Notification of class action certifications and settlements

''(a) Not later than 10 days after a proposed settlement in a class action is filed in court, class counsel shall serve the State attorney general of each State in which a class member resides and the Attorney General of the United States as if such attorneys general and the Department of Justice were parties in the class action with—

''(1) a copy of the complaint and any materials filed with the complaint and any amended complaints (except such materials shall not be required to be served if such materials are made electronically available through the Internet and such service includes notice of how to electronically access such material);

''(2) notice of any scheduled judicial hearing in the class action;

''(3) any proposed or final notification to class members of—

''(A)(i) the members' rights to request exclusion from the class action; or

''(ii) if no right to request exclusion exists, a statement that no such right exists; and

''(B) a proposed settlement of a class action;

''(4) any proposed or final class action settlement;

''(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

''(6) any final judgment or notice of dismissal;

''(7)(A) if feasible the names of class members who reside in each State attorney general's respective State and the estimated proportionate claim of such members to the entire settlement; or

''(B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each attorney general's State and the estimated proportionate claim of such members to the entire settlement; and

''(8) any written judicial opinion relating to the materials described under paragraphs (3) through (6).

''(b) A hearing to consider final approval of a proposed settlement may not be held earlier than 120 days after the date on which the State attorneys general and the Attorney General of the United States are served notice under subsection (a).

''(c) Any court with jurisdiction over a plaintiff class action shall require that—

''(1) any written notice provided to the class through the mail or publication in printed media contain a short summary written in plain, easily understood language, describing—

''(A) the subject matter of the class action;

''(B) the legal consequences of being a member of the class action;

''(C) the ability of a class member to seek removal of the class action to Federal court if—

''(i) the action is filed in a State court; and

''(ii) Federal jurisdiction would apply to such action under section 1332(d);

''(D) if the notice is informing class members of a proposed settlement agreement—

''(i) the benefits that will accrue to the class due to the settlement;

''(ii) the rights that class members will lose or waive through the settlement;

''(iii) obligations that will be imposed on the defendants by the settlement;

''(iv) the dollar amount of any attorney's fee class counsel will be seeking, or if not possible, a good faith estimate of the dollar amount of any attorney's fee class counsel will be seeking; and

''(v) an explanation of how any attorney's fee will be calculated and funded; and

''(E) any other material matter; and

''(2) any notice provided through television or radio to inform the class members of the right of each member to be excluded from a class action or a proposed settlement, if such right exists, shall, in plain, easily understood language—

''(A) describe the persons who may potentially become class members in the class action; and

''(B) explain that the failure of a person falling within the definition of the class to exercise such person's right to be excluded from a class action will result in the person's inclusion in the class action.

''(d) Compliance with this section shall not provide immunity to any party from any legal action under Federal or State law, including actions for malpractice or fraud.

''(e)(1) A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action if the class member resides in a State where the State attorney general has not been provided notice and materials under subsection (a).

''(2) The rights created by this subsection shall apply only to class members or any person acting on a class member's behalf, and shall not be construed to limit any other rights affecting a class member's participation in the settlement.

''(f) Nothing in this section shall be construed to impose any obligations, duties, or

responsibilities upon State attorneys general or the Attorney General of the United States.

"§ 1714. Limitation on attorney's fees in class actions

''(a) In any class action, the total attorney's fees and expenses awarded by the court to counsel for the plaintiff class may not exceed a reasonable percentage of the amount of—

''(1) any damages and prejudgment interest actually paid to the class;

''(2) any future financial benefits to the class based on the cessation of alleged improper conduct by the defendants; and

''(3) costs actually incurred by all defendants in complying with the terms of an injunctive order or settlement agreement.

''(b) Notwithstanding subsection (a), to the extent that the law permits, the court may award attorney's fees and expenses to counsel for the plaintiff class based on a reasonable lodestar calculation.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V of title 28, United States Code, is amended by inserting after the item relating to chapter 113 the following:

"114. Class Actions ..... 1711".

SEC. 3. DIVERSITY JURISDICTION FOR CLASS ACTIONS.

Section 1332 of title 28, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d)(1) In this subsection, the terms 'class', 'class action', and 'class certification order' have the meanings given such terms under section 1711.

''(2) The district courts shall have original jurisdiction of any civil action where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is a class action in which—

''(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

''(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

''(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

''(3) The district court shall abstain from hearing a civil action described under paragraph (2) if—

''(A)(i) the substantial majority of the members of the proposed plaintiff class are citizens of a single State of which the primary defendants are also citizens; and

''(ii) the claims asserted will be governed primarily by the laws of that State; or

''(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief.

''(4) In any class action, the claims of the individual members of any class shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs.

''(5) This subsection shall apply to any class action before or after the entry of a class certification order by the court.

''(6)(A) A district court shall dismiss, or, if after removal, strike the class allegations and remand, any civil action if—

''(i) the action is subject to the jurisdiction of the court solely under this subsection; and

''(ii) the court determines the action may not proceed as a class action based on a failure to satisfy the conditions of rule 23 of the Federal Rules of Civil Procedure.

''(B) Nothing in subparagraph (A) shall prohibit plaintiffs from filing an amended class action in Federal or State court.

''(C) Upon dismissal or remand, the period of limitations for any claim that was asserted in an action on behalf of any named or unnamed member of any proposed class shall be deemed tolled to the full extent provided under Federal law.

''(7) Paragraph (2) shall not apply to any class action, regardless of which forum any such action may be filed in, involving any claim relating to—

''(A) the internal affairs or governance of a corporation or other form of entity or business association arising under or by virtue of the statutory, common, or other laws of the State in which such corporation, entity, or business association is incorporated (in the case of a corporation) or organized (in the case of any other entity); or

''(B) the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 or the rules and regulations adopted under such Act).''.

SEC. 4. REMOVAL OF CLASS ACTIONS TO FEDERAL COURT.

(a) IN GENERAL.—Chapter 89 of title 28, United States Code, is amended by adding after section 1452 the following:

"§ 1453. Removal of class actions

''(a) In this section, the terms 'class', 'class action', and 'class member' have the meanings given such terms under section 1711.

''(b) A class action may be removed to a district court of the United States in accordance with this chapter, except that such action may be removed—

''(1) by any defendant without the consent of all defendants; or

''(2) by any plaintiff class member who is not a named or representative class member without the consent of all members of such class.

''(c) This section shall apply to any class action before or after the entry of any order certifying a class.

''(d) The provisions of section 1446 relating to a defendant removing a case shall apply to a plaintiff removing a case under this section, except that in the application of subsection (b) of such section the requirement relating to the 30-day filing period shall be met if a plaintiff class member files notice of removal within 30 days after receipt by such class member, through service or otherwise, of the initial written notice of the class action.

''(e) This section shall not apply to any class action, regardless of which forum any such action may be filed in, involving any claim relating to—

''(1) the internal affairs or governance of a corporation or other form of entity or business association arising under or by virtue of the statutory, common, or other laws of the State in which such corporation, entity, or business association is incorporated (in the case of a corporation) or organized (in the case of any other entity); or

''(2) the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 or the rules and regulations adopted under such Act).''.

(b) REMOVAL LIMITATION.—Section 1446(b) of title 28, United States Code, is amended in the second sentence by inserting ''(a)'' after ''section 1332''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 89 of title 28, United States Code, is amended by adding after the item relating to section 1452 the following:

''1453. Removal of class actions.''.

SEC. 5. REPRESENTATIONS AND SANCTIONS UNDER RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Rule 11(c) of the Federal Rules of Civil Procedure is amended—

(1) in the first sentence by striking ''may, subject to the conditions stated below,'' and inserting ''shall'';

(2) in paragraph (2) by striking the first and second sentences and inserting ''A sanction imposed for violation of this rule may consist of reasonable attorneys' fees and other expenses incurred as a result of the violation, directives of a nonmonetary nature, or an order to pay penalty into court or to a party.''; and

(3) in paragraph (2)(A) by inserting before the period '', although such sanctions may be awarded against a party's attorneys''.

SEC. 6. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of enactment of this Act.

Mr. KOHL. Mr. President, Senator GRASSLEY and I today introduce the Class Action Fairness Act of 1999. This legislation addresses growing problems in class action litigation, particularly unfair and abusive settlements that shortchange class members while class lawyers line their pockets with high fees.

Let me share with you just a few disturbing examples.

First, one of my constituents, Martha Preston of Baraboo, Wisconsin, was an unnamed member of a class action lawsuit against her mortgage company that ended in a settlement. While at first she got $4 and change in compensation, a few months later her lawyers surreptitiously took $80—twenty times her compensation—from her escrow account to pay their fees. In total, her lawyers managed to pocket over $8 million in fees, but never explained that the class—not the defendant—would pay the attorneys' fees. Naturally outraged, she and others sued the class lawyers. Her lawyers turned around and sued her in Alabama—a state she had never visited—and demanded an unbelievable $25 million. So not only did she lose $75, she was forced to defend herself from a $25 million lawsuit.

Second, class lawyers and defendants often engineer settlements that leave plaintiffs with small discounts or coupons unlikely ever to be used. Meanwhile, class lawyers reap big fees based on unduly optimistic valuations. For example, in a settlement of a class action against major airlines, most plaintiffs received less than $80 in coupons while class attorneys received $14 million in fees based on a projection that the discounts were worth hundreds of millions. In a suit over faulty computer monitors, class members got $13 coupons, while class lawyers pocketed $6 million. And in a class action against Nintendo, plaintiffs received $5 coupons, while attorneys took almost $2 million in fees.

Third, competing federal and state class actions engage in a race to settlement, where the best interests of the class lose out. For example, in one state class action the class lawyers negotiated a small settlement precluding

all other suits, and even agreed to settle federal claims that were not at issue in state court. Meanwhile, a federal court found that the federal claims could have been worth more than $1 billion, while accusing the state class lawyers of ''hostile representation'' that ''surpassed inadequacy and sank to the level of subversion'' and pursuit of self-interest in ''getting a fee'' that was ''more in line with the interests of [defendants] than those of their clients.''

