United States authorizing Congress to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. DURBIN (for himself, Mr. KENNEDY, Mr. BIDEN, Mr. MOYNIHAN, Mr. DODD, Mr. FITZGERALD, Mr. SCHUMER, Mr. LAUTENBERG, Mr. REID, Mr. STEVENS, Mrs. BOXER, Mr. LIEBERMAN, Mr. LEAHY, Mr. LEVIN, Mr. WELLSTONE, Mr. ROCKEFELLER, Mr. CLELAND, Mr. TORRICELLI, Mr. GRAMS, Mr. SANTORUM, Mr. DASCHLE, Ms. MIKULSKI, Mr. KERREY, Mr. COCHRAN, Mr. DORGAN, Mr. THURMOND, Ms. LANDRIEU, Ms. COLLINS, Mr. BURNS, Mr. MCCAIN, Mr. LOTT, Mr. BAYH, Mr. VOINOVICH, Mrs. LINCOLN, Mr. BINGAMAN, and Mr. WYDEN):

S. Res. 64. A resolution recognizing the historic significance of the first anniversary of the Good Friday Peace Agreement; considered and agreed to.

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

S. Res. 65. A resolution to authorize testimony, document production, and legal representation in Dirk S. Dixon, et al. v. Bruce Pearson, et al; considered and agreed to.

S. Res. 66. A resolution to authorize testimony, documentary production, and representation of employees of the Senate in United States v. Yah Lin ''Charlie'' Trie; considered and agreed to.

S. Res. 67. A resolution to authorize representation of Secretary of the Senate in the case of Bob Schafer, et al. v. William Jefferson Clinton, et al; considered and agreed to.

By Mrs. BOXER (for herself and Mr. BROWNBACK):

S. Res. 68. A resolution expressing the sense of the Senate regarding the treatment of women and girls by the Taliban in Afghanistan; to the Committee on Foreign Relations.

By Mr. ASHCROFT:

S. Con. Res. 18. A concurrent resolution expressing the sense of the Congress that the current Federal income tax deduction for interest paid on debt secured by a first or second home should not be further restricted; to the Committee on Finance.

By Mr. CAMPBELL (for himself, Mr. LAUTENBERG, Mr. SMITH of Oregon, Mr. ABRAHAM, Mr. BROWNBACK, Mr. REID, Mr. BURNS, Mr. TORRICELLI, Mr. CLELAND, and Mr. FEINGOLD):

S. Con. Res. 19. A concurrent resolution concerning anti-Semitic statements made by members of the Duma of the Russian Federation; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN:

S. 638. A bill to provide for the establishment of a School Security Technology Center and to authorize grants for local school security programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

SAFE SCHOOL SECURITY ACT

By Mr. BINGAMAN:

S. 639. A bill to prevent truancy and reduce juvenile crime; to the Committee on Health, Education, Labor, and Pensions.

TRUANCY PREVENTION AND JUVENILE CRIME REDUCTION ACT

By Mr. BINGAMAN:

S. 640. A bill to establish a pilot program to promote the replication of recent successful juvenile crime reduction strategies; to the Committee on the Judiciary.

SAFER COMMUNITIES PARTNERSHIP ACT

Mr. BINGAMAN. Mr. President, I rise today to introduce three measures that are linked together by a common theme—the desire to create a safer environment for young people to grow up in.

Two of these bills are designed to help communities better combat juvenile crime and the related problem of truancy. The third proposal will help better protect students from violence in the school building through the use of technology.

It's clear that in order to create a safer environment for young people, we must not only reduce the number of children who commit crimes, but also the number of children who are victims of crime.

Before I outline these specific bills, I'd like to put them in a larger context. Mr. President, I'd like to spend just a minute discussing the broader question of what children need—in addition to safe surroundings—in order to grow into healthy, productive adults.

Let me start by describing my own childhood. I grew up in a small mining town in southwestern New Mexico called Silver City. Both my parents were teachers, so naturally a top concern was that I got a solid education. Fortunately, the local schools were good, and when I graduated with my classmates from what is now Silver High, we felt we could compete with just about any other student in the country.

Silver City was also relatively safe. People tended to know their neighbors and while no town is completely crime-free, we felt secure in our homes, around town, and in school.

Finally, Silver City was by no means a wealthy town. But I'm sure I'm not the only one who grew up optimistic that a person could work hard, achieve a decent standard of living, and support their family without fear that one turn of bad luck would put them out on the streets.

In short, Mr. President, Silver City was a pretty good place to grow up. In fact, we used to feel sorry for people in neighboring states where the quality of life was not so good.

Even today, New Mexico is blessed with rich cultural diversity, tremendous natural beauty, strong families and a sense of tradition. All of these things make New Mexico a wonderful place to live. Each time I go home I'm astonished at the number of new people who are moving there, no doubt for some of these very reasons.

And yet, Mr. President, some things seem to have changed since I was a kid in New Mexico. I seem to hear more and more frequently from parents who tell me how hard it is to raise a child in a state where crime and unemployment rates are high, yet family income and school graduation rates are low. Where alcohol and drug abuse are widespread, but health insurance and treatment options are scarce.

Those of us from New Mexico know that a Washington-based study ranking our state as the worst place to raise children can not be taken at face-value. And yet, there is a troubling reality we must face. In many ways, our state is failing to provide what is needed to ensure all of our young people have the necessary foundation to grow into healthy, productive adults. In several key respects, New Mexico has fallen behind the other states we used to feel sorry for.

So, Mr. President, as we stand on the brink of a new century, I rise today to urge that we recommit ourselves—as elected officials, as community leaders, as parents, and as citizens— to better meeting the needs of people growing up in our state and to setting higher goals for New Mexico's future.

I began by saying that a child needs to grow up safe from harm. That means safe from family violence, safe from gang warfare, and safe in school. But a child has other needs that must be met as well. I'd like to mention three other areas that I believe are cornerstones to strong foundation for any child.

The first of these is economic security. If a child is living in poverty, or on the edge of poverty, it is very difficult for anything else to fall into place.

A child should grow up in a family whose economic circumstances are stable. This stability comes first and foremost from parents with decent job opportunities. It also comes from a family's ability to successfully juggle numerous economic demands—and to adapt to change, the only certainty in today's global economy. Our efforts in this area should center on creating more high-wage jobs and on giving families the tools to manage the unpredictable forces that can throw them into financial turmoil.

The second cornerstone is education. In America, a quality public education has long been the great leveler between the haves and the have-nots. Children need access to a quality education that will give them the skills to achieve a good standard of living.

A quality education system is one characterized by accountability and flexibility. Accountability means that clear goals are set for things like student achievement and teacher quality, information is readily available on student progress toward these goals, and schools are held accountable for this progress. Flexibility means that schools have the resources and the ability to adapt to meet the needs of students—particularly students at risk of dropping out.

Third, children must have access to affordable, quality health care. A child who is sick cannot go to school—cannot be expected to learn. And yet according to the Children's Defense Fund, no state has a greater percentage of uninsured children than New Mexico.

We have to ensure that this health care is not only promised, but delivered—and that it is just as available to rural areas as it is to urban ones.

In the coming weeks, I intend to introduce legislation and pursue strategies in each of these remaining three areas—that I hope will begin to help parents provide a strong foundation for their children. All of us who grew up in New Mexico have fond memories of those days, and we want to assure that feeling for future generations of New Mexicans so that they can grow up, raise their families, and build a future in our state.

Mr. President, I'd now like to describe the three bills I am introducing today.

While adult crime rates are declining in many areas, the juvenile crime rate continues to rise—especially drug-related crime. But there is some hope, and there are good solutions out there. Not too long ago, I heard about the success the City of Boston had in getting control of their serious juvenile crime problem. In 1992, Boston had 152 homicides—a horrendous statistic. Realizing the community had to come together to work on a common solution, the City of Boston developed and implemented a collaborative strategy to address their crime problem. Boston's strategy was very successful, and between 1995 and 1997, their homicide rate dropped significantly. Most notably, they went two years without a single juvenile homicide.

Boston got law enforcement, community organizations, health providers, prosecutors, and even religious leaders working together to tackle different aspects of juvenile crime.

The Boston strategy worked because it got people from different organizations working together on a specific set of goals—like taking guns away from felons, using probation officers to help identify and apprehend probation violators, and providing alternatives to children to keep them from getting into trouble in the first place.

Boston recognized that juvenile crime affects the entire community, and a community that pulls together to address it will have a better chance of success.

The legislation I am introducing today, called the Safer Communities Partnership Act, is patterned after a bill authored by Senator KENNEDY. It provides funding for communities that want to implement this ''Boston'' strategy. And because there is no one-size-fits-all approach that works for every community, this bill provides the flexibility to integrate this strategy into the crime-fighting efforts already occurring at the local level.

The next two proposals have two goals: (1) to keep kids in school, and (2) to keep kids in school safe.

Although truancy is often the first sign of trouble in the life of a young person, this problem has long been overlooked. Truancy not only indicates a young person's disinterest in school, it often indicates that a young person is headed for a life of crime, drugs and other serious problems.

It is clear that truancy and crime go hand-in-hand—44 percent of violent juvenile crime takes place during school hours and 57 percent of violent crimes committed by juveniles occur on school days. Most of these crimes take place at a time when we expect young people to be in school.

In most cases, parents are not aware that their children are truant. We all have to do a better job of notifying parents when kids skip school. In fact, most studies indicate that when parents, educators, law enforcement and community leaders all work together to prevent truancy at an early stage, school attendance increases and daytime crime decreases.

The Truancy Prevention and Juvenile Crime Reduction Act I am introducing today authorizes $25 million per year for local partnerships to address truancy. The funds can be used for a variety of purposes. They can be used to create penalties for truants and parents when truancy becomes a chronic problem. They can be used by schools to acquire the technology needed to automatically notify parents when their children are absent without an excuse.

Not only do we need to keep our young people in school, we need to keep our students in school safe! Most of us understand the importance of protecting our assets, yet we have neglected to protect our biggest investment of all: our school children. The third and final bill I am introducing today is intended to do just that.

We all remember the horrible tragedies that struck Jonesboro, Arkansas, Paducah, Kentucky, and other communities within the last year. At a time when violent crime in the nation is decreasing, one in ten public schools reported at least one serious violent crime during the 1996–97 school year. The school yard fist fight is no longer a child's worst fear: 71 percent of children ages 7 to 10 say they worry about being shot or stabbed. A violent environment is not a good learning environment.

Educators and law enforcement know that one way to prevent crime in our schools is through the use of technology. The Safe School Security Act would establish the School Security Technology Center at Sandia National Laboratories and provide grant money for local school districts to access the technology. Because Sandia is one of our nation's premier labs when it comes to providing physical security for our nation's most important assets, it is fitting that they would be chosen to provide security to school districts throughout our nation.

The latest technology was recently tested in a pilot project involving Sandia Labs and Belen High School in Belen, New Mexico and the results were astounding. After two years, Belen High School reported a 75 percent reduction in school violence, a 30 percent reduction in truancy, an 80 percent reduction in vehicle break-ins and a 75 percent reduction in vandalism. Moreover, insurance claims due to theft or vandalism at Belen High School dropped from $50,000 to $5,000 after the pilot project went into effect. Clearly, the cost of making our schools safer and more secure is a good investment for our nation.

Mr. President, these three bills represent only a small fraction of what should be done to ensure that children grow up safe. There is much more I hope we can do this year. For instance, no discussion of the safety of children would be complete without acknowledging the problem of drug and alcohol abuse, which is not only a problem for many young people, but is often a source of family violence committed by addicted parents.

In recent weeks, we have seen the community of Española in northern New Mexico begin to come to terms with a very serious heroin problem. In other parts of the state, federal, state and local officials are combating an increase in production and trafficking of methamphetamines, or meth. And of course, the problem of alcohol abuse continues to plague communities big and small, urban and rural.

All of these problems must be approached on two fronts—from the law enforcement side, and from the treatment side. Last year we obtained an increase of over one million dollars for New Mexico-based efforts to stop the drug trade along the Mexican border, and I recently joined in introducing a measure that will help local law enforcement crack down on the production and distribution of methamphetamines.

On the treatment side, Congress this year will update the budget for all federally-funded drug and alcohol treatment programs through the reauthorization of SAMHSA. I have already secured a commitment from the head of this agency to travel to northern New Mexico, and I plan to play a leading role in ensuring adequate funding for treatment facilities in underserved areas like our state.

Mr. President, in closing I'd like to say that I am not the only person interested in working to make New Mexico a better place to grow up. There are valiant efforts underway all across the state, and I commend those who are striving to make a difference. But this is not something that can occur overnight. This is a long term effort that requires cooperation between all levels of government, community leaders, average citizens, and of course, parents.

As we prepare to close the book on the 20th century, I'd like to suggest a

new horizon for our state that will give us the time to make the progress we all want to make. We are a little more than 12 years away from New Mexico's 100th anniversary as a state of these United States. This anniversary will occur on January 6, 2012. I say we set our sights beyond the turn of the century and focus on that year—2012. Then we can set high goals for New Mexico and the future of our children, knowing we have 12 more years to do all we can to meet them. New Mexico can still be a great place to grow up, if we all work together toward that goal.

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

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

S. 638

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 ''Safe School Security Act of 1999''.

SEC. 2. ESTABLISHMENT OF SCHOOL SECURITY TECHNOLOGY CENTER.

(a) SCHOOL SECURITY TECHNOLOGY CENTER.—

(1) ESTABLISHMENT.—The Attorney General, the Secretary of Education, and the Secretary of Energy shall enter into an agreement for the establishment at the Sandia National Laboratories, in partnership with the National Law Enforcement and Corrections Technology Center—Southeast, of a center to be known as the ''School Security Technology Center''. The School Security Technology Center shall be administered by the Attorney General.

(2) FUNCTIONS.—The School Security Technology Center shall be a resource to local educational agencies for school security assessments, security technology development, technology availability and implementation, and technical assistance relating to improving school security.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section—

(1) $2,850,000 for fiscal year 2000;

(2) $2,950,000 for fiscal year 2001; and

(3) $3,050,000 for fiscal year 2002.

SEC. 3. GRANTS FOR LOCAL SCHOOL SECURITY PROGRAMS.

Subpart 1 of part A of title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7111 et seq.) is amended by adding at the end the following:

''SEC. 4119. LOCAL SCHOOL SECURITY PROGRAMS.

''(a) IN GENERAL.—

''(1) GRANTS AUTHORIZED.—From amounts appropriated under subsection (c), the Secretary shall award grants on a competitive basis to local educational agencies to enable the agencies to acquire security technology for, or carry out activities related to improving security at, the middle and secondary schools served by the agencies, including obtaining school security assessments, and technical assistance, for the development of a comprehensive school security plan from the School Security Technology Center.

''(2) APPLICATION.—To be eligible to receive a grant under this section, a local educational agency shall submit to the Secretary an application in such form and containing such information as the Secretary may require, including information relating to the security needs of the agency.

''(3) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to local educational agencies that demonstrate the highest security needs, as reported by the agency in the application submitted under paragraph (2).

''(b) APPLICABILITY.—The provisions of this part (other than this section) shall not apply to this section.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 2000, 2001, and 2002.''.

SEC. 4. SAFE AND SECURE SCHOOL ADVISORY REPORT.

Not later than 1 year after the date of enactment of this Act, the Attorney General, in consultation with the Secretary of Education and the Secretary of Energy, or their designees, shall—

(1) develop a proposal to further improve school security; and

(2) submit that proposal to Congress.

S. 639

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 ''Truancy Prevention and Juvenile Crime Reduction Act of 1999''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Truancy is often the first sign of trouble—the first indicator that a young person is giving up and losing his or her way.

(2) Many students who become truant eventually drop out of school, and high school drop outs are two and a half times more likely to be on welfare than high school graduates, twice as likely to be unemployed, or if employed, earn lower salaries.

(3) Truancy is the top-ranking characteristic of criminals—more common than such factors as coming from single-parent families and being abused as children.

(4) High rates of truancy are linked to high daytime burglary rates and high vandalism.

(5) As much as 44 percent of violent juvenile crime takes place during school hours.

(6) As many as 75 percent of children ages 13 to 16 who are arrested and prosecuted for crimes are truants.

(7) Some cities report as many as 70 percent of daily student absences are unexcused, and the total number of absences in a single city can reach 4,000 per day.

(8) Society pays a significant social and economic cost due to truancy: only 34 percent of inmates have completed high school education; 17 percent of youth under age 18 entering adult prisons have not completed grade school (8th grade or less), 25 percent completed 10th grade, and 2 percent completed high school.

(9) Truants and later high school drop outs cost the Nation $240,000,000,000 in lost earnings and foregone taxes over their lifetimes, and the cost of crime control is staggering.

(10) In many instances, parents are unaware a child is truant.

(11) Effective truancy prevention, early intervention, and accountability programs can improve school attendance and reduce daytime crime rates.

(12) There is a lack of targeted funding for effective truancy prevention programs in current law.

SEC. 3. GRANTS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE PARTNERSHIP.—The term ''eligible partnership'' means a partnership between 1 or more qualified units of local government and 1 or more local educational agencies.