Fourth, class actions are often filed in state courts that are more likely to give inadequate consideration to class certification and class settlements. On several occasions, a state court has certified a class action although federal courts rejected certification of the same case. And in several Alabama state courts, 38 out of 43 classes certified in a three-year period were certified on an ex parte basis, without notice and hearing. One Alabama judge acting ex parte certified 11 class actions in 1997 alone. Comparably, only an estimated 38 class actions were certified in federal court that year (excluding suits against the U.S. and suits brought under federal law). This lack of close scrutiny appears to create a big incentive to file in state court, especially given the recent findings of a Rand study that class actions are increasingly concentrated in state courts.

Fifth, in nationwide class actions filed in state court, class lawyers often manipulate the pleadings to avoid removal to federal court, even by minimizing the potential claims of class members. For example, state class actions often seek just over $74,000 in damages per plaintiff, and forsake punitive damage claims, to avoid the $75,000 floor that qualifies for federal diversity jurisdiction. Or they defeat the federal requirement of complete diversity by naming one class member who is from the same state as a defendant, even if all other class members are from different states.

Finally, out-of-state defendants are often hauled into state court to address nationwide class claims, although federal courts are a more appropriate and more efficient forum. For example, an Alabama court is now considering a class action—and could establish a national policy—in a suit brought against the big three automakers on behalf of every American who bought a dual-equipped air bags over an eight-year period. The defendants failed in their attempt to remove to federal court based on an application of current diversity laws. And, unlike federal courts, states are unable to consolidate multiple class actions that involve the same underlying facts.

These examples show that abuse of the class action system is not only possible, but real. And the incentives and realities of the current system are a big part of the problem.

A class action is a lawsuit in which an attorney not only represents an individual plaintiff, but, in addition, seeks relief for all those individuals who suffered a similar injury. Prospective class members are usually sent notice about the class action, and are presumed to join it, unless they specifically ask to be left out. When these suits are settled, all class members are notified of the terms of the settlement and given the chance to object if they don't think the settlement is fair. A court must ultimately approve a settlement agreement.

The vast majority of these suits are brought and settled fairly and in good faith. Unfortunately, the class action system does not adequately protect class members from the few unscrupulous lawyers who are more interested in big attorneys' fees than compensation for their clients, the victims. The primary problem is that the client in a class action is a diffuse group of thousands of individuals scattered across the country, which is incapable of exercising meaningful control over the litigation. As a result, while in theory the class lawyers must be responsive to their clients, the lawyers control all aspects of the litigation.

Moreover, during a class action settlement, the amount of the attorney fee is negotiated between plaintiffs' lawyers and the defendants, just like other terms of the settlement. But in most cases the fees come at the expense of class members—the only party that does not have a seat at the bargaining table.

In addition, defendants may use class action settlements to advance their own interests. Paying a small settlement generally precludes all future claims by class members. So defendants have ample motivation to give class lawyers the fees they want as the price for settling all future liabilities.

As a result, it is easy to see how class members are left out in the cold. Although the judge is supposed to determine whether the settlement is fair before approving it, class lawyers and defendants ''may even put one over on the court, a staged performance. The lawyers support the settlement to get fees; the defendants support it to evade liability; the court can't vindicate the class's rights because the friendly presentation means that it lacks essential information,'' *Kamilewicz* v. *Bank of Boston Corp.*, 100 F.3d 1348, 1352 (Easterbrook, J., dissenting) (7th Cir. 1996).

Although class members get settlement notices and have the opportunity to object, they rarely do so, especially if they have little at stake. Not only is it expensive to get representation, but also it can be extremely difficult to actually understand what the settlement really does. Settlements are often written in long, finely printed letters with incomprehensible legalese, which even well-trained attorneys are hard pressed to understand. And settlements often omit basic information like how much money will go toward attorneys' fees and where that money will come from. In Martha Preston's case, one prominent federal judge found that ''the notice not only didn't alert the absent class members to the pending loss but also pulled the wool over the state judge's eyes,'' *id.*

We all know that class actions can result in significant and important benefits for class members and society, and that most class lawyers and most state courts are acting responsibly. Class actions have been used to desegregate racially divided schools, to obtain redress for victims of employment discrimination, and to compensate individuals exposed to toxic chemicals or defective products. Class actions increase access to our civil justice system because they enable people to pursuant claims collectively that would otherwise be too expensive to litigate.

The difficulty in any effort to improve a basically good system is weeding out the abuses without causing undue damage. The legislation we propose attempts to do this. It does not limit anyone's ability to file or settle a class action. It seeks to address the problem in several ways. First, it requires that State attorneys general be notified about proposed class action settlements that would affect residents of their states. With notice, the attorneys general can intervene in cases where they think the settlements are unfair.

Second, the legislation requires that class members be notified of a potential settlement in clear, easily understood English—not legal jargon.

Third, it limits class attorneys' fees to a reasonable percentage of the actual damages received by plaintiffs or to reasonable hourly fees. This will deter class lawyers from using inflated values of coupon settlements to reap big fees. Some courts have already embraced this standard, which parallels the recent securities reform law.

Fourth, it permits removal to federal court of certain class actions involving citizens of multiple states, at the request of unnamed class members or defendants. This provision eliminates gaming by class lawyers to keep cases in state court and, through consolidation of related cases in federal court, helps prevent a race to settlement between competing class actions.

Finally, it amends Rule 11 of the Federal Rules of Civil Procedures to require the imposition of sanctions for filing frivolous lawsuits, although the nature and extent of sanctions remains discretionary. This provision will deter the filing of frivolous class actions.

Let me emphasize the limited scope of this legislation. We do not close the courthouse door to any class action. We do not require that State attorneys general do anything with the notice they receive. We do not deny reasonable fees for class lawyers. And we do not mandate that every class action be brought in federal court. Instead, we simply promote closer and fairer scrutiny of class actions and class settlements.

These proposals have earned a broad range of support. Even Judge Paul Niemeyer, the Chair of the Judicial Conference's Advisory Committee on Civil Rules, who has studied class actions closely and testified before Congress on this issue, expressed his support for this ''modest'' measure, noting in particular that increasing federal jurisdiction over class actions will be a positive ''meaningful step.'' Last year, our bill passed the Judiciary Administrative Oversight and the Courts Subcommittee.

Mr. President, right now, people across the country can be dragged into lawsuits unaware of their rights and unarmed on the legal battlefield. What our bill does is give regular people back their rights and representation. This measure may not stop all abuses, but it moves use forward. It will help ensure that good people like Martha Preston don't get ripped off.

Mr. President, Senator GRASSLEY and I believe this is a moderate approach to correct the worst abuses, while preserving the benefits of class actions. It is both pro-consumer and pro-defendant. We believe it will make a difference.

By Mr. THOMAS (for himself, Mr. MCCAIN, Mr. KERRY, Mr. SMITH of Oregon, and Mr. ROBB):

S. 354. A bill to authorize the extension of nondiscriminatory trade status to the products of Mongolia; to the Committee on Foreign Relations.

MONGOLIA MOST-FAVORED-NATION STATUS

Mr. THOMAS. Mr. President, I rise as chairman of the Subcommittee on East Asian and Pacific Affairs to introduce S. 354, a bill to authorize the extension of nondiscriminatory treatment—formerly known as ''most-favored nation status''—to the products of Mongolia. I am pleased to be joined by Senator MCCAIN, chairman of the Commerce Committee; Senator KERRY, the ranking minority member of my subcommittee; and Senator ROBB and Senator SMITH or Oregon as original cosponsors.

Mongolia has undergone a series of remarkable and dramatic changes over the last few years. Sandwiched between the former Soviet Union and China, it was one of the first countries in the world to become communist after the Russian Revolution. After 70 years of communist rule, though, the Mongolian people have recently made great progress in establishing a democratic political system and creating a free-market economy. Since that time, there have been successive successful national and regional elections.

Mongolia has demonstrated a strong desire to build a friendly and cooperative relationship with the United States on trade and related matters since its turn towards democracy. We concluded a bilateral trade treaty with that country in 1991, and a bilateral investment treaty in 1994. Mongolia has received nondiscriminatory trading status since 1991, and has been found to be in full compliance with the freedom of emigration requirements of Title IV of the Trade Act of 1974. In additions, it has acceded to the Agreement Establishing of the World Trade Organization.

Mr. President, Mongolia has clearly demonstrated that it is fully deserving of joining the ranks of those countries to which we extend nondiscriminatory trade status. The extension of that status would not only serve to commend the Mongolians on their impressive progress, but would also enable the U.S. to avail itself of all its rights under the WTO with respect to Mongolia.

I have another, more parochial, reason for being interested in MFN status for Mongolia. Mongolia and my home state of Wyoming are sister states; a strong relationship between the two has developed over the last four years. Many of Mongolia's provincial governors have visited the state, and the two governments have established partnerships in education, agriculture, and livestock management. Like Wyoming, Mongolia is a high plateau with mountains on the northwest border, where many of the residents make their living by raising livestock. I am pleased to see the development of this mutually beneficial relationship, and am sure that the extension of nondiscriminatory trade status will serve to strengthen it further.

Mr. President, I introduced an identical bill in the last Congress, but Congress adjourned sine die before the bill could be acted on by both houses. I was very appreciative that last year the distinguished chairman of the Finance Committee, Senator ROTH, indicated his willingness to favorably consider the legislation early in this Congress, and look forward to working with him.

Mr. President, I ask unanimous that the text of S. 354 be printed in the RECORD.

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

S. 354

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

SECTION 1. FINDINGS.