(2) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(3) QUALIFIED UNIT OF LOCAL GOVERNMENT.—The term ''qualified unit of local government'' means a unit of local government that has in effect, as of the date on which the eligible partnership submits an application for a grant under this section, a statute or regulation that meets the requirements of section 223(a)(14) of the Juvenile Justice and Delinquency and Prevention Act of 1974 (42 U.S.C. 5633(a)(14)).

(4) UNIT OF LOCAL GOVERNMENT.—The term ''unit of local government'' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, or any Indian tribe.

(b) GRANT AUTHORITY.—The Attorney General, in consultation with the Secretary of Education, shall make grants in accordance with this section on a competitive basis to eligible partnerships to reduce truancy and the incidence of daytime juvenile crime.

(c) MAXIMUM AMOUNT; ALLOCATION; RENEWAL.—

(1) MAXIMUM AMOUNT.—The total amount awarded to an eligible partnership under this section in any fiscal year shall not exceed $100,000.

(2) ALLOCATION.—Not less than 25 percent of each grant awarded to an eligible partnership under this section shall be allocated for use by the local educational agency or agencies participating in the partnership.

(3) RENEWAL.—A grant awarded under this section for a fiscal year may be renewed for an additional period of not more than 2 fiscal years.

(d) USE OF FUNDS.—

(1) IN GENERAL.—Grant amounts made available under this section may be used by an eligible partnership to comprehensively address truancy through the use of—

(A) parental involvement in prevention activities, including meaningful incentives for parental responsibility;

(B) sanctions, including community service, or drivers' license suspension for students who are habitually truant;

(C) parental accountability, including fines, teacher-aid duty, or community service;

(D) in-school truancy prevention programs, including alternative education and in-school suspension;

(E) involvement of the local law enforcement, social services, judicial, business, and religious communities, and nonprofit organizations;

(F) technology, including automated telephone notice to parents and computerized attendance system;

(G) elimination of 40-day count and other unintended incentives to allow students to be truant after a certain time of school year; or

(H) juvenile probation officer collaboration with 1 or more local educational agencies.

(2) MODEL PROGRAMS.—In carrying out this section, the Attorney General may give priority to funding the following programs and programs that attempt to replicate one or more of the following model programs:

(A) The Truancy Intervention Project of the Fulton County, Georgia, Juvenile Court.

(B) The TABS (Truancy Abatement and Burglary Suppression) program of Milwaukee, Wisconsin.

(C) The Roswell Daytime Curfew Program of Roswell, New Mexico.

(D) The Stop, Cite and Return Program of Rohnert Park, California.

(E) The Stay in School Program of New Haven, Connecticut.

(F) The Atlantic County Project Helping Hand of Atlantic County, New Jersey.

(G) The THRIVE (Truancy Habits Reduced Increasing Valuable Education) initiative of Oklahoma City, Oklahoma.

(H) The Norfolk, Virginia project using computer software and data collection.

(I) The Community Service Early Intervention Program of Marion, Ohio.

(J) The Truancy Reduction Program of Bakersfield, California.

(K) The Grade Court program of Farmington, New Mexico.

(L) Any other model program that the Attorney General determines to be appropriate.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $25,000,000 for each of fiscal years 2000, 2001, and 2002.

S. 640

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 ''Safer Communities Partnership Act of 1999''.

SEC. 2. PILOT PROGRAM TO PROMOTE REPLICATION OF RECENT SUCCESSFUL JUVENILE CRIME REDUCTION STRATEGIES.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—The Attorney General (or a designee of the Attorney General), in conjunction with the Secretary of the Treasury (or the designee of the Secretary), shall establish a pilot program (referred to in this section as the ''program'') to encourage and support communities that adopt a comprehensive approach to suppressing and preventing violent juvenile crime and reducing drug and alcohol abuse among juveniles, patterned after successful State juvenile crime reduction strategies.

(2) PROGRAM.—In carrying out the program, the Attorney General shall—

(A) make and track grants to grant recipients (referred to in this section as ''coalitions'');

(B) in conjunction with the Secretary of the Treasury and the Secretary of Health and Human Services, provide for technical assistance and training, in addition to data collection, and dissemination of relevant information; and

(C) provide for the general administration of the program.

(3) ADMINISTRATION.—Not later than 30 days after the date of enactment of this Act, the Attorney General shall appoint or designate an Administrator (referred to in this section as the ''Administrator'') to carry out the program.

(4) PROGRAM AUTHORIZATION.—To be eligible to receive an initial grant or a renewal grant under this section, a coalition shall meet each of the following criteria:

(A) COMPOSITION.—The coalition shall consist of 1 or more representatives of—

(i) the local or tribal police department or sheriff's department;

(ii) the local prosecutors' office;

(iii) State or local probation officers;

(iv) religious affiliated or fraternal organizations involved in crime prevention;

(v) schools;

(vi) parents or local grass roots organizations such as neighborhood watch groups;

(vii) social service agencies involved in crime prevention;

(viii) a juvenile or youth court judge; and

(ix) substance and alcohol abuse counselors and treatment providers.

(B) OTHER PARTICIPANTS.—If possible, in addition to the representatives from the categories listed in subparagraph (A), the coalition shall include 1 or more representatives of—

(i) the United States Attorney's office;

(ii) the Federal Bureau of Investigation;

(iii) the Bureau of Alcohol, Tobacco and Firearms;

(iv) the Drug Enforcement Administration;

(v) the business community; and

(vi) researchers who have studied criminal justice and can offer technical or other assistance.

(C) COORDINATED STRATEGY.—A coalition shall submit to the Attorney General, or the Attorney General's designee, a comprehensive plan for reducing violent juvenile crime. To be eligible for consideration, a plan shall—

(i) ensure close collaboration among all members of the coalition in suppressing and preventing juvenile crime;

(ii) place heavy emphasis on coordinated enforcement initiatives, such as Federal and State programs that coordinate local police departments, prosecutors, and local community leaders to focus on the suppression of violent juvenile crime involving gangs;

(iii) ensure that there is close collaboration between police and probation officers in the supervision of juvenile offenders, such as initiatives that coordinate the efforts of parents, school officials, and police and probation officers to patrol the streets and make home visits to ensure that offenders comply with the terms of their probation;

(iv) ensure that a program is in place to trace all firearms seized from crime scenes or offenders in an effort to identify illegal gun traffickers;

(v) ensure that effective crime prevention programs are in place, such as programs that provide after-school safe havens and other opportunities for at-risk youth to escape or avoid gang or other criminal activity, and to reduce recidivism; and

(vi) ensure that a program is in place to divert nonviolent juvenile offenders into substance or alcohol abuse treatment, the successful completion of which may result in a suspended sentence for the offense, and the unsuccessful completion of which may result in an enhanced sentence for the offense.

(D) ACCOUNTABILITY.—A coalition shall—

(i) establish a system to measure and report outcomes consistent with common indicators and evaluation protocols established by the Administrator and that receives the approval of the Administrator; and

(ii) devise a detailed model for measuring and evaluating the success of the plan of the coalition in reducing violent juvenile crime, and provide assurances that the plan will be evaluated on a regular basis to assess progress in reducing violent juvenile crime.

(5) PRIORITY.—In awarding grants under this section, the Attorney General shall give priority to coalitions representing communities with demonstrated juvenile crime and drug abuse problems.

(6) GRANT AMOUNTS.—

(A) IN GENERAL.—The Administrator may award a grant to an eligible coalition under this section, in an amount not to exceed the lesser of—

(i) the amount of non-Federal funds raised by the coalition, including in-kind contributions, for that fiscal year; and

(ii) $400,000.

(B) NONSUPPLANTING REQUIREMENT.—A coalition seeking funds shall provide reasonable assurances that funds made available under this program to States or units of local government shall be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for programs described in this section, and shall in no event replace such State, local, or other non-Federal funds.

(C) SUSPENSION OF GRANTS.—If a coalition fails to continue to meet the criteria set forth in this section, the Administrator may suspend the grant, after providing written notice to the grant recipient and an opportunity to appeal.

(D) RENEWAL GRANTS.—Subject to subparagraph (D), the Administrator may award a renewal grant to grant recipient under this subparagraph for each fiscal year following the fiscal year for which an initial grant is awarded, in an amount not to exceed the amount of non-Federal funds raised by the coalition, including in-kind contributions, for that fiscal year, during the 4-year period following the period of the initial grant.

(7) PERMITTED USE OF FUNDS.—A coalition receiving funds under this section may expend such Federal funds on any use or program that is contained in the plan submitted to the Administrator.

(8) CONGRESSIONAL CONSULTATION.—

(A) IN GENERAL.—Two years after the date of implementation of the program established in this section, the Comptroller General of the United States shall submit to Congress a report reviewing the effectiveness of the program in suppressing and reducing violent juvenile crime in the participating communities.

(B) CONTENTS OF REPORT.—The report submitted under subparagraph (A) shall include—

(i) an analysis of each community participating in the program, along with information regarding the plan undertaken in the community, and the effectiveness of the plan in reducing violent juvenile crime; and

(ii) recommendations regarding the efficacy of continuing the program.

(b) INFORMATION COLLECTION AND DISSEMINATION WITH RESPECT TO COALITIONS.—

(1) COALITION INFORMATION.—For the purpose of audit and examination, the Attorney General—

(A) shall have access to any books, documents, papers, and records that are pertinent to any grant or grant renewal request under this section; and

(B) may periodically request information from a coalition to ensure that the coalition meets the applicable criteria.

(2) REPORTING.—The Attorney General shall, to the maximum extent practicable and in a manner consistent with applicable law, minimize reporting requirements by a coalition and expedite any application for a renewal grant made under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2000 through 2003, of which—

(A) not less than $1,000,000 in each fiscal year shall be used for coalitions representing communities with a population of not more than 50,000; and

(B) not less than 2 percent in each fiscal year shall be used for technical assistance and training under subsection (a)(2)(B).

(2) SOURCE OF SUMS.—Amounts authorized to be appropriated pursuant to this subsection may be derived from the Violent Crime Reduction Trust Fund.

By Mr. SARBANES (for himself, Mr. DURBIN, Mr. DODD, and Mr. FEINGOLD):

S. 641. A bill to amend the Truth in Lending Act to provide for enhanced information regarding credit card balance payment terms and conditions, and to provide for enhanced reporting of credit card solicitations to the Board of Governors of the Federal Reserve System and to Congress, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

ENHANCED CREDIT CARD DISCLOSURES

● Mr. SARBANES. Mr. President, I rise today to introduce legislation on a subject that was the focus of considerable discussion last fall, during the Senate's consideration of bankruptcy reform legislation.

During that debate, the Senate examined whether the increased rate of consumer bankruptcies in the Nation resulted solely from consumers' access to an excessively permissive bankruptcy process, or whether other factors also contributed to this increase. Ultimately it concluded that the record increase in bankruptcy filings across the nation is due not only to the ease with which one can enter the bankruptcy system, but also to the unparalleled levels of consumer debt—especially credit card debt—being run up across the country. As Senator DURBIN noted in his opening statement on the bankruptcy reform bill last fall, and as the CBO, FDIC, and numerous economists have found, the rate of increase in bankruptcy filings is virtually identical to the rate of increase in consumer debt.

This is not a coincidence. Rather, increased bankruptcies proceed directly from the fact that Americans are bombarded daily by credit card solicitations that promise easy access to credit without informing their targets of the implications of signing up for such credit.

During last fall's debate, the Senate also concluded that irresponsible borrowing could be reduced, and many bankruptcies averted, if Americans were provided with some basic information in their credit card materials regarding the consequences of assuming greater debt. A consensus emerged that credit card companies have some affirmative obligation to provide such information to consumers in their solicitations, monthly statements, and purchasing materials, in light of their aggressive pursuit of less and less knowledgeable borrowers.

As a result of this emerging consensus, last year's Senate bankruptcy bill—S. 1301—contained several provisions in the Manager's Amendment addressing credit card debt, and requiring specific disclosures by credit card companies in their payment and solicitation materials. These provisions, which I sponsored along with Senators DODD and DURBIN, were vital to the Senate's success in adopting balanced bankruptcy reform legislation that placed responsibility for the surge in consumer bankruptcies on debtors and creditors alike, and enabled the Senate to pass its bankruptcy bill by the overwhelming margin of 97–1.

Unfortunately, the House-Senate conference committee struck these disclosure provisions from its final conference report, leaving the bankruptcy bill again a one-sided document that failed to account for the role credit card companies play in the accumulation of credit card debt and in increased consumer bankruptcy rates. As a result of the conference committee's actions, the conference report died in the waning days of the 105th Congress, amid pledges by the majority to resurrect it in the early days of the 106th Congress.

Mr. President, if we are indeed going to enter again into a debate on bankruptcy legislation in the 106th Congress, it remains my firm belief that Congress must address both sides of the consumer bankruptcy equation—both the flaws in the bankruptcy system that make it easy for people to declare bankruptcy even if they have the ability to pay their debts, and the lending practices that encourage people on the economic margins to accumulate debts that are beyond their ability to repay.

I therefore rise today to introduce legislation that is similar, though not identical, to the language included in last year's Senate bankruptcy bill. It is my hope that this bill will stimulate discussion about the responsibilities of lenders in the bankruptcy equation, and that, when the time comes to debate bankruptcy reform, the nature and extent of these responsibilities will be a large part of the discussion.

In short, this legislation amends the Truth in Lending Act to require credit card companies to disclose the following basic information in each monthly statement:

(1) The required minimum payment on a consumer's monthly balance;

(2) The number of months it will take to pay off that balance if the consumer makes minimum monthly payments;

(3) The total cost, with interest, of paying off that balance if the consumer continues to make only minimum monthly payments; and

(4) The monthly payment amount if the consumer seeks to pay off the balance in 36 months.

The legislation also requires that when a debtor purchases property under a credit card plan, the retailer must disclose to the debtor, if applicable:

(1) That the creditor now has a security interest in the property;

(2) The nature of the security interest;

(3) How the security interest may be enforced in the event of non-payment of the credit card balance; and

(4) That the debtor must not dispose of the secured property until the balance on that account is fully paid.

My bill calls for the Federal Reserve Board to promulgate model forms for these disclosures and, finally, requires credit card companies to provide to the Fed, and the Fed to Congress, data regarding credit card solicitations.

This bill is not about restricting access to credit. Rather, it is about providing consumers with the information they need to make intelligent choices about whether to assume more debt. It advances the goal of consumer responsibility that should be at the heart of any efforts at bankruptcy reform by Congress, and I therefore urge my colleagues to review this legislation carefully and to draw upon it when—if—the issue of consumer bankruptcy reemerges in the 106th Congress.●

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. ROBERTS, Mrs. HUTCHISON, Mr. BURNS, Mr. BREAUX, Mr. HATCH, Mr. KERREY, Mr. MCCONNELL, Mrs. FEINSTEIN, Mr. CRAIG, Mr. SESSIONS, Mr. ALLARD, Mr. LUGAR, Mr. GRAMM, Mr. CAMPBELL, Mr. HAGEL, Mrs. MURRAY, and Mr. GRAMS):

S. 642. A bill to amend the Internal Revenue Code of 1986 to provide for Farm and Ranch Risk Management Accounts, and for other purposes; to the Committee on Finance.

FARM AND RANCH RISK MANAGEMENT ACT

● Mr. GRASSLEY. Mr. President, today, along with Senator BAUCUS and others, I am introducing the Farm and Ranch Risk Management Act of 1999. This bill gives farmers a necessary tool to manage the risk of price and income fluctuations inherent in agriculture. It does this by encouraging farmers to save some of their income during good years and allowing the funds to supplement income during bad years. This new tool will more fully equip family farmers to deal with the vagaries of the marketplace.

Farming is a unique sector of the American economy. Agriculture represents one-sixth of our Gross Domestic Product. It consists of hundreds of thousands of farmers across the nation, many of whom operate small, family farms. These farms often support entire families, and even several generations of a family. They work hard every day to produce the food consumed by this country and by much of the world.

Yet, farming remains one of the most perilous ways to make a living. The income of a farm family depends, in large part, on factors outside its control. Weather is one of those factors. In 1997, for instance, the income of North Dakota farmers dropped 98% due to flooding. Weather can completely wipe out a farmer. At best, weather can cause a farmer's income to fluctuate wildly.

Another factor is the uncertainty of international markets. Iowa farmers now export 40% of all they produce. But what happens, for example, when European countries impose trade barriers on beef, pork and genetically-modified feed grain? And what happens when Asian governments devalue their currencies? Exports fall and farm income declines through no fault of the farmer, but because of decisions made in foreign countries.

Today, farm families face their most severe crisis since the 1980's. Forces beyond the control of the individual farmer have led to record low prices for grain and livestock. The outlook for these families is dismal. Above normal production in 1998 led to nearly unprecedented grain surpluses. In fact, the USDA predicts soybean carry-over stocks will be 95% higher for the 1998–

99 marketing season than for the same period last year—the largest since 1986. With this much grain in the bins, a quick recovery in grain prices is highly unlikely.