Congress makes the following findings:

(1) Mongolia has received nondiscriminatory trade treatment since 1991 and has been found to be in full compliance with the freedom of emigration requirements of title IV of the Trade Act of 1974;

(2) Mongolia has, since ending its nearly 70 years of dependence on the former Union of Soviet Socialist Republics, established a parliamentary democracy and a free-market economic system;

(3) Mongolia concluded a bilateral trade treaty with the United States in 1991 and a bilateral investment treaty in 1994;

(4) Mongolia has acceded to the Agreement Establishing the World Trade Organization;

(5) Mongolia has demonstrated a strong desire to build a friendly and cooperative trade relationship with the United States; and

(6) The extension of nondiscriminatory trade status to the products of Mongolia would enable the United States to avail itself of all the rights available under the World Trade Organization with respect to Mongolia.

SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO MONGOLIA.

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply to Mongolia; and

(2) after making a determination under paragraph (1) with respect to Mongolia, proclaim the extension of nondiscriminatory treatment to the products of that country.

(b) TERMINATION OF APPLICATION OF TITLE IV.—On or after the effective date of the extension under subsection (a)(2) of nondiscriminatory treatment to the products of Mongolia, title IV of the Trade Act of 1974 shall cease to apply to that country.

Mr. MCCAIN. Mr. President, today I am proud to cosponsor legislation with Senators THOMAS, ROBB, and KERRY to grant nondiscriminatory trade status to Mongolia. Passage of this legislation will play an important role in aiding Mongolia's transition to a democratic government and a market-oriented economy.

There has been a stunning political transformation in Mongolia since it broke away from Communist rule in 1990. In the past seven years, there have been two presidential elections and three parliamentary elections. All of these have been open and democratic, and have not suffered from violence or fraud.

The most important aspect of these elections is that they show the triumph of democracy and democratic forces. In 1996, the Mongolian Social Democratic Party (MSDP) and Mongolian National Democratic Party (MNDP) joined forces to win an unexpected victory in the parliamentary elections. By fulfilling its ''Contract with the Mongolian Voter,'' this coalition is ensuring the establishment of a political system based on our cherished democratic principles. After a few months of uncertainty, the Mongolian government is now back on track and committed to continue its reforms. I am happy to say that the International Republican Institute is continuing to play a major role in showing these political parties how to establish a stable democratic government.

This democratic transformation has established a firm human rights regime. The Mongolian Constitution allows freedom of speech, the press and expression. Separation of Church and state is recognized in this predominantly Buddhist nation as well as the right to worship or not worship. Full freedom of emigration is allowed, and Mongolia now is in full compliance with sections 402 and 409 of the Trade Act of 1974, also known as the Jackson-Vanik Amendment. An independent judiciary has been established to protect these rights from any future violation.

Mongolia is also in the middle of an economic transformation. As part of the ''Contract with the Mongolian

Voter,'' the democratic coalition of the MNDP and MSDP ran on promises to establish private property rights and encourage foreign investment. The Mongolian government is now steadily creating a market economy. A program has been set up to allow residents of government-owned high rise apartments to acquire ownership of their residence. In 1997, Mongolia joined the international trading system by joining the World Trade Organization and eliminating all tariffs, except on personal automobiles, alcoholic beverages, and tobacco. On January 1, 1999, the state-run press became privatized. The economic news also continues to be good. The 1997 GDP growth was 3.3%, and the inflation rate has dropped from 53.2% in 1996 to 9.2% in June, 1998. The Mongolian government is now boldly moving to set the nation on a course to privatize large-scale enterprise and reform the state pension system.

When I was in Mongolia in 1997, I saw the effects of this economic transformation firsthand. At a town hall meeting in Kharakhorum, the ancient capital of the Mongol Empire, I met a herdsman and asked him about the economic liberalization. First, I asked him how many sheep he had under Communism. He said none, because the Communists didn't allow private property. Then I asked him how many sheep he owned after privatization. He answered that he had three sheep then, which is not much in a country with 25 million sheep. So I asked him how many sheep he has now. He answered that he now has 90 goats, 60 sheep, 20 cows and 6 horses. I asked him if that was considered successful. He replied that he was successful as were many herdsmen in this new economy. He then told me that he would never want to change the system back to what it was, because ''now Mongols have control over their own life and destiny.'' That is the new culture of a market Mongolian economy.

There are many benefits to supporting Mongolian democracy and economic liberalization. In 1991, Secretary of State James Baker promised Mongolia that the United States would be Mongolia's ''third neighbor.'' We remain committed to that course of action to encourage Mongolia in its endeavors and promote it as an example of how nations can successfully convert from a Communist totalitarian state to a market democracy. The democratic Mongolia has already begun to promote peace and stability among its neighbors by becoming the world's first national nuclear-free zone. Furthermore, the United States will be able to count on the liberalized Mongolian economy as an important market for American goods and services.

I hope that my colleagues here in the Senate will join me in passing this legislation to grant nondiscriminatory trade status to Mongolia to help it continue its successful democratic transformation and transition to a market economy.

By Mr. MOYNIHAN (for himself and Mr. BINGAMAN):

S. 355. A bill to amend title 13, United States Code, to eliminate the provision that prevents sampling from being used in determining the population for purposes of the apportionment of Representatives in Congress among the several States; to the Committee on Government Affairs.

A JUST APPORTIONMENT FOR ALL STATES ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce, along with my friend and colleague, Senator BINGAMAN, a bill to allow the use of sampling in determining the populations of the states for use in reapportionment. The Supreme Court has ruled that the 1976 amendments to the Census Act do not permit sampling in determining these populations. We believe sampling is vital to achieving the goal of the most accurate census possible, and to a fair and accurate redistricting.

The Bureau of the Census proposes to count each census tract by mail and then by sending out enumerators until they have responses for 90 percent of the addresses. The Bureau proposes to then use sampling to infer who lives at the remaining ten percent of addresses in each tract based on what they know of the 90 percent. This would provide a more accurate census then we get by repeatedly sending enumerators to hard-to-count locations and would save $500 million or more in personnel costs.

The Census plan is supported by the National Academy of Sciences' National Research Council, which was directed by Congress in 1992 to study ways to achieve the most accurate population count possible. The NRC report finds that the Bureau should ''make a good faith effort to count everyone, but then truncate physical enumeration after a reasonable effort to reach nonrespondents. The number and character of the remaining nonrespondents should then be estimated through sampling.''

Mr. President, the taking of a census goes back centuries. I quote from the King James version of the Bible, chapter two of Luke: ''And it came to pass in those days that there went out a decree from Caesar Augustus that all the world should be taxed (or enrolled, according to the footnote) * * * And all went to be taxed, everyone into his own city.'' The early censuses were taken to enable the rule or ruling government to tax or raise an army.

The first census for more sociological reasons was taken in Nuremberg, in 1449. So it was not a new idea to the Founding Fathers when they wrote it into the Constitution to facilitate fair taxation and accurate apportionment of the House of Representatives, the latter of which was the foundation of the Great Compromise that has served us well ever since.

The Constitution says in Article I, Section 2:

> Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years of the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall direct by law.

Those who cite this as saying the Constitution requires an ''actual enumeration'' should consider whether the phrase is being taken out of context. The Supreme Court has not yet ruled on the constitutionality of sampling. Rather the Court has ruled on the census laws last amended in 1976.

I also note that we have not taken an ''actual enumeration'' the way the Founding Fathers envisioned since 1960, after which enumerators going to every door were replaced with mail-in responses. The Constitution provides for a postal system, but did not direct that the census be taken by mail. Yet we do it that way. Why not sample if that is a further improvement?

Sampling would go far toward correcting one of the most serious flaws in the census, the undercount. Statistical work in the 1940's demonstrated that we can estimate how many people the census misses. The estimate for 1940 was 5.4 percent of the population. After decreasing steadily to 1.2 percent in 1980, the 1990 undercount increased to 1.8 percent, or more than four million people.

More significantly, the undercount is not distributed evenly. The differential undercount, as it is known, of minorities was 5.7 percent for Blacks, 5.0 percent for Hispanics, 2.3 percent for Asian-Pacific Islanders, and 4.5 percent for Native Americans, compared with 1.2 percent for non-Hispanic whites. The difference between the black and non-black undercount was the largest since 1940. By disproportionately missing minorities, we deprive them of equal representation in Congress and of proportionate funding from Federal programs based on population. The Census Bureau estimates that the total undercount will reach 1.9 percent in 2000 if the 1990 methods are used instead of sampling.

Mr. President, I have some history with the undercount issue. In 1966 when I became Director of the Joint Center for Urban Studies at MIT and Harvard, I asked Professor David Heer to work with me in planning a conference to publicize the non-white undercount in the 1960 census and to foster concern about the problems of obtaining a full enumeration, especially of the urban poor. I ask unanimous consent that my foreword to the report from that conference be printed in the RECORD, for it is, save for some small numerical changes, disturbingly still relevant. Sampling is the key to the problem and we must proceed with it so that we have one accurate census count for all purposes, all uses. I also ask unanimous consent that the text of the bill be printed in the RECORD and I hope my colleagues will support it.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 355

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 ''A Just Apportionment for All States Act''.

SEC. 2. USE OF SAMPLING.

Section 195 of title 13, United States Code, is amended by striking ''Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the'' and inserting ''The''.

SOCIAL STATISTICS AND THE CITY

(By David M. Heer)

FOREWORD

At one point in the course of the 1950's John Kenneth Galbraith observed that it is the statisticians, as much as any single group, who shape public policy, for the simple reason that societies never really become effectively concerned with social problems until they learn to measure them. An unassuming truth, perhaps, but a mighty one, and one that did more than he may know to sustain morale in a number of Washington bureaucracies (hateful word!) during a period when the relevant cabinet officers had on their own reached very much the same conclusion—and distrusted their charges all the more in consequence. For it is one of the ironies of American government that individuals and groups that have been most resistant to liberal social change have quite accurately perceived that social statistics are all too readily transformed into political dynamite, whilst in a curious way the reform temperament has tended to view the whole statistical process as plodding, overcautious, and somehow a brake on progress. (Why must every statistic be accompanied by detailed notes about the size of the ''standard error''?)

The answer, of course, is that this is what must be done if the fact is to be accurately stated, and ultimately accepted. But, given this atmosphere of suspicion on the one hand and impatience on the other, it is something of a wonder that the statistical officers of the federal government have with such fortitude and fairness remained faithful to a high intellectual calling, and an even more demanding public trust.

There is no agency of which this is more true than the Bureau of the Census, the first, still the most important, information-gathering agency of the federal government. For getting on, now, for two centuries, the Census has collected and compiled the essential facts of the American experience. Of late the ten-year cycle has begun to modulate somewhat, and as more an more current reports have been forthcoming, the Census has been quietly transforming itself into a continuously flowing source of information about the American people. In turn, American society has become more and more dependent on it. It would be difficult to find an aspect of public or private life not touched and somehow shaped by Census information. And yet for all this, it is somehow ignored. To declare that the Census is without friends would be absurd. But partisans? When Census appropriations are cut, who bleeds on Capitol Hill or in the Executive Office of the President? The answer is almost everyone in general, and therefore no one in particular. But the result, too often, is the neglect, even the abuse, of an indispensable public institution, which often of late has served better than it has been served.

The papers in this collection, as Professor Heer's introduction explains, were presented at a conference held in June 1976 with the avowed purpose of arousing a measure of public concern about the difficulties encountered by the Census in obtaining a full count of the urban poor, especially perhaps the Negro poor. It became apparent, for example, that in 1960 one fifth of nonwhite males aged 25-29 had in effect disappeared and had been left out of the Census count altogether. Invisible men. Altogether, one tenth of the nonwhite population had been ''missed.'' The ramifications of this fact were considerable, and its implications will suggest themselves immediately. It was hoped that a public airing of the issue might lead to greater public support to ensure that the Census would have the resources in 1970 to do what is, after all, its fundamental job, that of counting all the American people. As the reader will see, the scholarly case for providing this support was made with considerable energy and candor. But perhaps the most compelling argument arose from a chance remark by a conference participant to the effect that if the decennial census were not required by the Constitution, the Bureau would doubtless never have survived the economy drives of the nineteenth century. The thought flashed: the full enumeration of the American population is not simply an optional public service provided by government for the use of sales managers, sociologists, and regional planners. It is, rather, the constitutionally mandated process whereby political representation in the Congress is distributed as between different areas of the nation. It is a matter not of convenience but of the highest seriousness, affecting the very foundations of sovereignty. That being the case, there is no lawful course but to provide the Bureau with whatever resources are necessary to obtain a full enumeration. Inasmuch as Negroes and other ''minorities'' are concentrated in specific urban locations, to undercount significantly the population in those areas is to deny residents their rights under Article I, Section 3 of the Constitution, as well, no doubt, as under Section 1 of the Fourteenth Amendment. Given the further, more recent practice of distributing federal, state, and local categorical aid on the basis not only of the number but also social and economic characteristics of local populations, the constitutional case for full enumeration would seem to be further strengthened.

A sound legal case? Others will judge; and possibly one day the courts will decide. But of one thing the conference had no doubt: the common-sense case is irrefutable. America needs to count all its people. (And reciprocally, all its people need to make themselves available to be counted.) But if the legal case adds any strength to the commonsense argument, it remains only to add that should either of the arguments bring some improvement in the future, ti will be but another instance of the generosity of the Carnegie Corporation, which provided funds for the conference and for this publication.

Mr. BINGAMAN. Mr. President, I am pleased to speak in support of this important legislation being introduced today by my friend from New York, Senator MOYNIHAN. This bill turns into law what we all recognize is the only practical way to count our citizens in the decennial census. There is no question—the science is unequivocal—sampling is the only way to assure an accurate census.

Not only does sampling provide a better census, it costs less than all other alternative methods—as much as $3 billion less. What could be clearer? Sampling gives a better answer at a lower cost. This bill ought to pass the Senate unanimously.

Mr. President, the Constitution says the census shall be conducted in a manner that Congress shall by law direct. The recent Supreme Court case found that under the current law sampling may be used for all aspects of the census except for the decision on how many representatives each state will have. In fact, current law says sampling shall be used for every other purpose of the census.

My state now has three House members and that number isn't going to change after this census one way or the other. However, we now know New Mexico had the second highest undercount rate in the 1990 census—3.1 percent, or nearly 50,000 New Mexicans were simply left out, including 20,000 children. Among New Mexico's native American community, the undercount rate was an astounding 9 percent. This undercount is literally costing New Mexico millions of dollars every year.

In Albuquerque, our largest city, 12,000 men, women, and children were left out. Nationwide, 4 million Americans were not accounted for.

Mr. President, this massive undercount is unacceptable to New Mexico and should be unacceptable to every Senator, especially when the Census Bureau has a solution that is tried, tested, and reliable. I believe every citizen counts, and every citizen should be counted.

Federal funding for education, transportation, crime prevention and other priorities is allocated to states based on population. The majority of people overlooked in the past census are poor, the very citizens we must assure are not being left out. If the existing undercount is repeated in future censuses, New Mexico will again be denied its fair share of critical federal funds.

Under current law we can have a two-number census, one without sampling for apportionment and one with sampling for all other purposes. I can appreciate why some people don't want a two-number census. The country would be better served with only a single-number census as long as it's the best number the Census Bureau can come up with. However, some in Congress would use the appropriations process to stymie the census.

Mr. President, the census is done only once per decade, it is too important to decide this issue as part of the annual appropriation process. This bill will assure that the Census Bureau has available the very best tools for this important task. Science-based sampling is the only way to give America the quality we demand in our census. It is inconceivable to me that anyone would support a second-rate census.

I am pleased to support this bill, and I hope the Senate will take prompt action on it. I also urge the House to move forward quickly to pass this important legislation. I thank Mr. MOYNIHAN for his efforts.

By Mr. KYL (for himself and Mr. MCCAIN):

S. 356. A bill to authorize the Secretary of the Interior to convey certain works, facilities, and titles of the Gila Project, and designated lands within or adjacent to the Gila Project, to the Wellton-Mohawk Irrigation and Drainage District, and for other purposes; to the Committee on Energy and Natural Resources.

WELLTON-MOHAWK PROJECT TRANSFER

Mr. KYL. Mr. President, I rise today to introduce a bill to transfer title to the Wellton-Mohawk Irrigation and Drainage District in Yuma, Arizona from the Federal government to the project beneficiaries. If you think this sounds like deja vu, you would be correct—it is. In May of 1998, during the 105th Congress, I introduced the same bill. The version I introduce today is the same version the passed the Senate at the end of last Congress. The bill was approved by all the relevant House and Senate Committees, passed by the Senate, included in a package of similar bills in the House, but, for reasons that I have not been able to determine, never managed to get signed into law. And this particular project transfer was one Regional Director Bob Johnson called ''low hanging fruit.'' In a meeting in my office, he assured me that the Wellton-Mohawk project was a ''perfect example'' of the kind of project that should transfer under the administration's 1995 Framework for Transfer. So this is exactly the kind of project the Department of the Interior should transfer project title from the Department to the project beneficiaries.

Mr. President, I would like to thank Senator JOHN MCCAIN for cosponsoring this bill with me and 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. 356

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

SEC. 1. SHORT TITLE.—This Act may be referred to as the ''Wellton-Mohawk Transfer Act''.

SEC. 2. TRANSFER.—The Secretary of the Interior (''Secretary'') is authorized to carry out the terms of the Memorandum of Agreement No. 8–AA–34–WAO14 (''Agreement'') dated July 10, 1998 between the Secretary and the Wellton-Mohawk Irrigation and Drainage District (''District'') providing for the transfer of works, facilities, and lands to the District, including conveyance of Acquired Lands, Public Lands, and Withdrawn Lands, as defined in the Agreement.

SEC. 3. WATER AND POWER CONTRACTS.—Notwithstanding the transfer, the Secretary and the Secretary of Energy shall provide for and deliver Colorado River water and Parker-Davis Project Priority Use Power to the District in accordance with the terms of existing contracts with the District, including any amendments or supplements thereto or extensions thereof and as provided under section 2 of the Agreement.

SEC. 4. SAVINGS.—Nothing in this Act shall affect any obligations under the Colorado River Basin Salinity Control Act (P.L. 93–320, 42 U.S.C. 1571).

SEC. 5. REPORT.—If transfer of works, facilities, and lands pursuant to the Agreement has not occurred by July 1, 2000, the Secretary shall report on the status of the transfer as provided in section 5 of the Agreement.

SEC. 6. AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

By Mr. GRAMS:

S. 357. A bill to amend the Federal Crop Insurance Act to establish a pilot program in certain States to provide improved crop insurance options for producers; to the Committee on Agriculture, Nutrition, and Forestry.

FEDERAL CROP INSURANCE REFORM ACT

By Mr. GRAMS:

S. 358. A bill to freeze Federal discretionary spending at fiscal year 2000 levels, to extend the discretionary budget caps until the year 2010, and to require a two-thirds vote of the Senate to breach caps; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977 with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

BUDGET REFORM LEGISLATION

By Mr. GRAMS (for himself and Mr. CRAPO):

S. 359. A bill to establish procedures to provide for a taxpayer protection lock-box and related downward adjustment of discretionary spending limits, to provide for additional deficit reduction with funds resulting from the stimulative effect of revenue reductions, and to provide for the retirement security of current and future retirees through reforms of the Old Age Survivor and Disability Insurance Act; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

TAXPAYER PROTECTION LOCK-BOX LEGISLATION

Mr. GRAMS. Mr. President, I have a number of bills I want to introduce today. I want to start out by talking a little bit about the three bills dealing with budget reform, and then also an important bill leading to crop insurance reform.

Mr. President, I rise today to introduce these bills that would reform the Federal budget process, strengthen fiscal discipline and restore Government accountability to ensure that taxpayers are fully represented in Washington.

I commend Leader LOTT and Chairman DOMENICI for including budget process reform as one of the top five priorities in the 106th Congress. I believe this should be our immediate priority as we prepare to make our budget process work better.