At present, the only help for these farmers is a reactionary policy of government intervention. The USDA recently committed $50 million in direct aid to hog producers to help them combat the current crisis. In his State of the Union Address, the President pledged additional support for farmers. While we must do all we can to help farmers pull through the current crisis, we must also realize that this aid is merely a short-term solution. Why must farm families wait for a crisis before getting the help they need?

Mr. President, the bill I am introducing today is a proactive measure that will help farmers prevent future crises on their own. It equips them with the ability to offset cyclical downturns that are inherent in their profession without government intervention. In that way, this bill is complementary with the philosophy of the new farm program. Many farmers I have talked to are pleased with the new program, which returned business decisions to the farmers, not bureaucrats at the Department of Agriculture, and not elected officials. Under the new program, farmers determine for themselves what to plant according to the demands of the market. Likewise, the Farm and Ranch Risk Management Act allows the farmer to decide whether to defer his income for later years and when to withdraw funds to supplement his operation.

The volatile nature of commodity markets can make it difficult for family farmers to survive even a normal business cycle. When prices are high, farmers often pay so much of their income in taxes that they are unable to save anything. When prices drop again, farmers can be faced with liquidity problems. This bill allows farmers to manage their income, to smooth out the highs and lows of the commodity markets.

Mr. President, I will take just a moment to explain how the bill works. Eligible farmers are allowed to make contributions to tax-deferred accounts, also known as FARRM accounts. The contributions are tax-deductible and limited to 20% of the farmer's taxable income for the year. The contributions are invested in cash or other interest-bearing obligations. The interest is taxed during the year it is earned.

The funds can stay in the account for up to five years. Upon withdrawal, the funds are taxed as regular income. If the funds are not withdrawn five years after they were invested, they are taxed as income and subject to an additional 10% penalty.

Essentially, the farmer is given a five-year window to manage his money in a way that is best for his own operation. The farmer can contribute to the account in good years and withdraw from the account when his income is low.

This bill helps the farmer help himself. It is not a new government subsidy for agriculture. It will not create a new bureaucracy purporting to help farmers. The bill simply provides farmers with a fighting chance to survive the down times and an opportunity to succeed when prices eventually increase.

Mr. President, I ask that the bill be printed in the RECORD.

The bill follows:

S. 642

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Farm and Ranch Risk Management Act''.

SEC. 2. FARM AND RANCH RISK MANAGEMENT ACCOUNTS.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 of the Internal Revenue Code of 1986 (relating to taxable year for which deductions taken) is amended by inserting after section 468B the following new section:

''SEC. 468C. FARM AND RANCH RISK MANAGEMENT ACCOUNTS.

''(a) DEDUCTION ALLOWED.—In the case of an individual engaged in an eligible farming business, there shall be allowed as a deduction for any taxable year the amount paid in cash by the taxpayer during the taxable year to a Farm and Ranch Risk Management Account (hereinafter referred to as the 'FARRM Account').

''(b) LIMITATION.—The amount which a taxpayer may pay into the FARRM Account for any taxable year shall not exceed 20 percent of so much of the taxable income of the taxpayer (determined without regard to this section) which is attributable (determined in the manner applicable under section 1301) to any eligible farming business.

''(c) ELIGIBLE FARMING BUSINESS.—For purposes of this section, the term 'eligible farming business' means any farming business (as defined in section 263A(e)(4)) which is not a passive activity (within the meaning of section 469(c)) of the taxpayer.

''(d) FARRM ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—The term 'FARRM Account' means a trust created or organized in the United States for the exclusive benefit of the taxpayer, but only if the written governing instrument creating the trust meets the following requirements:

''(A) No contribution will be accepted for any taxable year in excess of the amount allowed as a deduction under subsection (a) for such year.

''(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

''(C) The assets of the trust consist entirely of cash or of obligations which have adequate stated interest (as defined in section 1274(c)(2)) and which pay such interest not less often than annually.

''(D) All income of the trust is distributed currently to the grantor.

''(E) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

''(2) ACCOUNT TAXED AS GRANTOR TRUST.—The grantor of a FARRM Account shall be treated for purposes of this title as the owner of such Account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

''(e) INCLUSION OF AMOUNTS DISTRIBUTED.—

''(1) IN GENERAL.—Except as provided in paragraph (2), there shall be includible in the gross income of the taxpayer for any taxable year—

''(A) any amount distributed from a FARRM Account of the taxpayer during such taxable year, and

''(B) any deemed distribution under—

''(i) subsection (f)(1) (relating to deposits not distributed within 5 years),

''(ii) subsection (f)(2) (relating to cessation in eligible farming business), and

''(iii) subparagraph (A) or (B) of subsection (f)(3) (relating to prohibited transactions and pledging account as security).

''(2) EXCEPTIONS.—Paragraph (1)(A) shall not apply to—

''(A) any distribution to the extent attributable to income of the Account, and

''(B) the distribution of any contribution paid during a taxable year to a FARRM Account to the extent that such contribution exceeds the limitation applicable under subsection (b) if requirements similar to the requirements of section 408(d)(4) are met.

For purposes of subparagraph (A), distributions shall be treated as first attributable to income and then to other amounts.

''(3) EXCLUSION FROM SELF-EMPLOYMENT TAX.—Amounts included in gross income under this subsection shall not be included in determining net earnings from self-employment under section 1402.

''(f) SPECIAL RULES.—

''(1) TAX ON DEPOSITS IN ACCOUNT WHICH ARE NOT DISTRIBUTED WITHIN 5 YEARS.—

''(A) IN GENERAL.—If, at the close of any taxable year, there is a nonqualified balance in any FARRM Account—

''(i) there shall be deemed distributed from such Account during such taxable year an amount equal to such balance, and

''(ii) the taxpayer's tax imposed by this chapter for such taxable year shall be increased by 10 percent of such deemed distribution.

The preceding sentence shall not apply if an amount equal to such nonqualified balance is distributed from such Account to the taxpayer before the due date (including extensions) for filing the return of tax imposed by this chapter for such year (or, if earlier, the date the taxpayer files such return for such year).

''(B) NONQUALIFIED BALANCE.—For purposes of subparagraph (A), the term 'nonqualified balance' means any balance in the Account on the last day of the taxable year which is attributable to amounts deposited in such Account before the 4th preceding taxable year.

''(C) ORDERING RULE.—For purposes of this paragraph, distributions from a FARRM Account shall be treated as made from deposits in the order in which such deposits were made, beginning with the earliest deposits. For purposes of the preceding sentence, income of such an Account shall be treated as a deposit made on the date such income is received by the Account.

''(2) CESSATION IN ELIGIBLE FARMING BUSINESS.—At the close of the first disqualification period after a period for which the taxpayer was engaged in an eligible farming business, there shall be deemed distributed from the FARRM Account (if any) of the taxpayer an amount equal to the balance in such Account at the close of such disqualification period. For purposes of the preceding sentence, the term 'disqualification period' means any period of 2 consecutive taxable years for which the taxpayer is not engaged in an eligible farming business.

''(3) CERTAIN RULES TO APPLY.—Rules similar to the following rules shall apply for purposes of this section:

''(A) Section 408(e)(2) (relating to loss of exemption of account where individual engages in prohibited transaction).

''(B) Section 408(e)(4) (relating to effect of pledging account as security).

''(C) Section 408(g) (relating to community property laws).

''(D) Section 408(h) (relating to custodial accounts).

''(4) TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to a FARRM Account on the last day of a taxable year if such payment is made on account of such taxable year and is made within 3½ months after the close of such taxable year.

''(5) INDIVIDUAL.—For purposes of this section, the term 'individual' shall not include an estate or trust.

''(g) REPORTS.—The trustee of a FARRM Account shall make such reports regarding such Account to the Secretary and to the person for whose benefit the Account is maintained with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such persons at such time and in such manner as may be required by those regulations.''.

(b) DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of such Code (defining adjusted gross income) is amended by inserting after paragraph (17) the following new paragraph:

''(18) CONTRIBUTIONS TO FARM AND RANCH RISK MANAGEMENT ACCOUNTS.—The deduction allowed by section 468C(a).''

(c) TAX ON EXCESS CONTRIBUTIONS.—

(1) Subsection (a) of section 4973 of such Code (relating to tax on certain excess contributions) is amended by striking ''or'' at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

''(4) a FARRM Account (within the meaning of section 468C(d)), or''.

(2) Section 4973 of such Code is amended by adding at the end the following new subsection:

''(g) EXCESS CONTRIBUTIONS TO FARRM ACCOUNTS.—For purposes of this section, in the case of a FARRM Account (within the meaning of section 468C(d)), the term 'excess contributions' means the amount by which the amount contributed for the taxable year to the Account exceeds the amount which may be contributed to the Account under section 468C(b) for such taxable year. For purposes of this subsection, any contribution which is distributed out of the FARRM Account in a distribution to which section 468C(e)(2)(B) applies shall be treated as an amount not contributed.''.

(3) The section heading for section 4973 of such Code is amended to read as follows:

''SEC. 4973. EXCESS CONTRIBUTIONS TO CERTAIN ACCOUNTS, ANNUITIES, ETC.''.

(4) The table of sections for chapter 43 of such Code is amended by striking the item relating to section 4973 and inserting the following new item:

''Sec. 4973. Excess contributions to certain accounts, annuities, etc.''.

(d) TAX ON PROHIBITED TRANSACTIONS.—

(1) Subsection (c) of section 4975 of such Code (relating to prohibited transactions) is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULE FOR FARRM ACCOUNTS.—A person for whose benefit a FARRM Account (within the meaning of section 468C(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such Account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a FARRM Account by reason of the application of section 468C(f)(3)(A) to such Account.''.

(2) Paragraph (1) of section 4975(e) of such Code is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following new subparagraph:

''(E) a FARRM Account described in section 468C(d),''.

(e) FAILURE TO PROVIDE REPORTS ON FARRM ACCOUNTS.—Paragraph (2) of section 6693(a) of such Code (relating to failure to provide reports on certain tax-favored accounts or annuities) is amended by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following new subparagraph:

''(C) section 468C(g) (relating to FARRM Accounts).''.

(f) CLERICAL AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 of such Code is amended by inserting after the item relating to section 468B the following new item:

''Sec. 468C. Farm and Ranch Risk Management Accounts.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.●

● Mr. BAUCUS. Mr. President, I rise today to join my colleague Senator GRASSLEY in introducing the Farm and Ranch Risk Management Act of 1999.

The American farm is the cornerstone of our rich cultural heritage. Yet farming remains one of the most perilous ways to make a living. A family farmer's income depends on good weather and strong international markets. When either of these two factors turn negative, farmers have few tools at their disposal to cushion the blow.

Farm families are now suffering record low prices on grain and livestock in the most severe farming crisis since the 1980's. Who could have imagined back in 1996 when Congress passed the Freedom to Farm Act that wheat prices would drop from $4.50 a bushel to $2.81 a bushel by September 1998? As wheat and other agricultural commodity prices dipped to record lows, America's producers have been stranded without a safety net, causing a severe financial crisis.

I sincerely hope that 1999 will be the ''Year of Recovery'' for our battered farm economy. I believe we can make this happen by focusing on three goals:

We must pry open foreign markets to agricultural products.

We must help agricultural producers at home.

We must install a permanent safety net to help producers weather times of crisis.

In two other bills I have introduced, I have proposed changes to the crop insurance program in order to help rebuild this safety net for farmers. Today's introduction of the Farm and Ranch Risk Management Act is another step in this re-building process. The FARRM Act is a pro-active measure that would give farmers a five-year window to manage their money. It allows them to put aside up to 20% of their annual income for up to 5 years in a tax-deferred FARRM account. They only pay taxes on the amount set-aside when it is withdrawn from the account.

The FARRM bill allows the farmer to help himself. It allows farmers to manage their incomes, to smooth out the highs and lows of the commodity markets. It is not a new subsidy, nor is it a new government program. It is simply a new tool farmers can use to cope with an uncertain world. It provides American farmers with a fighting chance to survive the down times with an opportunity to enjoy their success during the good times.

I believe the FARRM Act is an essential strand in the safety net we must weave to protect our nation's farm families. I urge my colleagues to support the bill.●

By Mrs. FEINSTEIN:

S. 645. A bill to amend the Clean Air Act to waive the oxygen content requirement for reformulated gasoline that results in no greater emissions of air pollutants than reformulated gasoline meeting the oxygen content requirement; to the Committee on Environment and Public Works.

ELIMINATING MTBE

● Mrs. FEINSTEIN. Mr. President, today I am introducing a bill to enable the U.S. Environmental Protection Agency to eliminate the additive, MTBE, from gasoline. The goal in this bill, as in my previous three bills (S. 266, S. 267 and S. 268) is to eliminate MTBE from drinking water.

Under this bill, the U.S. Environmental Protection Agency could waive the two percent reformulated gasoline oxygenate requirement of the Clean Air Act in any state if gasoline with less than two percent or with no oxygenates does not result in greater emissions than emissions from reformulated gasoline containing two percent oxygenates.

MTBE or methyl tertiary butyl ether is added to gasoline by some refiners in response to federal Clean Air Act requirements that areas with the most serious air pollution problems use reformulated or cleaner-burning gasoline. This federal law requires that this gasoline contain two percent by weight oxygenates. MTBE has been the oxygenate of choice by some refiners.

The Clean Air Act's reformulated gas requirements have no doubt helped reduce emissions throughout the United States, but the two percent oxygenate requirement has imposed limitations on the level of flexibility that U.S. EPA can grant to states and limited the flexibility of refiners in making clean gasoline.

I am very troubled to learn from a March 16 article in the Sacramento Bee that the gasoline refiners were aware

of MTBE's dangers long before it was approved for use in California. Researchers in Maine pointed out MTBE's harms in 1986. The Bee reporter, after studying industry research documents, quotes a 1992 industry scientific paper: ''MTBE plumes are expected to move faster and further than benzene plumes emanating from a gasoline spill. Moreover, the solubility of MTBE is nearly 25 times that of benzene and its concentration in gasoline will be approximately 10 times greater.''

A spokesman for the Oxygenated Fuels Association is also quoted as saying that the chemical properties that make MTBE problematic in water ''were widely known'' in the 1980s.

Bob Reeb, of the Association of California Water Agencies, is quoted as saying, had they known of MTBE's adverse effects, ''We would have fought like hell to keep it out of gasoline. It appears to be a classic case of placing corporate profits above public health.''

The Sacramento Bee article is appended to my statement.

A number of authorities have called attention to MTBE's harm and have called for prompt action.

The American Medical Association House of Delegates and the American Public Health Association approved resolutions calling for a moratorium on the use of MTBE in 1994—1994!

The University of California released a five-volume study in November 1998, and recommended phasing out MTBE. UC found that ''there are significant risks and costs associated with water contamination due to the use of MTBE.'' The University of California study says: ''If MTBE continues to be used at current levels and more sources become contaminated, the potential for regional degradation of water resources, especially groundwater basins, will increase. Severity of water shortages during drought years will be exacerbated.''

The UC study says that oil companies can make cleaner-burning gasoline that meets federal air standards without MTBE and that they should be given the flexibility to do that. The UC study found that ''there is no significant additional air quality benefit to the use of oxygenates such as MTBE in reformulated gasoline, relative to'' California's reformulated gasoline formula.

The California Environmental Protection Agency on February 19, 23, 24 held two public hearings on the University of California report. A total of 109 people spoke at the hearings and 987 written comments (including mine) were submitted as of today, and the comment period is still open. Of the 109 speakers, 12 supported continued use of MTBE. Cal EPA is still reading the written comments.

A June 12, 1998 Lawrence Livermore National Laboratory study concluded that MTBE is a ''frequent and widespread contaminant'' in groundwater throughout California and does not degrade significantly once it is there. This study found that groundwater has been contaminated at over 10,000 shallow monitoring sites. The Livermore study says that ''MTBE has the potential to impact regional groundwater resources and may present a cumulative contamination hazard.''

The Association of California Water Agencies has detected MTBE in shallow groundwater at over 10,000 sites in the state and in some deeper drinking wells. Their December 1998 study documented MTBE contamination in many of the state's surface water reservoirs, pointing to motorized recreation as a major source.

The environmental group, Communities for a Better Environment, issued a report this month calling for a ban on MTBE in our state because it has contamined groundwater, drinking water and land.

I have received letters and resolutions opposing MTBE from 56 California local governments, water districts, and air districts.

In higher concentrations, MTBE smells like turpentine and it tastes like paint thinner. Relatively low levels of MTBE can make drinking water simply undrinkable.

MTBE is a highly soluble organic compound which moves quickly through soil and gravel. It, therefore, poses a more rapid threat to water supplies than other constituents of gasoline when leaks occur. MTBE is easily traced, but it is very difficult and expensive to cleanup. California water agencies say it costs $1 million to cleanup per well and $5 million plus for reservoirs.

Contamination of drinking water MTBE continues to grow. A December 14, 1998 San Francisco Chronicle headline calls MTBE a ''Ticking Bomb.''