Mr. President, the Federal budget process has become a reckless game in which the team roster is limited to a handful of Washington politicians and technocrats while the taxpayers are relegated to the sidelines.

This has not only weakened the nation's fiscal discipline but also undermined the system of checks and balances established by the Constitution.

The most recent example of this abusive process was the 1998 Omnibus Appropriation legislation. The bill included $520 billion in funding for many essential Government programs, representing 8 out of Congress' 13 annual appropriations bills.

But the entire negotiations were exclusive, arbitrary, and conducted behind closed doors by only a few congressional leaders and White House staff.

Few Members of the Congress had any idea what was in the bill but were asked to approve it, without debate, without adequate review, without amendments, and without roll call votes.

As a result, Washington broke the spending caps mandated in last year's Balanced Budget Act by spending more than $21 billion of the surplus for so-called ''emergency'' purposes.

Budget negotiators magically invented a new smoke and mirrors budget term—''forward funding'' which shifted $9.3 billion into future budgets. Long-criticized ''backdoor spending'' thrived: for example, lawmakers sneaked $1 billion to fund programs to achieve initiatives under the Kyoto treaty. The White House has not sent up the Treaty and the Congress has many reservations about it.

Without any policy consideration, hundreds of millions of taxpayer dollars went to fund such pork programs as, amazingly, caffeinated chewing gum research.

The budget process is seriously flawed. Twenty-five years ago, Congress tried to change its budget practices and get spending under control by passing the Congressional Budget Act. Yet, over these 25 years, our national debt has grown from $540 billion to $5.6 trillion.

Spending is at an all-time high, and so are taxes. The budget process has become so complicated that most lawmakers have a hard time understanding it. Of course, that hasn't stopped the proliferation of budget gimmicks to circumvent the intent of the Congress.

Before the situation explodes completely, Congress must immediately reform the budget process to ensure the integrity of our budget and appropriations process. We can begin in the 106th Congress by taking a few simple steps.

The first step is to ensure our government's continued operation without any interruption. Last week, I introduced important legislation that would continue funding for the Government at the prior year's level when Congress and the President fail to complete appropriations legislation.

Mr. President, we all still have a fresh memory of the 1995 Federal Government shutdown, the longest one in history, which caused financial damage and inconvenience to millions of Americans when the President refused to support a Balanced Budget Act and tax relief for Americans.

However, the most serious damage done by the 27-day shutdown was that it shook the American people's confidence in their Government and in their elected officials.

I am concerned that President Clinton would use this technique again to force Congress into spending more money. I believe we can do better for the taxpayers and believe my legislation, the Good Government bill, will help to do that.

In May of 1997, I first proposed this as a stand-alone vote in an effort to pass the flood relief bill for Northern Minnesota. The Senate Democratic leader agreed and supported my proposal. I was able to obtain a commitment from the Senate leadership of both parties to pursue the legislation separately in the near future.

Last summer, I sought to offer it as an amendment to an appropriations bill. This amendment, originally sponsored by Senator MCCAIN, would have created an automatic procedure for a CR at the end of each fiscal year. Unfortunately, my efforts were not successful.

If I had succeeded, we would not have had to go through the debacle last year's omnibus spending bill.

Mr. President, we all have different philosophies and policies on budget priorities, and of course we will not always agree.

But there are essential functions and services of the Federal Government we must continue to fund regardless of our differences in budget priorities. Program funding must be based on merits, not on political leverage.

This legislation would continue funding for the Federal Government at 100 percent of the previous year's level when Congress and the President fail to complete appropriations legislation at the end of any fiscal year.

The virtue of this legislation is that it would allow us to debate issues concerning spending policy and the merits of budget priorities while we continue to keep essential Government functions operating. The American taxpayer will no longer be held hostage to a Government shutdown.

Mr. President, there are still plenty of uncertainties involved in our budget and appropriations process, particularly this year. We must ensure that this good-government contingency plan is adopted to keep the Government up and running in the event a budget agreement is not reached.

Another step we must take is to control our emergency spending. Emergency spending is spending over the budget allotment and is supposed to cover true emergencies, such as natural disaster relief.

Instead, Congress and the Administration have used this as an opportunity to bust the budget for a lot of spending that is not emergency related at all. Most of this spending can be planned within our budget limits. Even natural disasters happen regularly—why not put something in our budget to pay for them?

That is why I am introducing the ''Emergency Spending Control Act'' today as well. This legislation would require the President to submit a line item in his budget for natural disaster relief funding. The funding levels for this line item would be based on the average spending of the last five years on natural disaster relief.

The amount in this line item would not be subject to the current spending caps. The funding of this budget line item must be used exclusively for natural disaster relief—any use for non-natural disasters is strictly prohibited.

Mr. President, as a Senator whose State has been previously devastated by the 1997 flood of the Red and Minnesota Rivers, tornadoes, snow, ice and other natural disasters, I know how important enacting this legislation is not only for Minnesotans, but for all Americans.

Fortunately, city mayors, the State of Minnesota, and the Federal Emergency Management Agency acted quickly in the Red River Valley, and the rebuilding process moved relatively fast.

Local governments continue to work closely with my office and with State and Federal agencies to answer the many questions that still arise as people seek to rebuild their homes, their businesses, and the rest of their lives.

We owe it to these Minnesotans and other Americans who have been faced with a natural disaster to require the President to submit a line item in his budget for natural disaster relief funding.

Local and State officials should not be required to come to Washington and lobby for funding every time that a natural disaster occurs. We should not have to consider and pass separate ''emergency'' legislation which becomes a magnet for other so-called emergency spending. Disasters occur every year, we should budget for them.

Mr. President, the second to the last bill I am introducing today is a bill to enforce and expand the statutory spending caps. Spending limits are a good tool to control spending—if the President and lawmakers stick to them. But since the establishment of statutory spending limits, Washington has repeatedly broken them.

Washington set forth new spending caps in 1990 after it failed to meet its deficit reduction targets. In 1993, President Clinton broke the statutory spending caps for his new spending increases and created new caps.

But in 1997, the President could not live within his own spending caps, and he broke them again. Last year, President Clinton proposed over $22 billion of so-called ''emergency spending'' in the omnibus spending legislation and again broke the caps.

Again and again, Washington lowers the fiscal bar and then jumps over it at the expense of the American taxpayers.

This is wrong. Mr. President. If we commit to living within the statutory spending caps, we must stick to it. We must use every tool available to enforce these spending limits.

My legislation will help Congress to enforce its fiscal discipline by creating a new budget point of order to allow Congress to exceed spending limits only if two-thirds of its members vote to do so.

In addition, my bill would extend the limits beyond the year 2000. Doing so will ensure that spending increases won't grow faster than the income growth of working Americans.

There are many other budget process reforms I support as well, promoted by other Senators. One I would like to highlight is the biennial budget, which is proposed by our distinguished colleague, Senator DOMENICI. Biennial budgeting will allow us to examine our fiscal discipline as well as providing valuable time for our oversight responsibilities.

If the Congress adopts each of these changes, it will ensure a budget process that serves the best interests of the nation, allows careful policy and spending deliberation, and strengthens our political institution of government through representation as established by the Constitution.

Mr. President, finally I want to take a few minutes to introduce a bill which takes an important step toward improving the nation's federal crop insurance program—and that is a bill that I have introduced, the ''Crop Insurance Reform Act.''

Last year, we witnessed devastating circumstances come together to create a crisis atmosphere for many of our nation's farmers. I know that in my own state of Minnesota, multiple years of wet weather and crop disease—especially scab—coupled with rising production costs and plummeting commodity prices have devastated family farms in record numbers.

With the increased opportunities that accompany Freedom to Farm come increased risks. We've seen this first hand.

Freedom to Farm can work, but a necessary component of it, as I have argued repeatedly, is an adequate crop insurance program. This component has been missing so far. One of the promises made during debate of the 1996 Farm Bill was that Congress would address the need for better crop insurance.

We must not let another growing season pass without having instituted a new, effective crop insurance program.

This overhaul is a major undertaking, and instituting a program of comprehensive reform should be and is now a legislative priority.

In fact, the President has included a number of ideas for reforming the federal crop insurance program in his recent budget proposal. Most importantly, the President has suggested increasing the federal subsidies on crop insurance premiums and eliminating disparities in subsidy rates. Essentially, this is similar to legislation I introduced last year and am introducing again today. Unfortunately, while the President claims to support crop insurance reform, he has failed to identify any money in his budget to fund it. However, now that he has recognized the urgency of the situation, I hope we can work together to accomplish meaningful reform.

Furthermore, we must resume the debate now so that we can have the best system in place in time, and that we can do it in time for the year 2000 crops. The bill I am introducing today is a first step. It is the result of months of work from my Minnesota Crop Insurance Work Group.

The Work Group consists of various commodity groups, farm organizations, rural lenders, and agriculture economists. We have also worked closely with USDA's Farm Service and Risk Management Agencies. But it was my primary intention to assemble a committee of farmers and lenders—people who know the situation and have seen the problems firsthand.

The Crop Insurance Reform Act is designed to address the coverage decision a farmer must make at the initial stages of purchasing crop insurance. Producers have been telling us that they need better coverage, but that it is currently too expensive.

My bill will allow more options for producers to choose from when making risk-management decisions. It essentially provides farmers with an enhanced coverage product at a more affordable price.

Currently, producer premium subsidies range from nearly 42 percent at the 100 percent price election for 65 percent coverage, to only 13 percent at the 100 percent price election for 85 percent coverage. Although the Risk Management Agency has recently provided better product options, the relatively low subsidy levels at the higher ends of coverage make them cost prohibitive.

My bill will put in place a flat subsidy level of 31 percent across the 100 percent price election and at all levels of coverage.

This will adjust the producer premiums to make better coverage more affordable, thereby removing the incentive from purchasing lesser-grade coverage. The Crop Insurance Reform Act puts the focus of the coverage decision on what really matters: and that is the type of coverage which would be needed in the event of a disaster or loss, rather than simply making the decision based upon up-front costs.

When farmers are armed with the necessary risk management tools, I believe everybody will save. The government saves in ad hoc disaster payments, arguably the most expensive way to address any kind of financial crisis. But more importantly, the family farmer saves.

This bill is part of a continued effort to reform Federal Crop Insurance.

Over the next few months, I will continue to work with my Crop Insurance Work Group, and my colleagues, Senators LUGAR and ROBERTS, to craft a comprehensive program which directly benefits producers and also will be here to protect the taxpayers.

Mr. GRAMS. Mr. President, the second bill I am introducing with my good friend, Senator CRAPO of Idaho, is lockbox legislation.

Before being elected to the Senate in 1998, MIKE CRAPO led the fight to enact the Lock Box legislation in the House of Representatives. His version of the Lock Box legislation was passed by the House of Representatives on four different occassions, both as a free standing bill and as an amendment. I am pleased to have Senator CRAPO as a partner on this legislation in the Senate.

Mr. President, our short-term fiscal situation has improved greatly due to the continued growth of our economy. It is reported that we may end up with a unified budget surplus of over $80 billion this year and a $4.5 trillion surplus in the next 15 years.

Of course, tax dollars are always considered ''free money'' by the big spenders here in Washington, and the thought of all that new ''free surplus money'' is creating a feeding frenzy on Capitol Hill.

If we don't lock away this increased revenue for the taxpayers, the government will spend every penny of it. Despite the rhetoric about reserving it all for Social Security, Washington has already spent $30 billion of last year's budget surplus.

We need a lockbox to dedicate any increased revenue in the future and return it to the taxpayers as tax relief, debt reduction, and Social Security reform.

Since the unexpected revenue has come directly from working Americans, I believe it is only fair to return it to them. The tax burden on the American people is still historically high. It's sound policy to use our non-Social Security surplus to lower the tax burden and allow families to keep a little more of their hard-earned money.

Over the past 30 years, as I mentioned, we have amassed a $5.6 trillion national debt thanks to Washington's culture of spending. A newborn child today will bear over $20,000 of that debt the moment he or she comes into the world. Each year, we sink more than $250 billion into the black hole of interest payments, which could be better spent fighting crime, maintaining roads and bridges, and equipping the military. It's sound policy to use part of any surpluses to begin paying down the national debt and reducing the financial burden on the next generations.

The budget surpluses also give us a great opportunity to address our other long-term financial imbalances. Federal unfunded liabilities could eventually top $20 trillion, bankrupting our government if no real reform occurs.

It's vitally important that we use the entire Social Security surplus exclusively for Social Security, and we should even use a portion of the non-Social Security surplus to finance Social Security reforms.

If we don't lock in the surplus, Washington will spend all of it to expand the government. That's what they are doing now. Last month alone, President Clinton proposed 41 new programs. The spending increases he outlined could reach $300 billion a year, the highest increase proposed by any President in our history.

Mr. President, we must never, never, never repeat the mistake we made in 1997 and 1998, and allow Washington take a huge bite into the taxpayers' money. We must do everything we can to ensure we reserve any increased revenue for Social Security, tax relief and debt reduction.

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

S. 362. A bill to authorize appropriations for the Coastal Heritage Trail Route in New Jersey, and for other purposes; to the Committee on Energy and Natural Resources.

LEGISLATION TO REAUTHORIZE THE NEW JERSEY COASTAL HERITAGE TRAIL ROUTE

Mr. LAUTENBERG. Mr. President, today I am introducing legislation to reauthorize the New Jersey Coastal Heritage Trail Route so that we can allow the National Park Service, together with its partners, to complete its work in bringing recognition to New Jersey's rich coastal history. I am pleased to be joined by Senator TORRICELLI in sponsoring this legislation.

The Coastal Heritage Trail Route was first authorized in 1988 through legislation sponsored by former Senator Bill Bradley and myself. This legislation authorized the Secretary of the Interior to design a vehicular route that would enable the public to enjoy the nationally significant natural and cultural sites along the New Jersey coastline. Thanks to the work of the National Park Service, the Coastal Heritage Trail Route will, at completion, have five theme trails to allow for the self-discovery of topics ranging from maritime history to wildlife migration. These five vehicular discovery trails will travel along the coast of New Jersey, through eight different counties, by way of the Garden State Parkway and State Highway 49.

The first theme trail completed is the Maritime History trail. The purpose of this trail is to explore the coastal trade, defense of the nation, and fishing and ship building industries. The second trail is the Coastal

Habitats trail. This trail enables visitors to learn about the special natural resources of the New Jersey coast and the plants, animals and especially birds that live there. The recently opened Wildlife Migrations trail, allows individuals to explore the special places that migrating species depend on along New Jersey's coast. A fourth trail is the Historic Settlements trail. When completed, this trail will bring the historic communities whose economies were based on local natural resources to life. The final tour, Relaxation and Inspiration, will depict how people have traditionally used their leisure time, at places such as religious retreats and historic boardwalks.

The project, which was originally conceived and designed to recognize the importance of New Jersey's coastal areas in our nation's history, has grown into a rich partnership between the federal government, state and local governments, and private individuals. This partnership demonstrates a commitment among many levels of government and the private sector to bringing history to life.

Mr. President, the New Jersey Coastal Heritage Trail Route is clearly one of the National Park Service's success stories. Legislation to renew authorization for the trail enacted in 1994 appropriately called upon the Park Service to match 50 percent of its federal funding with non-federal funds. I am pleased to report that the Service has gone well beyond that matching requirement. Since 1994, appropriations for the Trail Route totaled $1.8 million. During that same period, the Park Service has raised $2.8 million in matching funds.

However, the work is not yet finished. Even though the Park Service has been able to meet the funding requirements, at this time, only the first three trails have been completed. The Park Service plans call for completing the two remaining trails, and adding three new visitor centers and interpretive materials to aid school children as they learn about New Jersey's history. Our bill would make this possible by increasing the authorization level for the trail to $4 million, and extend the authorization to the Year 2004, which would give the Park Service the additional time it needs to complete the Trail Route.

The Coastal Heritage Trail Route brings national recognition and stature to many of New Jersey's special places, and helps to contribute to New Jersey's number two industry, tourism. Most importantly, the Trail Route provides residents and visitors with an opportunity to explore New Jersey's natural and cultural history and develop an appreciation for its importance. But what should happen if we don't reauthorize the funds for this program? Among other effects, New Jersey residents and visitors to our state will have lost valuable educational opportunities. Much of the $2 million in grants that the project has successfully generated will have been lost. And there would be a severe impact on tourism if the five themes are not fully developed.

Mr. President, I just wanted to take a moment to commend Senator MURKOWSKI, the Chairman of the Senate Energy and Natural Resources Committee and Senator THOMAS, the Chairman of the Subcommittee on National Parks, Historic Preservation, and Recreation. They and the members of their staff worked hard in the last Congress to mark up this legislation and report it favorably to the full Senate. Although this bill was approved overwhelmingly by my colleagues in the Senate in the last Congress, the House of Representatives did not vote on this legislation prior to adjournment, and thus we must begin again. I have every confidence that this important legislation will pass both houses of Congress in a timely fashion during this session. Just today, the House Resources Committee reported out the House version of this bill, H.R. 171, introduced by Rep. FRANK A. LOBIONDO.

The completion of the Coastal Heritage Trail Route is an important priority for New Jersey. The trail system will provide a sense of history, not solely for the residents of New Jersey, but for its visitors as well. By repealing the sunset provision on the original act, and increasing the authorization, the National Park Service will be allowed to complete the project that deserves to be finished.

I ask unanimous consent that 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. 362

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

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

Section 6 of Public Law 100–515 (16 U.S.C. 1244 note) is amended—

(1) in subsection (b)(1), by striking ''$1,000,000'' and inserting ''$4,000,000''; and

(2) in subsection (c), by striking ''five'' and inserting ''10''.

By Mr. DOMENICI:

S. 363. A bill to establish a program for training residents of low-income rural areas for, and employing the residents in, new telecommunications industry jobs located in rural areas, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

THE RURAL EMPLOYMENT IN TELECOMMUNICATIONS INDUSTRY ACT OF 1999

Mr. DOMENICI. Mr. President, I rise today with great pleasure to introduce ''The Rural Employment in Telecommunications Industry Act of 1999.''

The introduction of this Bill marks a historic opportunity for rural communities to create jobs within the telecommunications industry. The Bill establishes a program to train residents of low income rural areas for employment in telecommunications industry jobs located in those same rural areas.

As many of my colleagues know, I have an initiative called ''rural payday'' and I believe this Bill is yet another step in creating jobs for our rural areas. All too often a rural area is characterized by a high number of low income residents and a high unemployment rate.

Moreover, our rural areas are often dependent upon a small number of employers or a single industry for employment opportunities. Consequently, when there is a plant closing, a downturn in the economy, or a slowdown in the area's industry the already present problems are only compounded.

Mr. President, I would also like to take a moment and talk about New Mexico.

While New Mexico may be the 5th largest state by size with its beautiful mountains, desert, and Great Plains and vibrant cities such as Albuquerque, Santa Fe, and Las Cruces it is also a very rural state. The Northwest and Southeast portions of the state are closely tied to the fortunes of the oil and gas industry. Additionally, a community can be dealt a severe blow with the closing or downsizing of an employer or manufacturing plant.

I would also like to mention that communities like Clovis and Roswell are already taking steps to lay the foundation for creating jobs through the Call Center Industry. Just recently in Clovis, over a 1,000 people participated in a Career Expo that focused on attracting Call Center companies to the area.

As I stated before, all too often rural areas do not possess the resources of more metropolitan areas and can be devastated by a single event or downturn in the economy. The Bill I am introducing today will allow communities, like those I just mentioned, to apply for Federal aid to assist them in taking the next step in attracting telecommunications jobs.