The Lawrence Livermore study says that ground water has been contaminated at over 10,000 sites in my state.

South Lake Tahoe has closed 14 wells and is implementing a ban on personal watercraft. Ten plumes of MTBE released by gas stations (some from a hose torn loose, some from spills, some from underground tanks) have caused the shutdown of 35% of the districts' drinking water wells, eliminating nearly one-fifth of its water supply since September 1997. The levels of groundwater contamination there are as high as 1,200,000 parts per billion. The South Tahoe Public Utility District has spent nearly $1 million in non-budget funds on MTBE.

The February 5 Sacramento Bee reported that MTBE has been detected 30 miles away from Lake Tahoe, that ''it apparently made its way to the reservoir through South Lake Tahoe's wastewater export system. . . Six service stations working to clear MTBE from contaminated areas have been discharging water into the sewer system after a treatment process.'' The article quotes Dawn Forsythe, a Tahoe authority: ''It's going all the way through the sewer system, through the treatment system, through the export pipeline, across a stream and now it's in the reservoir.''

MTBE has been detected in drinking water supplies in a number of cities including Santa Monica, Riverside, Anaheim, Los Angeles, San Francisco, Sebastopol, Manteca, and San Diego. MTBE has also been detected in numerous California reservoirs including Lake Shasta in Redding, San Pablo and Cherry reservoirs in the Bay Area, and Coyote and Anderson reservoirs in Santa Clara.

Drinking water wells in Santa Clara Valley (Great Oaks Water Company) and Sacramento (Fruitridge Vista Water Company) have been shut down because of MTBE contamination.

In addition, MTBE has been detected in the following surface water reservoirs: Lake Perris (Metropolitan Water District of Southern California), Anderson Reservoir (Santa Clara Valley Water District), Canyon Lake (Elsinore Valley Municipal Water District), Pardee Reservoir and San Pablo Reservoir (East Bay Municipal Utility District), Lake Berryessa (Solano County Water Agency).

The largest contamination occurred in the city of Santa Monica, which lost 75% of its ground water supply as a result of MTBE leaking out of shallow gas tanks beneath the surface. MTBE has been discovered in publicly owned wells approximately 100 feet from the City Council Chamber in South Lake Tahoe. In Glennvile, California, near Bakersfield, MTBE levels have been detected in groundwater as high as 190,000 parts per billion—dramatically exceeding the California Department of Health advisory of 35 parts per billion.

While many scientists say we need more definitive research on the human health effects of MTBE, the U.S. EPA has indicated that ''MTBE is an animal carcinogen and has a human carcinogenic hazard potential.''

Dr. John Froines, a distinguished UCLA scientist, testified at the California EPA hearing on February 23 as follows:

> We in our report have concluded the cancer evidence in animals is relevant to humans.
>
> There are ''acute effects in occupationally-exposed workers, including headaches, dizziness, nausea, eye and respiratory irritation, vomiting, sensation of spaciness or disorientation and burning of the nose and throat.''
>
> MTBE exposure was associated with excess cancers in rats and mice, therefore, multi-species,'' citing multiple, ''endpoints, lymphoma, leukemia, testicular cancer, liver and kidney.
>
> All four of the tumor sites observed in animals may be predictive of human cancer risk.

He further testified:

> The related question is whether there is evidence which demonstrates the animal cancers are not relevant to humans. The answer developed in detail in our report is no. There is no convincing evidence that the data is specific to animals. That is our conclusion. Nobody has come forward to tell us a basis to change that point of view.

These, to me, are troubling statements from a reputable authority.

While the data is incomplete, we do know that MTBE is showing up in other states. U.S. EPA funded a study by the University of Massachusetts last year, which was not able to collect data from every state, but which reported that 25 states have reports of private drinking water wells contaminated with MTBE. Nineteen states reported public drinking water wells contaminated with MTBE. EPA experts concluded, ''MTBE detections by most state programs is common'' and ''MTBE may contaminate groundwater in unexpected locations and in unexpected ways, such as at diesel fuel sites or from surface dumping of small amounts of gasoline.'' (Soil and Groundwater Cleanup, August/September 1998, ''Study Reports LUST Programs Are Felling Effects of MTBE Releases.'')

Here are some examples of problems in other states:

A Maine survey found that 15 percent of drinking wells had detectable amounts of MTBE and 5,200 private wells may contain MTBE above the state's drinking water standard.

MTBE has contaminated the well water for over 200 homes in New York.

In Blue Bell, Pennsylvania, MTBE was detected in tap water, suspected from a leak from a gas station tank.

Texas, with over 21,000 leaking underground fuel tanks, is finding MTBE in drinking water.

MTBE has been detected in drinking water in Kansas and Virginia.

Clearly, MTBE is a problem in many states.

The California Air Resources Board in 1994 adopted a clean gas formula that is called a ''predictive model,'' a performance-based program that allows refiners to use innovative fuel formulations to meet clean air requirements.

The predictive model provides twice the clean air benefits required by the federal government. With this model, refiners can make cleaner burning gasoline with one percent oxygen or even no oxygen at all. The federal two percent oxygenate requirement limits this kind of innovation. In fact, Chevron, Tosco and Shell are already making MTBE-free gasoline.

Since the introduction of the California Cleaner Burning Gasoline program, there has been a 300-ton-per-day decrease in ozone forming ingredients found in the air. This is the emission reduction equivalent of taking 3.5 million automobiles off the road. California reformulated gasoline reduces smog-forming emissions from vehicles by 15 percent.

I have now offered to the Congress 4 approaches to getting MTBE out of our drinking water.

I introduced S. 266 on January 20, a bill to allow California to apply its own clean or reformulated gasoline rules as long as emissions reductions are equivalent or greater. California's rules are stricter than the federal rules and thus meet the air quality requirements of the federal Clean Air Act. This bill is the companion to H.R. 11 introduced by Rep. BILBRAY on January 6, 1999.

S. 267, my second bill, requires the U.S. Environmental Protection Agency to make petroleum releases into drinking water the highest priority in the federal underground storage tank cleanup program. This bill is needed because underground storage tanks are the major source of MTBE into drinking water and federal law does not give EPA specific guidance on cleanup priorities.

The third bill, S. 268, will move from 2006 to 2001 full implementation of EPA's current watercraft engine exhaust emissions requirements. The California Air Resources Board on December 10, 1998, adopted watercraft engine regulations in effect making the federal EPA rules effective in 2001, so this bill will make the deadline in the federal requirements consistent with California's deadlines. In addition, the bill will require an emissions label on these engines consistent with California's requirements so the consumer can make an informed purchasing choice. This bill is needed because watercraft engines have remained essentially unchanged since the 1930s and up to 30 percent of the gas that goes into the motor goes into water unburned.

Dr. John Froines, testified that in California, ''. . . essentially every citizen of California is breathing MTBE daily.''

MTBE is not needed to produce clean air. By allowing the companies that supply our state's gasoline to use good science and sound environmental policy, we can achieve the goals set forth by the Clear Air Act, without sacrificing California's clean water. I believe U.S. EPA should give all states this flexibility.

MTBE is not needed. Refiners can make gasoline that is clean—Chevron, Tosco and Shell are already doing that in my state.

MTBE is an animal carcinogen and a potential human carcinogen.

Let's end it.

Mr. President, I ask unanimous consent that the text of the bill and article from the Sacramento Bee be printed in the RECORD.

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

S. 645

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

SECTION 1. WAIVER OF OXYGEN CONTENT REQUIREMENT FOR CERTAIN REFORMULATED GASOLINE.

Section 211(k)(2)(B) of the Clean Air Act (42 U.S.C. 7545(k)(2)(B)) is amended—

(1) in the first sentence, by striking ''The oxygen'' and inserting the following:

''(i) REQUIREMENT.—The oxygen''; and

(2) in the second sentence—

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

''(ii) WAIVERS.—The Administrator'';

(B) by striking ''area upon a'' and inserting the following: ''area—

''(I) upon a'';

(C) by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(II) if the Administrator determines, by regulation, that reformulated gasoline that contains less than 2.0 percent by weight oxygen and meets all other requirements of this subsection will result in total emissions of ozone forming volatile organic compounds and toxic air pollutants, respectively, that are not greater than the total emissions of those compounds and pollutants resulting from reformulated gasoline that contains at least 2.0 percent by weight oxygen and meets all other requirements of this subsection.''.

[From the Sacramento Bee, Mar. 16, 1999]

MTBE RISK TO DRINKING WATER WAS KNOWN FOR YEARS

(By Chris Bowman and Patrick Hoge)

America's fuel industry knew about the risk to drinking water from MTBE years before domestic refineries more than doubled the chemical's volume in gasoline, but manufacturers marketed the product as an environmental improvement anyway.

In technical papers and conference presentations, environmental engineers for refineries and government regulators alike predicted that MTBE could become a lingering groundwater menace as its usage increased.

Sixteen years before MTBE-rich gasoline was approved for statewide use in California to combat air pollution, oil companies knew from their first experience with the fuel additive in New England how quickly methyl tertiary butyl ether can migrate from leaking storage tanks to drinking water wells, company records and technical journals show.

At the time, the pollution specialists stressed that MTBE was in many ways more worrisome than gasoline's cancer-causing benzene.

''MTBE plumes are expected to move faster and further than benzene plumes emanating from a gasoline spill,'' three Shell researchers said in an internal 1992 paper. ''Moreover, the solubility of MTBE is nearly 25 times that of benzene, and its concentration in gasoline will be approximately 10 times greater.''

These papers, recently obtained by The Bee, have renewed importance today in California where the spotlight on the fuel controversy is about to turn on industry.

Later this month, Gov. Gray Davis is expected to announce that MTBE presents a public health threat and should be phased out of California, sources in his administration say. Such an action would not end the public debate, but rather shift it to the question of who will pay to clean up MTBE and how much cleanup should occur.

Even if the synthetic compound were banned overnight—a highly unlikely prospect—California would still have to defend its water supplies for many years against MTBE-laced groundwater from past fuel leaks.

MTBE is a key component of a ''cleaner-burning gasoline'' that has been used in most of California's 27 million vehicles for the past three years. While the gasoline has been credited for removing 300 hundred tons of tailpipe poisons every day in the state, it also has created a Pandora's box underground.

Increasingly, the compound has found its way into underground reservoirs, in stormwater runoff, in recreational lakes and in wells across the country. In California, MTBE has contaminated 10,000 groundwater sites and tainted Tahoe, Donner, Shasta and several other lakes. It also has knocked out wells in several communities. In South Lake Tahoe, more than a dozen wells have been shut down due to MTBE contamination.

While scientists are still studying MTBE's health effects—the federal government classifies it as a ''possible'' cancer-causing agent

in humans—minute amounts of the pollutant can spoil wells by imparting a bitter taste and solvent-like ordor.

Already some marina-related businesses have taken an economical hit due to water utilities banning fuel-spitting power craft from reservoirs tapped for drinking water. Filtration plants can't remove MTBE without expensive treatment upgrades.

But the biggest MTBE bill is yet to come, and, one way or another, consumers will ultimately pay for it. That will be in the cleanup of MTBE-laden fuel that has spilled and leaked from pipelines and storage tanks. The restoration is expected to take many years, at a cost of tens of millions to hundreds of millions of dollars a year, a major University of California study recently concluded.

Makers of gasoline and MTBE put the onus on tank owners and the environmental officials who regulate the tanks and the fuels.

Officials at Shell Oil Co. headquartered in Houston told The Bee that its 1992 paper describing the environmental downside of MTBE was hardly news.

''(It) was in the public domain and already accessible to regulators,'' the company said in a prepared statement. A spokeswoman said it was based on information disseminated at a 1986 pollution control conference co-sponsored by the American Petroleum Institute.

In the 1980s, the chemical properties making MTBE problematic in water ''were widely known,'' said Charlie Drevna, chief spokesman for Oxygenated Fuels Association, which represents makers of MTBE and other oxygen-bearing fuel components. ''What wasn't known was that the (underground storage tank) program in this country was in total shambles.''

But the leaking tanks problem has been widely reported for at least the past decade when the U.S. Environmental Protection Agency ordered the tanks replaced or upgraded. Most major brand gasoline stations in California complied by the federal deadline last December.

California motorists have been paying for a good part of the cleanups from leaking tanks since 1992. They pay about 1.2 cents per gallon at the pump toward a $180 million-a-year state cleanup fund that reimburses mostly small businesses.

The argument that industry should bear more responsibility for the MTBE pollution is beginning to grow. In the past few months, attorneys suing oil companies on behalf of individuals and utilities over MTBE pollution in California, South Carolina and Maine have joined forces. The common allegation is that the oil companies knew or should have known that adding more MTBE to gasoline posed a major threat to drinking water sources.

''It would have been astonishing for corporations of this size and complexity not to have known the risk that an additive to a product that would become so widespread would pose to the environment and to the public,'' said Victor Sher, a Sacramento attorney representing the South Tahoe Public Utility District.

Sher said his lawsuit, filed in 1999, is the first in the nation by a public water supplier that goes after fuel makers on grounds of product liability.

While the environmentally troublesome properties of MTBE were noted in technical papers from the oil industry and federal regulators, Sher said he has yet to find evidence that the oil industry ever raised those problems before policy-makers as they deliberated the rules for the cleaner-burning gasoline.

''They should have been telling the regulators, and they should have been looking for alternatives,'' Shea said.

Shell Oil officials say EPA regulators had plenty of notice in the 1980s, well before 1992 when refiners began to substantially increase the chemical's use to meet the new federal cleaner-burning fuel rules.

''The literature then available indicated to government regulators, manufacturers of MTBE and to gasoline manufacturers, including Shell, that the then perceived benefits outweighed the then perceived risks,'' the company statement said.

Liability aside, the knowledge of MTBE's downside could have changed what ended up in the gas tanks of millions of motorists. The gasoline additive is now the fourth top selling chemical in the United States, with more than 9 million tons of it sold annually.

Water suppliers say they certainly would have raised a fuss.

''We would have fought like hell to keep it out of gasoline,'' said Bob Reeb, of the Association of California Water Agencies. ''It appears to be a classic case of placing corporate profits above public health.''

If that's the case, Assembly Speaker Antonio Villaraigosa, D-Los Angeles, said, ''We can make the argument that this industry has a very high level of responsibility to provide the cleanup of this contamination.''

MTBE's critics point out that the trail of responsibility can be traced back at least to 1986 when three researchers from Maine laid out the basic characteristics of MTBE in discussion today: that it moves farther and faster in groundwater, last longer, and is much more difficult to filter out than other gasoline compounds.

The presentation was at a Houston conference attended by dozens of regulators and industry scientists on ground-water pollutants. It was sponsored by the American Petroleum Institute and the National Well Water Association.

Two of the Maine paper's authors said their presentation didn't seem to make much of an impact on regulators and industry.

''There just seemed to be a feeling that there wasn't anything that was necessary to do now, which puzzles me in retrospect,'' said Peter Garrett, one of the authors. ''I think it was because MTBE was hailed as being the chemical of the future because of its potential to cut down on air pollution.''

Co-author Marcel Moreau, now an expert on underground tanks, said all of the technical information about the chemical's characteristics was freely supplied by ARCO.

But as momentum was building on Capitol Hill toward requiring oxygenated compounds like MTBE in gasoline to combat smog, no such environmental concerns surfaced in the public debate either from industry, environmentalists or regulators, according to interviews with key participants.

MTBE's many critics express amazement that a chemical could have been introduced into the environment on such a massive scale with so little data on its toxicology or behavior in the environment.

When first added to premium gasoline in 1979, scientists had produced no studies on MTBE's long-term health effects.

''It is astonishing that such a technological process could have been started without sufficient technological information that would have enabled us to expose possible adverse health effects of the compound,'' wrote Fiorella Belpoggi, lead researcher in a 1995 investigation of MTBE's cancer-causing potential.

The recent study of MTBE done by the University of California similarly found that regulators did not do enough to assess MTBE's potential environmental impacts before allowing its huge rise.

In California, health officials testified recently before the state Legislature that they did not realize that MTBE posed a major groundwater threat until 1995, when Santa Monica reported contamination of one of its wells.

Ironically, companies like ARCO continued to spend lavishly in 1996 to promote MTBE as an environmentally friendly product that made gasoline burn cleaner.

The lack of toxicology data remains even today, more than three years after MTBE's introduction in California on a massive scale.

Industry representatives insist that expensive upgrades of underground tanks already mandated under law will curtail the MTBE problem.

But others say evidence shows too many other ways that MTBE can get into water wells.

James Giannopoulos, principal engineer with the state Water Resources Control Board, made a similar point during a recent MTBE hearing in Sacramento.

''Even a small failure rate of the more than 50,000 upgraded tanks, we believe constitutes a good water quality reason to eliminate MTBE from gasoline,'' he said.●

By Mr. ROTH (for himself and Mr. BAUCUS):

S. 646. A bill to amend the Internal Revenue Code of 1986 to provide increased retirement savings opportunities, and for other purposes; to the Committee on Finance.