The Bill will allow the Secretary of Labor to establish a program to promote rural employment in the telecommunications industry by providing grants to states with low income rural areas. The program will be a win win proposition for all involved because employers choosing to participate in the project by bringing jobs to the rural area will be assured of a highly skilled workforce.

The program will provide residents with intensive services to train them for the new jobs in the telecommunications industry. The intensive services will include customized training and appropriate remedial training, support services and placement of the individual in one of the new jobs created by the program.

And that is what this bill is about, providing people with the tools needed to succeed. With these steps we are embarking on the road of providing our rural areas throughout our nation with a vehicle to create jobs. We are creating opportunities and an environment where our citizens can succeed and our communities can be vibrant.

By Mr. BOND (for himself, Mr. KERRY, and Mr. LIEBERMAN):

S. 364. A bill to improve certain loan programs of the Small Business Administration, and for other purposes; to the Committee on Small Business.

SMALL BUSINESS INVESTMENT IMPROVEMENT ACT OF 1999

Mr. BOND. Mr. President, I rise today to introduce the Small Business Investment Improvement Act of 1999. I am pleased to announce that two of my colleagues from the Committee on Small Business, Senator KERRY and Senator LIEBERMAN, have joined as principal cosponsors. This is an important bill for one simple reason: it makes more investment capital available to small businesses that are seeking to grow and hire new employees.

In 1958, Congress created the SBIC Program to assist small business owners obtain investment capital. Forty years later, small businesses continue to experience difficulty in obtaining investment capital from banks and traditional investment sources. Although investment capital is readily available to large businesses from traditional Wall Street investment firms, small businesses seeking investments in the range of $500,000–$2.5 million have to look elsewhere. SBICs are frequently the only sources of investment capital for growing small businesses.

In 1992 and 1996, the Committee on Small Business worked closely with the Small Business Administration to correct earlier deficiencies in the law in order to ensure the future of the program. Today, the SBIC Program is expanding rapidly in an effort to meet the growing demands of small business owners for debt and equity investment capital.

Last year, the Committee on Small Business approved a bill similar to the bill being introduced today. Today's bill includes two technical changes in the SBIC program. The first change removes a requirement that at least 50 percent of the annual program level of the approved participating securities under the SBIC Program be reserved for funding with SBICs having private capital of not more than $20 million. The requirement has become obsolete following SBA's imposition of its leverage commitment process and Congressional approval for SBA to issue five year commitments for SBIC leverage.

The second technical change requires SBA to issue SBIC guarantees and trust certificates at periodic intervals of not less than 12 months. The current requirement is six months. This change will give maximum flexibility for SBA and the SBIC industry to negotiate the placement of certificates that fund leverage and obtain the lowest possible interest rate.

The Small Business Investment Improvement Act of 1999 clarifies the rules for the determination of an eligible small business or small enterprise that is not required to pay Federal income tax at the corporate level, but that is required to pass income through to its shareholders or partners by using a specified formula to compute its after-tax income. This provision is intended to permit ''pass through'' enterprises to be treated the same as enterprises that pay Federal taxes for purposes of SBA size standard determinations.

The bill would also make a relatively small change in the operation of the program. This change, however, would help smaller, small businesses to be more attractive to investors. SBICs would be permitted to accept royalty payments contingent on future performance from companies in which they invest as a form of equity return for their investment.

SBA already permits SBICs to receive warrants from small businesses, which give the investing SBIC the right to acquire a portion of the equity of the small business. By pledging royalties or warrants, the small business is able to reduce the interest that would otherwise be payable by the small business to the SBIC. Importantly, the royalty feature provides the smaller, small business with an incentive to attract SBIC investments when the return may otherwise be insufficient to attract venture capital.

Lastly, the bill increases the program authorization levels to fund Participating Securities. In Fiscal Year 1999, the authorization level would increase from $800 million to $1.2 billion; in Fiscal Year 2000, it would increase from $900 million to $1.5 billion. The two increases have become necessary as the demand in the SBIC program was growing at a rapid rate. Higher authorization levels are necessary if the SBIC Program is going to meet the demand for investment capital from the small business community.

Mr. President, this is a sound legislative proposal, which has the support of many of my colleagues on the Committee on Small Business. It is my hope we will be able to conduct a committee markup of this bill in the near future.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 364

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 ''Small Business Investment Improvement Act of 1999''.

SEC. 2. SBIC PROGRAM.

(a) IN GENERAL.—Section 308(i)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 687(i)(2)) is amended by adding at the end the following: ''In this paragraph, the term 'interest' includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan.''.

(b) FUNDING LEVELS.—Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended—

(1) in subsection (d)(1)(C)(i), by striking ''$800,000,000'' and inserting ''$1,200,000,000''; and

(2) in subsection (e)(1)(C)(i), by striking ''$900,000,000'' and inserting ''$1,500,000,000''.

(c) DEFINITIONS.—

(1) SMALL BUSINESS CONCERN.—Section 103(5) of the Small Business Investment Act of 1958 (15 U.S.C. 662(5)) is amended—

(A) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), and indenting appropriately;

(B) in clause (iii), as redesignated, by adding ''and'' at the end;

(C) by striking ''purposes of this Act, an investment'' and inserting the following: ''purposes of this Act—

''(A) an investment''; and

(D) by adding at the end the following:

''(B) in determining whether a business concern satisfies net income standards established pursuant to section 3(a)(2) of the Small Business Act, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

''(i) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this subparagraph), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

''(ii) the net income (so determined) less any deduction for State (and local) income taxes calculated under clause (i), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation;''.

(2) SMALLER ENTERPRISE.—Section 103(12)(A)(ii) of the Small Business Investment Act of 1958 (15 U.S.C. 662(12)(A)(ii)) is amended by inserting before the semicolon at the end the following: ''except that, for purposes of this clause, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

''(I) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this clause), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the business concern were a corporation; and

''(II) the net income (so determined) less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would have applied if the business concern were a corporation''.

(d) TECHNICAL CORRECTIONS.—

(1) REPEAL.—Section 303(g) of the Small Business Investment Act of 1958 (15 U.S.C. 683(g)) is amended by striking paragraph (13).

(2) ISSUANCE OF GUARANTEES AND TRUST CERTIFICATES.—Section 320 of the Small Business Investment Act of 1958 (15 U.S.C. 687m) is amended by striking ''6'' and inserting ''12''.

(3) ELIMINATION OF TABLE OF CONTENTS.—Section 101 of the Small Business Investment Act of 1958 (15 U.S.C. 661 note) is amended to read as follows:

"SEC. 101. SHORT TITLE.

''This Act may be cited as the 'Small Business Investment Act of 1958'.''.

Mr. KERRY. Mr. President, today I join Chairman BOND in support of the Small Business Investment Company Technical Corrections Act.

The Small Business Investment Company (SBIC) program is vital to our fastest growing small companies that have capital needs exceeding the caps on SBA's loan programs, but are not large enough to be attractive to traditional venture capital investors. The demand is clear: Last year, participating securities in the SBIC program invested $360 million in 495 financings. In Massachusetts, where there is an impressive community of fast-growing companies, particularly in the hi-tech industry, there were 140 SBIC financings, worth $145.4 million.

This legislation sets out to make five technical changes. They range from improving the incentive for SBIC's to loan money to small companies to structuring a fairer formula for determining whether companies of the same revenue size can quality for SBIC financing. One of the most important changes will increase the authorized levels for participating securities.

The Participating Securities component of the SBIC program invests principally in the equities of new or expanding businesses. To leverage the private capital of participating securities and better serve these fast-growing businesses, I supported Senator LIEBERMAN's amendment to H.R. 3412 during the last Congress, which would have raised the authorization level for participating securities from $800 million to $1 billion in fiscal year 1999 and from $900 million to $1.2 billion in fiscal year 2000. This bill passed the Senate Small Business Committee and the full Senate by unanimous consent, but unfortunately, the House was unable to act on it before the 105th Congress ended.

Since that amendment was introduced, we have seen that the need is even greater than those levels. The Administration anticipates faster growth in the SBIC program because of both its increasing popularity and the increase in additional personnel at the Small Business Administration to its SBIC licensing unit. In fiscal years 1997 and 1998, SBA licensed approximately 30 new SBIC's per year. With more staff devoted to the licensing unit, SBA projects that it will license more than double that amount in fiscal year 1999. Accordingly, Senator BOND's Act would increase the authorization level to $1.2 billion in FY99 and to $1.5 billion in FY2000.

Mr. President, I am pleased to cosponsor this legislation and I applaud the work of my colleagues on the Senate Small Business Committee, Chairman BOND and Senator LIEBERMAN.

By Mr. GORTON (for himself and Mrs. MURRAY):

S. 365. A bill to amend title XIX of the Social Security Act, to allow States to use the funds available under the State children's health insurance program for an enhanced matching rate for coverage of additional children under the Medicaid program; to the Committee on Finance.

CHILDREN'S HEALTH EQUITY ACT

Mr. GORTON. Mr. President. In 1997, Congress and the President agreed to provide $48 billion over the next 10 years as an incentive to states to provide health care coverage to uninsured, low-income children. To receive this money, states must expand eligibility levels to children living in families with incomes up to 200% of the federal poverty level.

Washington State has a strong record of ensuring that its low-income kids have access to health care. Five years ago, my state decided to do what Congress and the President have just last year required other states to do. In 1994, Washington expanded its child Medicaid eligibility level to 200% of the federal poverty level (FPL) all the way through to the age of 18.

During the negotiations of the 1997 Balanced Budget Act (BBA), Congress and the Administration recognized that certain states were already undertaking Medicaid expansions up to or above 200 percent of FPL, and that they would be allowed to use the new SCHIP funds. Unfortunately, this provision was limited to those states that enacted expansions on or after March 31, 1997 and disallowed Washington from accessing the $230 million in SCHIP funds it had been allocated through 2002. As a result, Washington State cannot use its SCHIP allotment to cover the 90,000 children currently eligible, but not covered for health care at or below 200 percent of poverty. Exacerbating this inequity is the fact that many states have begun accessing their SCHIP allotments to cover kids at poverty levels far below Washington's current or past eligibility levels.