RETIREMENT SAVINGS OPPORTUNITY ACT OF 1999

● Mr. ROTH. Mr. President, one question many Americans ask themselves is this: Will I have enough to live on when I retire. According to a study published by the Employee Benefit Research Institute, about one third of Americans are not confident that they will have enough to live on in their retirement years. Social Security is an important component of an individual's retirement income, but savings—whether through personal accounts or through employer-provided retirement plans—will help provide for a better life at retirement. Another troubling factor is that if you are employed by a small business you are far less likely to be eligible for a retirement plan. There must be ways to get more Americans interested in providing for their retirement years and to get small businesses interested in providing retirement benefits for their employees. This is a concern that spreads across party lines; everyone knows that there must be incentives for promoting retirement savings.

Despite these concerns, we have a strong system of tax favored savings plans in place. For savings through the workplace, there are 401(k) plans, 403(b) plans and 457 plans, each of which can be sponsored by different types of employers. For individual savings, there is either the traditional IRA or the Roth IRA. And all these different savings vehicles have different limits on how much individuals can save. However, our current system can do more and the limitations that we placed on retirement savings in times of budgetary restraints should be re-examined now. In addition, we should capitalize on some of the successful savings incentives and use them to broaden our savings base.

Both Senator BAUCUS and I are pleased to introduce a new bill, the Retirement Savings Opportunity Act of 1999, which will build upon the strengths of our current system, yet provide new opportunities for people to save for retirement. In addition, this bill would also increase the incentives that would help small businesses start and maintain retirement plans for its employees. These are issues that Senator BAUCUS is very concerned about and I join him in providing these important incentives for small businesses. The provisions of this bill are as follows:

Increase IRA dollar limit. The maximum contribution limit for IRAs (both traditional IRAs and Roth IRAs) is $2,000. This limit, which has been in place since 1982, has never been indexed for inflation. If the IRA limit were indexed for inflation it would be close to $5,000. In this bill, the limit for all IRAs (both traditional IRAs and Roth IRAs) will be increased to $5,000 per year. In addition, this limit will be adjusted annually for cost of living increases, in $100 increments, so that the amount that taxpayers can save with an IRA will never again be reduced due to the impact of cost of living increases.

It is important to remember who makes IRA contributions. An estimated 26 percent of American households how own a traditional IRA, according to a 1998 survey by the Investment Company Institute. In 1993 (the most recent year for which comprehensive aggregate data is available) 52 percent of all IRA owners earned less than $50,000. This same group made about 65 percent of all IRA contributions in 1985.

We know that people at all income levels are limited by the $2,000 cap on contributions. For example, IRS statistics show that the average contribution level in 1993 for people with less than $20,000 in income was $1,500. Clearly this means that there were lower income people who wanted to make contributions of more than the $2,000 limit.

In addition, IRAs are the only tax-favored savings vehicle for many taxpayers. According to the Bureau of Labor Statistics, only 48 percent of individuals who work in small business establishments were eligible for any retirement plan in 1994. This is a problem that both Senator BAUCUS and I try to address elsewhere in this bill by providing greater incentives to business for establishing employer-sponsored retirement savings plans. However, regardless of the incentives that we may provide, not all employers will establish retirement plans for their employees. Furthermore, not all employees will stay with one employer long enough to receive a benefit. Under current law, the maximum amount that an individual can save is too low to provide adequate savings for retirement. In order to spur an increase in savings, we believe that an increase in the IRA limit is warranted.

Increase IRA income caps. There are different and confusing caps on contributions to traditional and Roth IRAs. They are as follows:

Tax deductible contributions to traditional IRAs. If an individual is an active participant in an employer provided pension plan, the amount of a deductible contribution that an individual can make is confusing. First of all the $2,000 contribution amount is reduced if the adjusted gross income of the taxpayer is over $51,000, if the taxpayer is filing a joint return. If the taxpayer is a single or head of household filer, the $2,000 contribution amount is reduced if adjusted gross income exceeds $31,000. These income limits are scheduled to increase annually until the year 2007 when the joint filer limit will be $80,000 and the single and head of household filer limit will be $50,000. Married taxpayers who file separately are precluded from making deductible contributions if their adjusted gross income is above $10,000, unless the couple has not lived together for the entire year. Finally, if an individual is not an active participant in an employer's plan and the individual's spouse is, an individual is not able to make a deductible contribution to an IRA if the couple's income is $150,000 or above. These are too many restrictions.

The bill will eliminate these conflicting and confusing income limits for deductible IRAs. What this will mean is that all individuals who have earned income can make full deductible contributions to a traditional IRA. In addition, a homemaker without earnings will be able to make IRA contributions.

Contributions to Roth IRAs. A full $2,000 contribution can only be made to a Roth IRA if a single taxpayer's adjusted gross income is less than $95,000 and married taxpayer's adjusted gross income is less than $150,000. If a taxpayer is married and files separately from his or her spouse, the taxpayer cannot make a Roth IRA contribution if his or her adjusted gross income exceeds $10,000, unless they live apart for the entire year. The bill will eliminate these income limits for Roth IRA contributions, so that all taxpayers can make a contribution to a Roth IRA. Remember, however, that a taxpayer cannot make a full contribution to a Roth IRA and also make a full contribution to a traditional IRA; amounts contributed to one type of IRA reduce the amounts that can be contributed to the other type of IRA.

Conversion to Roth IRAs. In order to convert to a Roth IRA, an individual's adjusted gross income must not exceed $100,000 regardless of whether the individual is married filing jointly or single. Married individuals who are filing separately cannot convert to a Roth IRA, unless they live apart for the entire year. The bill will raise the income cap for conversions to $1 million.

The current income limitations relating to IRAs are needlessly complex and are confusing to taxpayers. As we heard at the recent Senate Finance Committee hearing on retirement savings, these limits are confusing to taxpayers with the result that taxpayers do not fully utilize these products. By eliminating these income limitations, which affect only a small percentage of taxpayers, we can increase the use of IRAs. When Congress restricted the deductibility of IRA contributions in 1986, the IRS reported that the level of IRA contributions fell from $38 billion to $14 billion in 1987.

Will taxpayers increase the amount of their savings to IRAs if the savings opportunities were increased? According to a 1997 survey conducted on behalf of the Savings Coalition, increasing the IRA limits would result in more savings for retirement. Sixty-four percent said that they would increase the rate of their personal savings with IRAs.

Economic studies also have shown that increasing the tax incentives for savings should result in substantial increases in savings due to increases in the net return. See, for example, Lawrence H. Summers, ''Capital Taxation and Accumulation in a Life Cycle Growth Model,'' American Economic Review, 71, September 1981. The staff of the Joint Committee on Taxation noted in its description of Present Law and Background Relating to Tax Incentives for Savings prepared for the Finance Committee hearing (JCX–7–99), there are many reasons for this increase in savings due to increased limits, including the psychological incentives to save and the increased advertising by banks and other financial institutions of tax-benefitted savings vehicles may influence people's savings decisions.

Increase other dollar-based benefit limitations. Currently, the maximum pre-tax contribution to a 401(k) plan or a 403(b) annuity is $10,000. In addition, the maximum contribution to a 457(b) plan (a salary deferral plan for employees of government and tax exempt organizations) is $8,000. Finally, the maximum contribution to a SIMPLE plan (a simplified defined contribution plan available only to small employers) is $6,000. These limits are indexed for cost of living increases. There has traditionally been a differential in contribution limits among the various types of plans: IRAs (which are individual plans) having the lowest limits; SIMPLE plans having a greater limit—but not as much as a 401(k) plan; and 401(k) and 403(b) plans having the highest limits, but the greatest number of regulations. Since the IRA limit will be raised to $5,000, the bill will increase limits for 401(k) and 403(b) plans to $15,000 and for SIMPLE plans to $10,000; thereby continuing the differential. The limit for 457(b) plans for government employees will increase to $12,000.

As stated before, there is a clear need to increase the IRA limit above the current $2,000 contribution level. But increasing that level without increasing the savings opportunity levels for

employer provided plans will result in some business owners eliminating their employer provided plans and saving only for themselves in an IRA. By increasing the employer provided plan limits, business owners will still have the incentive to maintain a plan for employees if only to avail themselves of the higher plan limits for employer provided plans.

This does not mean that business executives can automatically take advantage of these higher contribution limits. First, it is important to remember that contributions can only be made on the first $160,000 of compensation. In addition, in order for a business owner or other highly compensated employee to take advantage of these limits, a number of non-highly compensated employees must also benefit under the plan. An example should show how these non-discrimination rules work. In a company, there is one person—let's say the owner of the business—who makes over $160,000 and that person wants to contribute the full $15,000 to the company 401(k) plan. He could only contribute the full $15,000 if (i) low paid employees as a group contribute 8% of their compensation to the 401(k) plan, (ii) all low paid employees receive a fully vested contribution from the employer equal to 3% of their compensation or (iii) all low paid employees would be eligible to receive matching contributions of 100% of their contribution to the 401(k) plan of their first 3% contribution and 50% of their next 2% of compensation contribution. Clearly, business owners and high paid employees cannot benefit with this new higher contribution limits unless the amount of savings that low paid people make—either on their own or with the help of the employer—increases.

Roth 401(k) or 403(b) plan. We have heard testimony before the Finance Committee that the results of the first year of the Roth IRA has been successful. And we have all seen the television and print ads touting the benefits of the Roth IRA. The opportunity for tax-free investment returns has clearly caught the fancy of the American people. In less than five months after the Roth IRA became available, the Investment Company Institute estimated that approximately 3 percent of American households owned a Roth IRA. In addition, the survey found that the typical Roth IRA owner was 37 years old, significantly younger than the traditional IRA owner who is about 50 years old, and that 30 percent of Roth IRA owners indicated that the Roth IRA was the first IRA they had ever owned. This bill will harness the power of the Roth IRA and give it to participants in 401(k) plans and 403(b) plans.

Companies will have the opportunity to give participants in 401(k) plans and 403(b) plans the ability to contribute to these plans on an after-tax basis, with the earnings on such contributions being tax-free when distributed, like the Roth IRA. More than the maximum Roth IRA contribution amount can be contributed under this option; employees would be limited to the maximum 401(k) or 403(b) contribution amount. The regular non-discrimination rules that apply to 401(k) and 403(b) plans will also apply to these after-tax contributions. Consequently, in order for business owners and highly compensated employees to take full advantage of these new savings opportunities, low paid employees must also benefit.

The regular distribution rules (rather than the Roth IRA distribution rules) would apply to these types of plans. However, these after-tax accounts could be rolled into a Roth IRA when the individual retires. And unlike Roth IRAs, there would not be an opportunity for 401(k) or 403(b) plan participant to convert their current 401(k) and 403(b) account balances into the new non-taxable balances.

Catch-up contributions. This provision will provide an additional savings opportunity to those individuals who are close to retirement. According to a study by the Employee Benefit Research Institute, older workers tend to have their contributions constrained by maximum limits which are either plan limits on how much can be contributed or legal limits on how much can be contributed. EBRI believes that this is probably due to the fact that they are more focused on retirement and are thus more likely to contribute at a higher level. We all know that there can be other pressing financial needs earlier in life—school loans, home loans, taking time off to raise the kids—which limit the amount that we may have available to save for retirement. The closer that we get to retirement, the more we want to put away for those years when we are not working. However, the current law limitations on how much may be contributed to tax qualified savings vehicles may restrict people's ability to save at this time in their lives.

The bill will give those who are near retirement—age 50—the opportunity to contribute an additional amount in excess of the annual limits equal to an additional 50% of the annual limit. Catch-up contributions will be allowed in 401(k) plans, 403(b) plans, 457(b) plans and IRAs. For IRAs, this will mean that someone age 50 could contribute $7,500 each year rather than $5,000.

For employer provided plans, the catch contribution will be available to anyone who is age 50 or above and who is limited in the amount that he or she can contribute to the plan by a plan limit, the maximum contribution limit or the nondiscrimination rules that apply to highly paid employees. This additional catch-up contributions to employer provided plan will not be subject to the normal non-discrimination rules for other contributions. Consequently, if a highly paid employee is limited by the nondiscrimination rules to only contributing $9,000 to a 401(k) plan, the employee will be able to contribute an additional $7,500 annually in the years after he attains age 50. This way, an employee is able to make contributions to provide for his or her retirement security when he or she is best able to afford to make these contributions and not be limited because other younger employees do not make contributions.

Small business incentives. According to the most recent Bureau of Labor Statistics figures, only 48 percent of employees in a small business are likely to be covered by any retirement plan, while 78 percent of employees of large or medium size businesses are likely to be covered. Since employees of small businesses are less likely to be covered by a retirement plan, we needed to find incentives for small businesses to want to establish plans. This is an issue that Senator BAUCUS is particularly interested in and these small business incentives represent some of his ideas on how to expand the small business market for retirement plans. The bill will assist small businesses in establishing retirement plans in the following ways:

Tax credit for start-up costs. A nonrefundable tax credit of up to $500 would be available to small businesses with up to 100 employees to defray the administrative costs of establishing a new retirement plan. This credit would only be available for the first three years of operation of the plan. This credit could be carried back for one year or forward for 20 years (the general business credit carryover rules).

Tax credit for contributions. A nonrefundable tax credit equal to 50% of employer contributions made on behalf of non-highly compensated employees would be available to small businesses with 50 or less employees during the first 5 years of a plan's operation. Only contributions of not more than 3% of compensation are eligible for the credit. This credit could be carried back for one year or forward for 20 years.

Small business defined benefit plan. This plan will provide employees of small businesses with a secure, fully portable, defined retirement benefit without imposing the complex rules and regulations of normal defined benefit plans. This plan, called the Savings Are For Everyone (SAFE) plan, will provide a fully vested benefit that is fully funded, using conservative actuarial assumptions. The benefit will be based on an employee's salary and years of service and could be structured so that years of service prior to the establishment of the plan can be used in determining the benefit—which helps older, long service employees. The SAFE plan is meant to complement the successful SIMPLE defined contribution plan that is available for small businesses.

Elimination of 25 percent of compensation limitation. Currently, the maximum amount that can be contributed to a defined contribution plan on behalf of an individual participant is the lesser of $30,000 or 25 percent of

compensation. This includes both employee contribution and any matching contributions or profit sharing contributions made by the plan sponsor. This bill will eliminate the 25 percent of compensation limit, so that the maximum contribution that is made on behalf of any individual is $30,000. With the additional savings opportunities provided for all employees under this bill, it would be much more likely for employees—especially low paid employees—to exceed this 25 percent of compensation limitation. This change will make sure that those employees will not be limited in fully providing for their retirement security, especially, if the employer also contributes toward the employee's retirement plan.

Tax deduction for employee deferrals. Under current law, an employee pre-tax deferral is treated as employer contribution and is subject to the limits on how much an employer can take as a tax deduction on qualified plan contributions. With the increased amount of pre-tax savings that we anticipate employees will make after enactment of this bill, there is a concern that the maximum limit on deductible contributions will be reached. This bill will permit employer to fully deduct any employee pre-tax deferrals, without regard to the maximum limit on deductions. Other employer contributions to a plan, however, will continue to be subject to this deduction limitation.

IRA contributions to an employer plan. The bill gives employers the opportunity to accept traditional IRA contributions as part of their regular employer plan. In addition, it gives employees the ability to have IRA contributions made directly to the employer-sponsored IRA as a payroll deduction. One advantage of using an employer plan as an IRA account is that the administrative costs in an employer plan are usually much less than the costs in a privately maintained plan. Another advantage is that contributions to the IRA will be made on a payroll deduction basis, which makes it more likely that the contributions will be made.

Full funding limit increase. Defined benefit pension plans are also an important source of retirement income. Currently, amounts that can be deducted as contributions to a pension plan is limited to the lesser of the actuarial funding requirement amount or 150 percent of the current liability amount of the plan. The current liability amount does not take into account projected pension benefits. This 150 percent of current liability limitation is eliminated in this bill. This will result in better funded pension plans, since the articial limitation of 150 percent of current liability no longer applies.

Both Senator BAUCUS and I hope that other Senators will join us in this effort to increase savings opportunities for all working Americans.●

● Mr. BAUCUS. Mr. President, I rise to join my colleague, Senator ROTH, Chairman of the Senate Finance Committee and fellow Montanan, in introducing this important bill. Mr. President, I have agreed to join Chairman ROTH in introducing this bill for one reason—I believe we must increase the level of personal savings in our country.

Personal savings have been on a precipitous decline during the last 2 decades. Net personal savings have dropped from 9.3% of Gross Domestic Product in the 1970's to one-half of one percent in 1999. This is the lowest rate of personal savings since 1933. If we are to reverse this decline, and help Americans plan for their retirement years, we must create a culture of savings in our country.

The Retirement Savings Opportunity Act is one piece of a much broader effort to reverse this trend. Another important part of this puzzle is represented by the package of regulatory reforms I have been working on with Senators GRAHAM and GRASSLEY, in a bill that will be introduced shortly. Yet another approach is represented by the President's proposal to create Universal Savings Accounts for all working Americans. I support the President's commitment to dedicate a portion of our projected budget surpluses to helping Americans save for their retirement, though I am modifying his proposal to take advantage of our existing pension system and enhance it. All of these proposals, when taken together in a comprehensive package, will help Americans of all income levels save for the future.

My particular concern is in pension coverage for small businesses and their employees. Less than one in every five Americans working for small businesses have access to pension plans through their workplace. This represents 40 million working Americans who do not have pension coverage. And since virtually all of the net new jobs being created in this country are being created by small businesses, their retirement security must not be neglected. We simply must make it easier for small businesses to start pension plans, and to provide pension coverage to their employees.

I am particularly pleased with the small business incentives included in the Retirement Savings Opportunity Act. This bill contains a tax credit to help defray the administrative costs small businesses incur when they start up new pension plans. It also includes an additional tax credit as an incentive for small business owners who contribute money on behalf of their employees into new plans. Finally, the bill includes a new, simplified defined benefit plan for small businesses. These are not by any means the only ways we can help small businesses provide pensions for their workers, but they are a good start down that road. The increased limits that are included in the bill will also help this process by making it easier for employers to save, thus making it more likely they will also provide benefits to their lower paid workers.

I am very excited that we are finally engaging in a public policy debate about retirement security. Only by elevating this debate to the highest levels will we be able to make the changes necessary to truly make the American dream a reality for everyone. We must help Americans make their Golden Years truly golden, so they can look forward to a secure financial future. This bill, as part of a comprehensive solution that includes other proposals directed toward lower-income workers, will help make retirement security a reality for all Americans.●

By Mr. MACK (for himself and Mr. GRAHAM)

S. 647. A bill to provide for the appointment of additional Federal district judges in the State of Florida, and for other purposes; to the Committee on the Judiciary.

THE FLORIDA FEDERAL JUDGESHIP ACT OF 1999

● Mr. MACK. Mr. President, I come before the Senate today with my esteemed colleague and friend, Senator GRAHAM, to introduce the Florida Federal Judgeship Act of 1999. I would not be here today if I did not wholeheartedly believe that the problem facing the court system in the Middle and Southern Districts of Florida is one of the most acute judgeship problems in the nation. If judicial resources are not increased in these two districts, the problem will become irreversible. Mr. President, the situation that presently exists in Florida rises to the level of an emergency and thus, the problem needs attention today.

The legislation that Senator GRAHAM and I are introducing would create seven new judgeships for the state of Florida. The Middle District would receive five new permanent judgeships, and the Southern District would receive two new permanent judgeships. These numbers were officially recommended by the United States Judicial Conference earlier this week.

The Middle District of Florida is nearly 400 miles, spanning from the Georgia border on the northeast side to the south of Naples on the southwest coast of Florida. This district includes, among others, the cities of Jacksonville, Orlando, and Tampa. The Southern District encompasses Ft. Lauderdale and Miami, along with other cities in the southern portion of the state.

Additional judgeship positions have not been created for these districts since 1990. Since this time, the Middle District alone has had a 62 percent increase in the total number of cases filed. Moreover, Florida's population has increased nearly twice as fast as the nation during the 1990s. By 2025, the United States Census Bureau projects Florida will surpass New York as the third largest state with 20.7 million residents.

Each year, Florida becomes a winter home to people from all over the United States and the world. In addition, the Middle and Southern Districts

are home to major tourist attractions such as Disney World, Universal Studios, Sea World, Busch Gardens, and South Beach. The heavy flow of both winter residents and tourism, along with Florida's growing number of permanent residents, causes the needs of these two judicial districts to be unique in this nation.

In addition, the Middle District contains the federal correctional center at Coleman. When the penitentiary is completed in Spring 2001, this will be one of the largest prison complexes in the country and the largest in the state of Florida. The capacity at Coleman will be approximately 4,700 inmates and all complaints filed by these prisoners regarding the facilities and their individual care will be sent to the Middle District for resolution.

To add to the problem, a portion of the Middle District has been designated a High Intensity Drug Trafficking Area. While I am pleased that Florida will be receiving additional assistance in the war against drugs, we also must recognize that this law enforcement initiative is expected to dramatically impact narcotic related arrests and therefore, prosecutions in the Middle District.

Thus, it is apparent that without the addition of new judges, access to justice will no longer be swift in the Middle and Southern Districts. To provide Floridians with a safe environment and access to justice, a court system must be put in place which can handle the demands of this dynamic and growing part of our country. Accordingly, I urge the Judiciary Committee and the full Senate to consider and pass this legislation expeditiously.●

● Mr. GRAHAM. Mr. President, I am extremely pleased to join with my distinguished colleague from Florida, Senator MACK, in introducing the Florida Federal Judgeship Act of 1999. This legislation will create seven additional U.S. District Court judgeships in Florida—two in the Southern District and five—in the fast-growing Middle District of Florida.

I want to thank Senator ORRIN HATCH, chairman of the Senate Judiciary Committee, for his recognition of the overcrowding problem facing Florida's federal district courts and for his good-faith pledge to work with Senator GRASSLEY to consider this issue early this year. I look forward to working with all my Senate colleagues in considering this important issue.

Because our number of judgeships is too small to meet the increasing demand of Florida's rapidly growing population, judges face overwhelming caseloads. Prosecutors and law-enforcement personnel are stymied in their efforts to mete out swift justice. Civil litigants are forced to endure unreasonable waits to bring their cases to resolution.

Mr. President, make no mistake: Florida's federal courts are in the midst of a full-blown crisis. Prominent legal and judicial officials all over Florida have told us that this is not a tenable situation. But Floridians are not alone in their concern about overcrowded court dockets in the Southern and Middle Districts of Florida. Yesterday, March 16th, the Judicial Conference of the United States—the principal policy-making body of the federal judiciary, which is chaired by the Chief Justice of the Supreme Court and composed of federal judges from throughout the United States—asked Congress to create 33 permanent and 25 temporary additional district judgeships. Senator MACK and I are introducing our bill so that Congress can meet the needs of Florida by providing the additional judicial resources needed for these two U.S. District Courts to meet their increasing caseload.

On three previous occasions since 1976, Congress has authorized new Federal judgeships in numbers that each time exceeded the request of the Judicial Conference thus recognizing the dire needs of our court systems. The last recommendation, made in March of 1997, followed recommendations that were unheeded in September of 1992 and September of 1994. There have simply been no new judgeships since December 1, 1990. We cannot allow this new request to go unheeded again.

Mr. President, many states have justifiable concerns about overcrowded federal district court dockets. However the urgent nature of Florida's judicial crisis makes our state a special case. Its Southern and Middle Districts deserve immediate attention for three main reasons.

First, Florida has one of the highest caseloads per judge in the nation, a condition that has continued to worsen over the last year. Currently, the Judicial Conference has proposed all recommendations for increased judgeship based on weighted filings—a number that takes into account both the total number of cases filed per judge and the average level of case complexity. Currently the standard for each Federal district judge is 430 weighted cases per year. When the caseload exceeds 430, that district is entitled to be reviewed for purposes of an additional judge.

As of September 30, 1998, the Southern District's weighted filings stood at 608 per judge. This is 41 percent above the standard and 18 percent above the national average of 516 weighted filing per judge. In the Middle District, the story was even worse—805 weighted filings per judge, a figure that ranks sixth highest in the entire nation. Middle District's weighted filings per judge from September 1996 to September 1998, a two year period, jumped from 45 percent above the standard to 87 percent above the standard and 56 percent above the national average.

As of January 30, 1999, over 1,100 criminal defendants have cases pending in the Middle District. The story is even worse on the civil side of the docket, where more than 5,900 cases have yet to receive final disposition. Florida's caseload isn't going to experience a slowdown in growth anytime soon, and the judicial backlog will get worse unless Congress takes preventative action for the long-term.

Second, this legislation recognizes that Florida's largest federal judicial districts are responsible for a massive area that includes nearly 80 percent of Florida residents. Last year the state's population reached 15 million, growing 15.9 percent since the 1990 census of 12.9 million. The Southern and Middle Districts combined jurisdiction stretches from key West—the southernmost city in the continental United States—north to include Miami, Ft. Lauderdale, West Palm Beach, Melbourne, Fort Myers, Sarasota, Tampa, St. Petersburg, Orlando, and Jacksonville.

Between 1980 and 1995, the Middle District grew by a whopping 52%. It is expected to increase by an addition 21% in the next decade. However, since 1990, the last time the Judicial Conference recommended and Congress approved more judges for Florida, our U.S. District Courts have not received any additional resources from the federal government to cope with that growth.

Third, this proposal will assist the work of law enforcement officials and personnel. If we are committed to ensuring that criminals face punishment in a swift manner, we must be willing to provide resources to all aspects of the judicial system.

In both of these districts, drug prosecutions and other serious criminal cases make up a large percentage of the overall caseload. For example, both the Southern and Middle Districts contain High intensity Drug Trafficking Areas (HITDAs). These anti-drug zones generate a substantial number of lengthy, multi-defendant prosecutions, and the additional of judges will help law enforcement officials and prosecutors in their fight against drug crimes.

In addition, federal prosecutors and law enforcement officials throughout Florida, but especially in the Southern District, are being forced to spend more time combatting the cheats, fly-by-night operators, and other criminals who are engaged in a systematic campaign to defraud Medicare and other health care programs. It has been estimated that nearly twenty percent of all Medicare dollars spent in South Florida are lost to fraud. In fact, nearly 30 percent of all Medicare fraud nationwide takes place in Florida.

Mr. President, it is vital that we act quickly to resolve this crisis. From 1990, in Middle District, and 1993, in Southern District, the total number of filings have gone up 62 percent. With a state population growth rate predicted to exceed 300,000 residents per year, these trends are unlikely to reverse. The addition of these judgeships will still leave both districts well above the weighted filings per judgeship standard.

U.S. Federal District Courts are the first stop for all citizens involved in the federal judicial system. Most federal cases are disposed at this level and

it is essential that these citizens have their claims heard in a timely manner. Congress and the White House must be vigilant in their shared responsibility for recommending, nominating, and confirming federal judicial nominees. Senator HATCH's leadership, and his determination to address Florida's special needs, are very much appreciated by the residents of our state.

Our legislation is simple, sound, and will serve the interests of all Floridians. I look forward to working with Senator MACK and members of the Judiciary Committee on this matter. I urge all my colleagues to support the passage of this much needed legislation. Further delay in this matter will only serve to deny timely justice for thousands of crime victims and civil litigants in Florida's Southern and Middle Judicial Districts.

I ask unanimous consent that a letter I have received from Chief Judge Edward B. Davis of the Southern District of Florida be printed in the RECORD.

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

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF FLORIDA,
Miami, FL, February 23, 1999.

Hon. D. ROBERT GRAHAM,
U.S. Senate, Hart Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: I am writing to reaffirm our need for the two additional judgeships this court has been seeking since 1995. The Judicial Conference approved that request in 1996 and reaffirmed it in 1998. It did so based on the weighted filings per judgeship. During the last three years, the weighted filings per judgeship have averaged 601 which is 171 filings above the standard of 430 per judgeship.

The Conference Committee on Judicial Statistics again analyzed the Judiciary's judgeship needs last year and again recommended to the Judicial Conference the two additional judgeships. The following are the highlights of that analysis:

Since 1993, filings have increased by more than 50%. Most of the increase has been in civil cases which have risen 62 percent;

Prisoner petitions have nearly doubled since 1993;

Criminal filings have fluctuated over the last five years, growing to a high of 102 per judgeship in 1996 (this figure will be even higher in the present statistical year based on current trends);

The heavy criminal caseload is reflected in both the weighted filings and the number of lengthy trials;

Over the last three years, the Court has averaged 34 trials per year in excess of 10 days, with an average of 9 in excess of 20 days (almost 10% of the Federal Judiciary's total);

With the addition of two judgeships, the Court's weighted filings per judgeship would only fall to approximately 520, still well above the standard of 430.

I also note that in the Southern District we: had 57% more criminal trials than the next highest district (Central California) in the federal system; and had more criminal cases pending in 1998 in the Southern District than in 92 other federal district courts and in the entire 1st and 7th Circuits.

Despite your incredible assistance in filing our judicial vacancies, we have not had a full complement of Judges since October of 1988. I think the ongoing impact of the vacancies and the above data continues to support this Court's need for the two additional judgeships that were requested in 1995 as part of the 1996 Biennial Judgeship Survey.

If you have any questions or need additional information, please telephone me at (305) 523–5150.

Sincerely,

EDWARD B. DAVIS,
Chief Judge.●

By Mr. KERRY (for himself and Mr. GRASSLEY):

S. 648. A bill to provide for the protection of employees providing air safety information; to the Committee on Health, Education, Labor, and Pensions.

AVIATION SAFETY PROTECTION ACT

● Mr. KERRY. Mr. President, today I am introducing the Aviation Safety Protection Act of 1999 with Senator GRASSLEY to increase overall safety of the airline industry by establishing whistleblower protection for aviation workers. I am honored to work on this important issue with Senator GRASSLEY, who has long been a leader on whistleblower legislation.

The Occupational Safety and Health Act (OSHA) properly protects both private and federal government employees who report health and safety violations from reprisal by their employers. However, because of a loophole, aviation employees are not covered by these protections. Flight attendants and other airline employees are in the best position to recognize breaches in safety regulations and can be the critical link in ensuring safer air travel. Currently, those employees who work for unscrupulous airlines face the possibility of harassment, negative disciplinary action, and even termination if they report violations.

Aviation employees perform an important public service when they choose to report safety concerns. No employee should be put in the position of having to choose between his or her job and reporting violations that threaten the safety of passengers and crew. For that reason, we need a strong whistleblower law to protect aviation employees from retaliation by their employers when reporting incidents to federal authorities. Americans who travel on commercial airlines deserve the safeguards that exist when flight attendants and other airline employees can step forward to help federal authorities enforce safety laws.

This bill would provide the necessary protections for aviation employees who provide safety violation information to federal authorities or testify about or assist in disclosure of safety violations. This legislation provides a Department of Labor complaint procedure for employees who experience employer reprisal for reporting such violations, and assures that there are strong enforcement and judicial review provisions for fair implementation of the protections.

I want to acknowledge the leadership of Representative SHERWOOD BOEHLERT, Republican from New York, and Representative JAMES CLYBURN, Democrat from South Carolina, who have introduced the companion bill in the House. I also want to thank the Administration for their support of this legislation.

This bill will provide important protections to aviation workers and the general public. I urge my colleagues on both sides of the aisle to join Senator GRASSLEY and me in supporting it.

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

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

S. 648

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Aviation Safety Protection Act''.

SEC. 2. PROTECTION OF EMPLOYEES PROVIDING AIR SAFETY INFORMATION.

(a) IN GENERAL.—Chapter 421 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

''§ 42121. Protection of employees providing air safety information

''(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier may discharge an employee of the air carrier or the contractor or subcontractor of an air carrier or otherwise discriminate against any such employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

''(1) provided, caused to be provided, or is about to provide or cause to be provided, to the Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

''(2) has filed, caused to be filed, or is about to file or cause to be filed, a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

''(3) testified or will testify in such a proceeding; or

''(4) assisted or participated or is about to assist or participate in such a proceeding.

''(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—

''(1) FILING AND NOTIFICATION.—

''(A) IN GENERAL.—In accordance with this paragraph, a person may file (or have a person file on behalf of that person) a complaint with the Secretary of Labor if that person believes that an air carrier or contractor or subcontractor of an air carrier discharged or otherwise discriminated against that person in violation of subsection (a).

''(B) REQUIREMENTS FOR FILING COMPLAINTS.—A complaint referred to in subparagraph (A) may be filed not later than 90 days after an alleged violation occurs. The complaint shall state the alleged violation.

''(C) NOTIFICATION.—Upon receipt of a complaint submitted under subparagraph (A),

the Secretary of Labor shall notify the air carrier, contractor, or subcontractor named in the complaint and the Administrator of the Federal Aviation Administration of the—

''(i) filing of the complaint;

''(ii) allegations contained in the complaint;

''(iii) substance of evidence supporting the complaint; and

''(iv) opportunities that are afforded to the air carrier, contractor, or subcontractor under paragraph (2).

''(2) INVESTIGATION; PRELIMINARY ORDER.—

''(A) IN GENERAL.—

''(i) INVESTIGATION.—Not later than 60 days after receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify in writing the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings.

''(ii) ORDER.—Except as provided in subparagraph (B), if the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the findings referred to in clause (i) with a preliminary order providing the relief prescribed under paragraph (3)(B).

''(iii) OBJECTIONS.—Not later than 30 days after the date of notification of findings under this paragraph, the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order and request a hearing on the record.

''(iv) EFFECT OF FILING.—The filing of objections under clause (iii) shall not operate to stay any reinstatement remedy contained in the preliminary order.

''(v) HEARINGS.—Hearings conducted pursuant to a request made under clause (iii) shall be conducted expeditiously and governed by the Federal Rules of Civil Procedure. If a hearing is not requested during the 30-day period prescribed in clause (iii), the preliminary order shall be deemed a final order that is not subject to judicial review.