The bill I am introducing today, along with Senator MURRAY, corrects this technicality and is a top priority for the Washington State delegation in the 106th Congress. Congresswoman DUNN has introduced a companion measure in the House of Representatives that is cosponsored by the entire Washington delegation.

This bipartisan, bicameral initiative represents a thoughtful, carefully-crafted response to the unintended consequences of SCHIP and brings much needed assistance to children currently at risk. Rather than simply changing the effective date included in the BBA, this initiative includes strong maintenance of effort language as well as incentives for our state to find those 90,000 uninsured kids because we feel strongly that they receive the health coverage for which they are eligible.

This bill does not take money from other states nor does it provide additional federal subsidies for children the state is now covering, it simply allows Washington to continue to do the good work they have already started by focusing on new, uninsured children at low income levels first.

By Mr. COCHRAN (for himself, Mr. MOYNIHAN, and Mr. FRIST):

S.J. Res. 8. A joint resolution providing for the reappointment of Wesley S. Williams, Jr., as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

By Mr. COCHRAN (for himself, Mr. MOYNIHAN, and Mr. FRIST):

S.J. Res. 9. A joint resolution providing for the reappointment of Dr. Hanna H. Gray as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

By Mr. COCHRAN (for himself, Mr. MOYNIHAN, and Mr. FRIST):

S.J. Res. 10. A joint resolution providing for the reappointment of Barber B. Conable, Jr., as a citizen regent of the Board of Regents of the Smithsonian Institution; to the Committee on Rules and Administration.

BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION REAPPOINTMENTS

Mr. COCHRAN. Mr. President, today I am introducing three Senate Joint Resolutions reappointing citizen regents of the Board of Regents of the Smithsonian Institution. I am pleased that my fellow Smithsonian Institution Regents, Senators MOYNIHAN and FRIST are cosponsors.

At its meeting on January 25, 1999, the Smithsonian Institution Board of Regents recommended the following distinguished individuals for reappointment to six year terms effective April 12, 1999: Barber B. Conable, Jr. of New York; Dr. Hanna H. Gray of Illinois; and Mr. Wesley S. Williams, Jr. of the District of Columbia.

I ask unanimous consent that copies of their biographies be included in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

WESLEY S. WILLIAMS, JR.

Wesley S. Williams, Jr., of Washington, D.C., has been associated with the law firm of Covington & Burling since 1970 and a partner since 1975. He was previously legal counsel to the Senate Committee on the District of Columbia, a teaching fellow at Columbia University Law School, and Special Counsel to the District of Columbia Council. He is currently active on many corporate and nonprofit boards and has participated in the Smithsonian Luncheon Group. He was appointed to the Board of Regents in April 1993, chairs its Investment Policy Committee, and serves on the Regents' Executive Committee, Nominating Committee, Committee on Policy, Programs, and Planning, and ad hoc Committee on Business. He also served on the Regents' Search Committee for a New Secretary, and he is a member of the Commission of the National Museum of American Art.

HANNA HOLBORN GRAY

The Harry Pratt Judson Distinguished Service Professor of History, The University of Chicago

Hanna H. Gray was President of the University of Chicago from July 1, 1978 through June 30, 1993, and is now President Emeritus.

Mrs. Gray is a historian with special interests in the history of humanism, political and historical thought, and politics in the Renaissance and the Reformation. She taught history at the University of Chicago from 1961 to 1972 and is now the Harry Pratt Judson Distinguished Service Professor of History in the University of Chicago's Department of History.

She was born on October 25, 1930, in Heidelberg, Germany. She received her B.A. degree from Bryn Mawr in 1950 and her Ph.D. in history from Harvard University in 1957. From 1950 to 1951, she was a Fulbright Scholar at Oxford University.

She was an instructor at Bryn Mawr College in 1953–54 and taught at Harvard from 1955 to 1960, returning as a Visiting Lecturer in 1963–64. In 1961, she became a member of the University of Chicago's faculty as Assistant Professor of History, becoming Associate Professor in 1964.

Mrs. Gray was appointed Dean of the College of Arts and Sciences and Professor of History at Northwestern University in 1972. In 1974, she was elected Provost of Yale University with an appointment as Professor of History. From 1977 to 1978, she also served as Acting President of Yale.

She has been a Fellow of the Newberry Library, a Fellow of the Center of Behavioral Sciences, a Visiting Scholar at that center, a Visiting Professor at the University of California at Berkeley, and a Visiting Scholar for Phi Beta Kappa. She is also an Honorary Fellow of St. Anne's College, Oxford.

Mrs. Gray is a member of the Renaissance Society of America. She is a fellow of the American Academy of Arts and Sciences and a member of the American Philosophical Society, the National Academy of Education, and the Council on Foreign Relations of New York. She holds honorary degrees from a number of colleges and universities, including Oxford, Yale, Brown, Columbia, Princeton, Duke, Harvard, and the Universities of Michigan and Toronto, and The University of Chicago.

She is chairman of the boards of the Andrew W. Mellon Foundation and the Howard Hughes Medical Institute, serves on the boards of Harvard University and the Marlboro School of Music, and is a Regent of the Smithsonian Institution.

In addition, Mrs. Gray is a member of the boards of directors of J.P. Morgan & Company, the Cummins Engine Company, and Ameritech.

Mrs. Gray was one of twelve distinguished foreign-born Amrericans to receive a Medal of Liberty award from President Reagan at ceremonies marking the rekindling of the Statue of Liberty's lamp in 1986. In 1991, she received the Presidential Medal of Freedom, the nation's highest civilian award, from President Bush. She received the Charles Frankel Prize from the National Endowment of the Humanities and the Jefferson Medal from the American Philosophical Society in 1993. In 1996, Mrs. Gray received the University of Chicago's Quantrell Award for Excellence in Undergraduate Teaching. In 1997, she received the M. Carey Thomas Award from Bryn Mawr College.

Her husband, Charles M. Gray, is Professor Emeritus in the Department of History at the University of Chicago.

BARBER B. CONABLE, JR.

Barber Conable retired on August 31, 1991, from a five-year term as President of The World Bank Group, headquartered in Washington, D.C. The World Bank promotes economic growth and an equitable distribution of the benefits of that growth to improve the quality of life for people in developing countries.

Mr. Conable was a Member of the House of Representatives from 1965–1985. In Congress, he served 18 years on the House Ways and Means Committee, the last eight years as its Ranking Minority Member. He served in various capacities for 14 years in the House Republican Leadership, including Chairman of the Republican Policy Committee and the Republican Research Committee. During his congressional service, he also was a member of the Joint Economic Committee and the House Budget and Ethics committees.

Following Mr. Conable's retirement from Congress, he served on the Boards of four multinational corporations and the Board of the New York Stock Exchange. He also was active in foundation, museum, and nonprofit work, and was a Distinguished Professor at the University of Rochester.

Currently Mr. Conable serves on the Board of Directors of Corning, Inc., Pfizer, Inc., the American International Group, Inc., and the First Empire State Corporation. In addition, he is a Trustee of Cornell University and of the National Museum of the American Indian of the Smithsonian Institution. He has chaired the Museum's development committee since October, 1990 and is a member of its International Founders Council, the volunteer committee for the National Campaign to raise funds for construction of the Museum on the Mall.

Mr. Conable is a native of Warsaw, New York and graduated from Cornell University and Cornell Law School. He was a Marine in World War II and the Korean War.

Mr. and Mrs. Conable are parents of three daughters and a son. They reside in Alexander, New York.

ADDITIONAL COSPONSORS

S. 2

At the request of Mr. JEFFORDS, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 2, a bill to extend programs and activities under the Elementary and Secondary Education Act of 1965.

S. 4

At the request of Mr. ROBB, his name was added as a cosponsor of S. 4, a bill to improve pay and retirement equity for members of the Armed Forces; and for other purposes.

At the request of Mr. CLELAND, his name was added as a cosponsor of S. 4, supra.

At the request of Mr. WARNER, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 4, supra.

S. 6

At the request of Mr. DASCHLE, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 6, a bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to protect consumers in managed care plans and other health coverage.

S. 11

At the request of Mr. ABRAHAM, the names of the Senator from Alabama (Mr. SESSIONS), the Senator from Iowa (Mr. GRASSLEY), and the Senator from Arkansas (Mr. HUTCHINSON) were added as cosponsors of S. 11, a bill for the relief of Wei Jingsheng.

S. 17

At the request of Mr. DODD, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 17, a bill to increase the availability, affordability, and quality of child care.

S. 30

At the request of Mr. DASCHLE, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 30, a bill to provide countercylical income loss protection to offset extreme losses resulting from severe economic and weather-related events, and for other purposes.

S. 56

At the request of Mr. KYL, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 56, a bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers.

S. 101

At the request of Mr. LUGAR, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 101, a bill to promote trade in United States agricultural commodities, livestock, and value-added products, and to prepare for future bilateral and multilateral trade negotiations.

S. 125

At the request of Mr. FEINGOLD, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 125, a bill to reduce the number of executive branch political appointees.

S. 129

At the request of Mr. FEINGOLD, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 129, a bill to terminate the F/A–18E/F aircraft program.

S. 138

At the request of Mr. KYL, the names of the Senator from Idaho (Mr. CRAIG) and the Senator from Georgia (Mr. COVERDELL) were added as cosponsors of S. 138, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for expenses of attending elementary and secondary schools and for contributions to charitable organizations which provide scholarships for children to attend such schools.

S. 171

At the request of Mr. MOYNIHAN, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 171, a bill to amend the Clean Air Act to limit the concentration of sulfur in gasoline used in motor vehicles.

S. 227

At the request of Mr. COVERDELL, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 227, a bill to prohibit the expenditure of Federal funds to provide