''(B) REQUIREMENTS.—

''(i) REQUIRED SHOWING BY COMPLAINANT.—The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

''(ii) SHOWING BY EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

''(iii) CRITERIA FOR DETERMINATION BY SECRETARY.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

''(iv) PROHIBITION.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

''(3) FINAL ORDER.—

''(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—

''(i) IN GENERAL.—Not later than 120 days after conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order that—

''(I) provides relief in accordance with this paragraph; or

''(II) denies the complaint.

''(ii) SETTLEMENT AGREEMENT.—At any time before issuance of a final order under this paragraph, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the air carrier, contractor, or subcontractor alleged to have committed the violation.

''(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the air carrier, contractor, or subcontractor that the Secretary of Labor determines to have committed the violation to—

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

''(ii) reinstate the complainant to the former position of the complainant and ensure the payment of compensation (including back pay) and the restoration of terms, conditions, and privileges associated with the employment; and

''(iii) provide compensatory damages to the complainant.

''(C) COSTS OF COMPLAINT.—If the Secretary of Labor issues a final order that provides for relief in accordance with this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the air carrier, contractor, or subcontractor named in the order an amount equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant (as determined by the Secretary of Labor) for, or in connection with, the bringing of the complaint that resulted in the issuance of the order.

''(4) FRIVOLOUS COMPLAINTS.—A complaint brought under this section that is found to be frivolous or to have been brought in bad faith shall be governed by Rule 11 of the Federal Rules of Civil Procedure.

''(5) REVIEW.—

''(A) APPEAL TO COURT OF APPEALS.—

''(i) IN GENERAL.—Not later than 60 days after a final order is issued under paragraph (3), a person adversely affected or aggrieved by that order may obtain review of the order in the United States court of appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of that violation.

''(ii) REQUIREMENTS FOR JUDICIAL REVIEW.—A review conducted under this paragraph shall be conducted in accordance with chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order that is the subject of the review.

''(B) LIMITATION ON COLLATERAL ATTACK.—An order referred to in subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

''(6) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—

''(A) IN GENERAL.—If an air carrier, contractor, or subcontractor named in an order issued under paragraph (3) fails to comply with the order, the Secretary of Labor may file a civil action in the United States district court for the district in which the violation occurred to enforce that order.

''(B) RELIEF.—In any action brought under this paragraph, the district court shall have jurisdiction to grant any appropriate form of relief, including injunctive relief and compensatory damages.

''(7) ENFORCEMENT OF ORDER BY PARTIES.—

''(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order is issued under paragraph (3) may commence a civil action against the air carrier, contractor, or subcontractor named in the order to require compliance with the order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the order.

''(B) ATTORNEY FEES.—In issuing any final order under this paragraph, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any party if the court determines that the awarding of those costs is appropriate.

''(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

''(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of an air carrier, or contractor or subcontractor of an air carrier who, acting without direction from the air carrier (or an agent, contractor, or subcontractor of the air carrier), deliberately causes a violation of any requirement relating to air carrier safety under this subtitle or any other law of the United States.

''(e) CONTRACTOR DEFINED.—In this section, the term 'contractor' means a company that performs safety-sensitive functions by contract for an air carrier.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 421 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

''42121. Protection of employees providing air safety information.

(c) CIVIL PENALTY.—Section 46301(a)(1)(A) of title 49, United States Code, is amended by striking ''subchapter II of chapter 421,'' and inserting ''subchapter II or III of chapter 421,''.●

By Mr. WELLSTONE (for himself and Mr. KENNEDY):

S. 653. A bill to amend the Occupational Safety and Health Act of 1970 to further protect the safety and health of employees; to the Committee on Health, Education, Labor, and Pensions.

SAFER WORKPLACES ACT OF 1999

By Mr. WELLSTONE:

S. 654. A bill to strengthen the rights of workers to associate, organize and strike, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

RIGHT-TO-ORGANIZE ACT OF 1999

● Mr. WELLSTONE. Mr. President, I rise today to introduce two pieces of legislation that I believe would represent a giant step forward for working Americans. The first bill, which I am calling the ''Safer Workplaces Act of 1999,'' contains four provisions that would extend health and safety protections for workers in the workplace. The second bill, the ''Right to Organize Act of 1999,'' would go a long way toward correcting some of the flagrant abuses

of the law that have resulted in workers being denied their right to organize and bargain collectively.

THE SAFER WORKPLACES ACT OF 1999

In recent years some of my colleagues have argued that the Occupational Safety and Health (OSH) Act already goes too far in protecting the right of employees to work in a safe and healthy environment. I have a different view. I believe that, in several fundamental ways, the OSH Act does not go far enough.

There are still too many workers injured on the job in America today. There are still too many tragic cases of workers losing their lives because their employers deliberately chose to break the law. When workers go to work in the morning, they have every right to expect that they'll come home at night in one piece—not maimed or killed on the job because of their employer's wrongdoing. I don't think that's a lot to ask.

Of course it's not. In fact, I know many of my Republican friends couldn't agree more. This is not, and should not be, a partisan issue. The four provisions of my ''Safer Workplaces Act,'' which I am also introducing individually as separate legislation, have all enjoyed bipartisan support in the past. I don't see any reason why they shouldn't enjoy bipartisan support in this Congress, as well. I hope we can sidestep some of the more bitter controversies surrounding the OSH Act and focus instead on meaningful changes that will make a real difference in the lives of American workers.

The first provision in my Safer Workplaces Act, which I am introducing separately as the ''Safety and Health Whistleblowers Protection Act,'' would encourage employees to step forward and identify hazards in the workplace without fear of retaliation from their employers. In theory, workers are already protected from retaliation under Section 11(c) of the OSH Act, but we know that this protection is all too often meaningless. As Assistant Secretary of Labor Charles Jeffress recently testified before the Employment, Safety, and Training Subcommittee, ''The provisions in place today in Section 11(c) of the Act are too weak and too cumbersome to discourage employer retaliation or to provide an effective remedy for the victims of retaliation.''

Many, if not most, employees are simply afraid that they'll be punished or fired if they complain. And they have every reason to be afraid. In 1997 the Labor Department's Inspector General, Charles C. Masten, concluded that

> Workers, particularly with small companies, are vulnerable to reprisals by their employers for complaining about unsafe, unhealthy work conditions. The severity of the discrimination is highlighted by the fact that for 653 cases included in our sample, nearly 67 percent of the workers who filed complaints were terminated from their jobs.

The IG further found that workers who complain to their employer first—rather than to OSHA—are particularly vulnerable; that workers in small firms are the most vulnerable; that employer retaliation is often severe, most frequently in the form of firing; that OSHA procedures to investigate complaints are inadequate; that there are significant delays in OSHA's decision-making in 11(c) cases; and that the Department is failing to seek effective remedies for employees.

GAO reached similar conclusions. Of the Compliance Safety and Health Officers (CSHOs) surveyed by GAO, 26 percent thought workers have little or no protection when they report violations to OSHA. According to almost 50 percent of these officers, workers themselves believe they have little or no protection. But only 10 percent thought workers faced no real danger of retaliation.

When employees are too intimidated to identify workplace dangers, we end up with workplaces that are more dangerous than they should be. The Labor Department Inspector General concluded that, ''Based on the worker termination rates in the 11(c) cases, many employers are not receptive to requests for abatement of workplace hazards and feel free to discipline workers who seek abatement.'' So hazards go unreported and more workers get injured or killed.

The problems with Section 11(c) are widely acknowledged. In the 103rd Congress, the House Education and Labor Committee issued a stinging critique of current law, and many of its criticisms were echoed by OSHA itself in 1998. These are some of the shortcomings they identified. There's too little time for workers to file a complaint, since many don't even learn of their legal rights within 30 days of retaliation. There's no protection for employees who refuse to work when they have good reason to think they're in danger. Workers have to rely on the Department to take their cases to court, and there are no real time limits for doing that. While their cases are pending, workers have no job and no paycheck. And there are no penalties for employers who retaliate against workers.

My legislation is designed to correct these flaws. It gives workers 6 months, rather than 30 days, to file a grievance for retaliation. It protects not only workers who report unsafe conditions, but also employees who refuse to work when they have good reason to think they might be harmed or injured. To expedite the process, my bill provides for prompt hearings before an administrative law judge. It would allow dissatisfied workers to then take their case to a federal appeals court themselves, not having to rely on the Department. And it would provide for reinstatement during these proceedings, as well as compensatory damages and exemplary damages when the employer's behavior has been particularly outrageous.

These common-sense improvements should not be contentious or controversial. In fact, a bipartisan consensus has already emerged in support of similar whistleblower reforms. In July 1988, Reagan Administration Secretary of Labor Ann McLaughlin recommended legislation allowing airline employees to refuse work when they have a reasonable belief that they might be injured or killed, as well as providing a six month grievance filing period, hearings before an administrative law judge, and a temporary reinstatement remedy. Labor Secretary Elizabeth Dole agreed that ''limitation periods shorter than 180 days have proved too short for effective protection of whistleblower rights.''

In 1989 President Bush said that reinstatement must be available for whistleblowers in cases involving waste, fraud, and abuse because ''Standard make-whole remedies * * * will be meaningless, in practice, if whistleblowers are crushed personally and financially while legitimate complaints are caught in procedural limbo.'' In 1991, Gerard Scannell, Assistant Secretary for OSHA under President Bush, testified that ''we know there is a need to improve whistleblower protection and we have been working closely with the Congress on this issue.''

In the 104th Congress, Republican Congressman CASS BALLENGER introduced an OSHA reform bill that would have strengthened whistleblower protections by lengthening the grievance filing period from 30 to 60 days, and by giving employees the right to take their cases to court if the Labor Department refuses to act.

Republicans and Democrats agree that Section 11(c) is woefully inadequate and cries out for immediate reform. To ensure a safe and healthy work environment for all workers, we must count on employees to actively participate in identifying and correcting workplace hazards. But they're not going to do that if it means putting their jobs on the line. It's that simple. These courageous individuals need more protection, not less, and that's what my legislation is all about.

The second provision of my Safer Workplaces Act, which I am introducing separately as the ''Wrongful Death Accountability Act,'' would make it a felony to commit willful violations of the OSH Act that result in death of an employee. Unbelievably, these criminal violations are only a misdemeanor under current law. Under virtually every other federal safety and health or environmental statute, by contrast, criminal violations are a felony.

Because the penalty is so insignificant, the Justice Department rarely prosecutes. There are not a lot of cases where willful violations lead to the death of an employee, but some of them involve egregious behavior that needs to be prosecuted. We need to send

a message. Employers who cause the death of their employees by deliberately violating the law should be held accountable with something more than a slap on the wrist.

Before a recent hearing of the Employment, Safety, and Training Subcommittee, Assistant Secretary of Labor Charles Jeffress testified, ''We would urge that these violations not be classified as misdemeanors, but felonies, which carry with them the possibility of incarceration for periods in excess of one year. Classifying willful workplace safety and health violations that lead to an employee's death as misdemeanors is woefully inadequate to address the harm caused. Classifying such crimes as felonies would more justly reflect the severity of the offense.''

This is another reform that has enjoyed bipartisan support in the past, and deserves bipartisan support in this Congress. In 1990 the Bush Administration testified in support of making these criminal violations felonies. Several Republicans on the Labor Committee—Brock Adams, Jim Jeffords, and David Durenberger—all supported such legislation.

The third provision of the Safer Workplaces Act, which I am introducing separately as the ''Federal Employees Safety Enhancement Act,'' would extend full OSHA protections to employees of the federal government. Federal employees have been excluded from OSHA coverage for almost 30 years. While a 1980 executive order required federal agencies to comply with OSHA standards, it provides no real enforcement authority.

As Assistant Secretary of Labor Charles Jeffress recently testified before the Employment, Safety, and Training Subcommittee, ''the OSH Act currently does not adequately protect Federal employees. * * * OSHA has little ability to require positive change on the part of public employees. As a consequence, this limited authority hinders OSHA's success in reducing illness, injuries, and fatalities on the job.''

Again, this is a common-sense reform that should be bipartisan and uncontroversial. In 1994, Republican Congressman CASS BALLENGER proposed to cover federal employees in his OSHA reform legislation. Last year, under the leadership of Senator ENZI, the Senate voted unanimously to extend OSHA coverage to the U.S. Postal Service. On introducing his Postal Employees Safety Enhancement Act of 1998, Republican Senator ENZI indicated that all federal employees should ultimately be covered: ''This important legislation is an incremental step in the effort to ensure that the 'law of the land' applies equally to all branches of government as well as the private sector—and everything in-between.''

Finally, my Safer Workplace Act would also extend OSHA protections to employees of state and local government. State and local public employees are now covered only if their state happens to have a state plan. But in 27 states that do not have a state plan, 8.1 million state and local public employees are not protected by OSHA.

There's no reason why these employees should be treated as second-class citizens. They face workplace hazards just like workers in the private sector, sometimes more. Their health and their lives are just as much at risk as those of private sector workers. In fact, in 1997, 624 public sector workers were killed on the job. In several states, the injury rate is higher for public employees than for private sector employees.

At a recent hearing of the Employment, Safety, and Training Subcommittee, Assistant Secretary of Labor Charles Jeffress testified. ''There are numerous examples of on-the-job tragedies that occurred primarily because safety and health protections do not apply to public employees. These tragedies could have been prevented by compliance with OSHA rules.''

Once again, this is a common-sense, bipartisan proposal. The Bush Administration supported OSHA coverage for state and local public employees in 1991. I understand there is interest on the other side of the aisle in this particular provision, and I welcome it.

Taken together, the four provisions in this legislation would make a real difference for American workers. Fewer of them would be exposed to workplace hazards, fewer would be injured or harmed on the job, and fewer would be forced to pay with their lives. The Safer Workplaces Act would encourage employees to be involved in identifying workplace hazards and correcting them before tragedy occurs. It would deter employers from putting their employees lives' in danger through deliberate violations of the law. And it would give federal employees and state and local public employees the same health and safety protections that workers in the private sector have long enjoyed. This is a sensible package of bipartisan reforms, and I would encourage my colleagues on both sides of the aisle to join me in passing this legislation in the 106th Congress.

THE RIGHT-TO-ORGANIZE ACT OF 1999

As Ranking Democrat on the Health, Education, Labor and Pensions (HELP) subcommittee with jurisdiction over the National Labor Relations Act (NLRA), I am also introducing legislation that would more fully recognize the right of American working men and women to organize and bargain collectively.

Workers across America who want to organize a union and bargain collectively with their employer are finding that the rules are stacked against them in crucial ways. This is clear to any labor organizer, and to many workers who have made the effort. To give workers a fair chance to organize and bargain collectively, we need fundamental labor law reform.

My ''Right-to-Organize Act of 1999'' will target some of the worst abuses of labor law that have become increasingly common in recent years. First, employees are being subject to flagrant coercion, intimidation, and interference during certification election campaigns. Second, employers are simply firing employees who attempt to organize a union, and they're doing so with virtual impunity. In fact, despite the fact that the NLRA prohibits firing of employees for trying to organize a union, as many as 10,000 Americans lose their jobs each year for doing just that. The 1994 Dunlop Commission found that one in four employers illegally fired union activists during organizing campaigns. And third, there is a growing problem of employers refusing to bargain with their employees even after a union has been certified.

The Right-to-Organize Act of 1999 tackles these problems with the following provisions:

First, it would help employees make fully informed, free decisions about union representation by providing labor representatives and management equal opportunity to disseminate information to employees.

Second, it would expand the remedies available for employees who are wrongfully discharged—for union organizing, for example. Specifically, it would expand the remedies available to the National Labor Relations Board to include three times back pay, and it would allow employees to recover punitive damages in district court when the Board has determined that they were wrongfully discharged.

Third, if protecting the right to join a union and bargain collectively is to have any meaning, there must be safeguards to ensure that newly certified unions have a reasonable opportunity to reach an agreement with their employer. My legislation would provide for mediation and arbitration when employers and employees fail to reach a collective bargaining agreement on their own within 60 days of a union's certification.

While these provisions are all much-needed to level the playing field, I am the first to admit that much more still needs to be done. This legislation is very much a work in progress. I will be considering additional provisions to strengthen the authority of the National Labor Relations Board's (NLRB) to sanction willful violations of the law and to prevent abuses that too often string out election campaigns for months and months while worker representatives are thoroughly intimidated, organizers are fired, and the organizing campaign dies an early death.

I believe very strongly that the Right to Organize is terribly important—not only for the workers who want to join together and bargain collectively, but for all Americans. One of the most important things we can do to raise the standard of living and quality of life for working Americans, raise wages and benefits, improve health and safety in the workplace, and give average

Americans more control over their lives is to enforce their right to organize, join, and belong to a union. We know that union workers are able to earn up to one-third more than non-union workers and are more likely to have pensions and health benefits. That's why more than four in ten workers who are not currently in a union say they would join one if they had the chance.

When workers join together to fight for job security, for dignity, for economic justice and for a fair share of America's prosperity, it is not a struggle merely for their own benefit. The gains of unionized workers on basic bread-and-butter issues are key to the economic security of all working families. Upholding the Right to Organize is a way to advance important social objectives—higher wages, better benefits, more pension coverage, more worker training, more health insurance coverage, and safer workplaces—without drawing on any additional government resources.

I believe that the Right to Organize is one of the most important civil rights and human rights causes of the 1990s. Unfortunately, this cause has received too little attention in this Congress. I hope I can do something to remedy that situation, but this legislation is only a first step.

By Mr. LOTT (for himself, Mr. MCCAIN, Mr. STEVENS, Mr. BURNS, Mrs. HUTCHISON, Mr. FRIST, Mr. MACK, Mr. MURKOWSKI, Mr. WARNER, Mr. SHELBY, Mr. BENNETT, Mr. INHOFE, Mr. SESSIONS, and Mr. GRAMS):

S. 655. A bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles; to the Committee on Commerce, Science, and Transportation.

NATIONAL SALVAGE MOTOR VEHICLE CONSUMER PROTECTION ACT OF 1999

Mr. LOTT. Mr. President, today I am introducing legislation to combat the growing and costly fraud of title washing. Title fraud is a deceptive practice that costs consumers more than $4 billion dollars annually and places millions of structurally defective vehicles back on America's roads and highways. These are millions of unsafe cars and trucks sharing the roads with your loved ones.

The National Salvage Motor Vehicle Consumer Protection Act encourages states to adopt uniform titling and registration standards to protect used car buyers from unknowingly purchasing totaled and subsequently rebuilt vehicles. It is a sound and reasonable measure that enhances consumer disclosure and aids state motor vehicle administrators throughout the nation by giving them identical points of reference to describe salvage vehicles.

Let us be very clear on this, there are no uniform definitions and standards in place today and this leads to a hodgepodge of disclosure approaches throughout the country. Unscrupulous automobile rebuilders take advantage of inconsistencies in state titling definitions and procedures to purchase damaged vehicles at a low cost, rebuild them, oftentimes by welding the front and back of two different cars together, and then retitling the vehicle in another state. The new ''clean'' title bears no indication of the vehicle's previous damage record. As a result, consumers in your states are being sold previously totaled cars and trucks without having any knowledge that the vehicle they purchased, sometimes at a very high price, was severely damaged. A vehicle where only minor damage could cause it to fall apart. The unwitting purchasers of these vehicles experience significant economic loss. They and other motorists may also suffer bodily harm from these wrecks on wheels.

Mr. President, the title branding bill offered today will promote greater disclosure to potential used car buyers than occurs today. It establishes uniform definitions for salvage, rebuilt salvage, nonrepairable, and flood vehicles based upon the recommendations of the Motor Vehicle Titling, Registration and Salvage Advisory Committee. This congressionally mandated task force, overseen by the U.S. Department of Transportation, included the U.S. Attorney General's Criminal and Civil Justice Divisions, State motor vehicle officials, motor vehicle manufactures, auto dealers, recyclers, insurers, salvage yard operators, scrap processors, the U.S. Treasury Department, police chiefs and municipal auto theft investigators, and other interested and affected parties. The uniform definitions and standards contained in this bill are theirs, not mine. Their recommendations are based on a wealth of day-to-day experience dealing with consumer fraud, vehicle titling, and automobile theft. The Salvage Advisory Committee's recommendations struck an appropriate balance between consumers' economic interests and their personal safety.

The National Salvage Motor Vehicle Consumer Protection Act requires rebuilt salvage vehicles to undergo a theft inspection in addition to any required state safety inspection. To further promote disclosure to potential used car buyers, the legislation also requires rebuilt salvage vehicles to have a decal permanently fastened to the driver's doorjamb and a sticker would be affixed to the windshield disclosing the vehicle's status. Additionally, a written disclosure statement must be provided to buyers and the vehicle's title would be branded with the statement ''rebuilt salvage.''

The bill also requires that the brands included on state vehicle titles be carried forward to each state where the vehicle is retitled.

So if your state wants to add additional requirements—they can. And these items will be a permanent part of the title.

In an effort to take aim at automobile theft, the bill requires the tracking of Vehicle Identification Numbers (VIN) of irreparably damaged vehicles. This provision ensures that VINs are not simply swapped from damaged cars to stolen cars to mask their identity.

Mr. President, Congress came very close to enacting title branding legislation last year. The original Senate measure received the formal bipartisan support of 57 Senators, and a similar bill passed the House of Representatives by a vote of 333 to 72. Throughout the legislative process, a number of significant changes were made to the bill to address the concerns expressed by consumer groups and some state attorneys general.

The title branding bill before you today retains all of the changes approved by the House of Representatives last October and it includes additional pro-consumer, pro-states rights modifications received from states and the Administration.

Under this revised bill, states are free to adopt disclosure standards beyond those provided for in the bill. Let me say again that nothing in this bill prohibits states from providing unlimited disclosure to their citizens. This important legislation merely creates a basic minimum national standard while giving participating states the flexibility to adopt more stringent provisions and additional disclosure requirements.

The bill also does not create a federal mandate on the states as some big government advocates would have it. My colleagues are well aware that the Supreme Court ruled in *New York* v. *United States* [505 U.S. 144 (1992)] that states cannot be forced by Congress to execute programs that should be administered by the U.S. government. In the New York decision, the Justices upheld ''access incentives'' which allow states to decide whether they want to use federal standards.

This legislation follows the Supreme Court's ruling by offering incentive grants, as proposed by the U.S. Department of Transportation, to states that voluntarily choose to participate in the uniform titling regime for salvage vehicles. Thus, states that enact the bill's uniform titling definitions and procedures will be eligible for conformance funding. They can use the authorized funds to issue new titles, to establish and administer vehicle theft or safety inspections, for enforcement activities, and for other related purposes. While I believe most states will decide to participate in this completely voluntary program, rest assured no state will be penalized for choosing not to participate, or for adopting only some of the bill's provisions.

I would also like to point out that the revised bill no longer links state adoption of uniform titling standards to the National Motor Vehicle Title Information System (NMVTIS) funding or participation. Again, there is no penalty for nonparticipation.

The bill merely identifies and defines the minimum number of terms that should be used by states to characterize damaged vehicles. The use of nationally and consistently recognized terms will help consumers make informed decisions wherever they purchase a used vehicle. Whether in Mississippi, Utah, Florida, Montana, Texas, Virginia or any other participating state.

Mr. President, let me tell our colleagues this bill is about a commission's recommendations. Quite frankly, I took the recommendations from a commission created by Congress and codified their ideas. The ideas of the experts. The ideas of all the stakeholders. As we all know, many commission reports gather dust. I do not want this one to gather dust because motorists could be driving used cars which are literally wrecks. This is the commission's bill and I am proud to be associated with its sponsorship.

The bill fully adopts the federal task force's ''salvage'' vehicle definition as a vehicle that sustains damage in excess of 75% of its pre-accident value. This figure is lower than the House's proposal during the 105th Congress which would have set the uniform salvage threshold at 80%. The revised bill also gives states the flexibility to establish an even lower threshold if they choose. A state may set its salvage threshold at 70%, for example. The bill does not, however, set the uniform standard at an arbitrarily low minimum salvage threshold, such as 65%, when no state in the union currently has such a standard. No state. Not one.

The bill defines a flood vehicle as one that suffers water damage that inhibits the electrical, computerized, or mechanical functions of the vehicle. This definition expands upon the recommendation of the Advisory Committee by taking into account real world experience. State's found that merely being exposed to water alone does not in and of itself threaten the structural integrity, safety, or value of a vehicle. A car or truck should not be branded a flood vehicle just because its carpeting and floor mats are wet. If it were the case, none of us would drive our cars through the rain or snow. It is only when water damage impairs a vehicle's operating functions and the electrical, mechanical or computerized components have not been repaired or replaced, that the vehicle should be classified as a flood vehicle. The revised bill also goes beyond the task force's recommendations by including any vehicle acquired by an insurer as part of a water damage settlement.

A nonrepairable vehicle is one that is incapable of being driven safely and has no resale value except as a source for parts or scrap. This is similar to the nonrepairable definition used by California, our nation's largest state. This is also the common sense definition the Advisory Committee wisely chose in lieu of an arbitrary percentage based definition that would force otherwise repairable vehicles into the scrap heap. It should be noted that only five states have a percentage based nonrepairable definition. I find it troubling that these same five states have been far less successful in reducing automobile thefts than the nation as a whole and accident related deaths higher than the forty five states that do not have a percentage based nonrepairable definition. Coupled with the negative economic effects on consumers, these are additional reasons not to adopt a percentage based definition for nonrepairable vehicles.

Mr. President, my colleagues should also be aware that this legislation allows states to use additional terms in their titling regimes such as ''reconstructed'', ''unrebuildable'', and ''junk vehicles'' in addition to the terms defined in this measure. If a state that chooses to conform to the federal standard also wants to use a percentage based definition to describe a ''parts only'' vehicle, it can use a term synonymous to nonrepairable.

The National Salvage Motor Vehicle Consumer Protection Act also allows states to cover any vehicle, regardless of age. It allows older vehicles to be designated as a ''older model salvage vehicle.'' This is a change recommended by a state attorneys general representative to provide states with even more flexibility. Again, the age of a vehicle is no longer an issue under this revised title branding bill.

This legislation even grants state attorneys general the ability to sue on behalf of consumers victimized by rebuilt salvage fraud and to recover monetary judgments for damages that citizens may have suffered.

Two new prohibited acts are included in the bill—one related to failure to make a flood disclosure and the other related to moving a vehicle or title across state lines for the purpose of avoiding the bill's requirements.

Mr. President, I have just gone over a number of changes that I incorporated into the bill. I have reached out to accommodate a number of issues, but there is a point where making changes defeats the purpose of the bill which is to promote consumer disclosure through uniformity.

Mr. President, this bill does nothing to inhibit a consumers ability to pursue private rights of actions available under state law. Moreover, states are free to continue or adopt new civil and criminal penalties against individuals or companies that defraud consumers. The bill does not, however, negatively impact the already overburdened Federal courts. This bill is about disclosure. If your son or daughter is buying a used car, you want them to know right up front whether the vehicle they are about to purchase has been severely damaged. Getting relief after several years of litigating in a U.S. Court does not protect consumers. It does not turn the clock back for someone who has been killed or seriously injured in a structurally unsafe vehicle.

Mr. President, I would also like to reiterate some key points concerning The National Salvage Motor Vehicle Consumer Protection Act:

State participation is completely voluntary. V-O-L-U-N-T-A-R-Y.

There is no preemption of state law. None whatsoever. None. None. None. State legislatures can fully enact the bill's provisions, enact only some of the uniform definitions and standards, or take no action whatsoever.

States that choose to participate in the minimal uniform definitions and standards identified in this bill will be entitled to conformance funding.

There is no penalty for non-participation by a state. None whatsoever. None. None. None. And, no linkage to state National Motor Vehicle Title Information System (NMVTIS) funding or participation.

It mirrors recommendations of the Motor Vehicle Titling, Registration and Salvage Advisory Committee.

The bill's definitions and standards are the minimum necessary for a voluntary uniform salvage titling framework. M-I-N-I-M-U-M.

This legislation does not force states to adopt standards or definitions that not even one state currently has in place.

The bill does not unnecessarily devalue vehicles or cause otherwise repairable automobiles to be junked. This is key because some will talk about greater protection, but these proposals threaten the car's value for no good reason and this makes no sense

The revised bill includes many additional technical corrections provided to me by the U.S. Department of Transportation, the National Association of Attorney's General, and others. I want to personally thank them for their time and effort in going over the bill with me—line by line. Their thoughts were invaluable and helpful. Throughout the legislative process, I have made several good faith efforts to reach out to all groups interested in this legislation and where possible, I included reasonable changes in the bill.

It is widely supported by state motor vehicle administrators, law enforcement agencies, state legislators, consumers, and the automobile and insurance industries. Widely supported.

Experts on the front lines, those who deal with titling issues everyday, have described other proposals that have been floated recently as confusing, or overly complex, or unworkable, or unwise, or counter productive. In many instances, these proposals have been flatly rejected by state legislatures.

The National Salvage Motor Vehicle Consumer Protection Act represents a fair, balanced, and workable approach to dealing with the issue of title fraud. It provides a voluntary framework for states to provide much needed disclosure to potential used-car purchasers. It would help close the many loopholes that exist in state titling rules. This measure maintains a state's ability to provide more disclosure, to take direct

and timely action against dishonest parties, and to adopt more stringent rules and procedures should they decide to do so. It is both pro-consumer and pro-states rights. This bill protects the safety and well-being of consumers and motorists across America.

I urge the more than fifty of my colleagues from both sides of the aisle who formally supported this title branding legislation during the last Congress to cosponsor this important bill again. I ask the rest of my colleagues also to protect their constituents by lending their support to this much needed consumer protection measure.

The time has come for Congressional action. Repeated hearings have been held on this issue in both chambers over several years. The record is clear. Title fraud is a significant problem across the country. It continues unabated. The solution is more consumer disclosure based on the use of appropriate and rational national standards. This legislation is a win-win solution for consumers, states, and industry.

You know the time has come for Congressional action when the Department of Transportation's crash test cars are rebuilt, title washed, and back on America's roads and highways. Remember, these are deliberately wrecked vehicles. Yes, the time has come for action.

Let us work together to move this measure forward. To keep dishonest rebuilders from taking advantage of even one more used car purchaser in your state.

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. 655

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 ''National Salvage Motor Vehicle Consumer Protection Act of 1999''.

SEC. 2. MOTOR VEHICLE TITLING AND DISCLOSURE REQUIREMENTS.

(a) AMENDMENT TO TITLE 49, UNITED STATES CODE.—Subtitle VI of title 49, United States Code, is amended by inserting a new chapter at the end:

''CHAPTER 333—AUTOMOBILE SAFETY AND TITLE DISCLOSURE REQUIREMENTS

''§ 33301. Definitions

''(a) DEFINITIONS.—For the purposes of this chapter:

''(1) PASSENGER MOTOR VEHICLE.—The term 'passenger motor vehicle' has the same meaning given such term by section 32101(10), except, notwithstanding section 32101(9), it includes a multi-purpose passenger vehicle (constructed on a truck chassis or with special features for occasional off-road operation), a truck, other than a truck referred to in section 32101(10)(B), and a pickup truck when that vehicle or truck is rated by the manufacturer of such vehicle or truck at not more than 10,000 pounds gross vehicle weight, and it only includes a vehicle manufactured primarily for use on public streets, roads, and highways.

''(2) SALVAGE VEHICLE.—The term 'salvage vehicle' means any passenger motor vehicle, other than a flood vehicle or a nonrepairable vehicle, which—

''(A) is a late model vehicle which has been wrecked, destroyed, or damaged, to the extent that the total cost of repairs to rebuild or reconstruct the passenger motor vehicle to its condition immediately before it was wrecked, destroyed, or damaged, and for legal operation on the roads or highways, exceeds 75 percent of the retail value of the passenger motor vehicle at the time it was wrecked, destroyed, or damaged;

''(B) is a late model vehicle which has been wrecked, destroyed, or damaged, and to which an insurance company acquires ownership pursuant to a damage settlement (except in the case of a settlement in connection with a recovered stolen vehicle, unless such vehicle sustained damage sufficient to meet the damage threshold prescribed by subparagraph (A)); or

''(C) the owner wishes to voluntarily designate as a salvage vehicle by obtaining a salvage title, without regard to the level of damage, age, or value of such vehicle or any other factor, except that such designation by the owner shall not impose on the insurer of the passenger motor vehicle or on an insurer processing a claim made by or on behalf of the owner of the passenger motor vehicle any obligation or liability.

Notwithstanding any other provision of this chapter, a State may use the term 'older model salvage vehicle' to designate a wrecked, destroyed, or damaged vehicle that does not meet the definition of a late model vehicle in paragraph (9). If a State has established or establishes a salvage definition at a lesser percentage than provided under subparagraph (A), then that definition shall not be considered to be inconsistent with the provisions of this chapter.

''(3) SALVAGE TITLE.—The term 'salvage title' means a passenger motor vehicle ownership document issued by the State to the owner of a salvage vehicle. A salvage title shall be conspicuously labeled with the word 'salvage' across the front.

''(4) REBUILT SALVAGE VEHICLE.—The term 'rebuilt salvage vehicle' means—

''(A) any passenger motor vehicle which was previously issued a salvage title, had passed State anti-theft inspection, has been issued a certificate indicating that the passenger motor vehicle has passed the required anti-theft inspection, has passed the State safety inspection in those States requiring a safety inspection pursuant to section 33302(b)(8), has been issued a certificate indicating that the passenger motor vehicle has passed the required safety inspection in those States requiring such a safety inspection pursuant to section 33302(b)(8), and has a decal stating 'Rebuilt Salvage Vehicle—Anti-theft and Safety Inspections Passed' affixed to the driver's door jamb; or

''(B) any passenger motor vehicle which was previously issued a salvage title, had passed a State anti-theft inspection, has been issued a certificate indicating that the passenger motor vehicle has passed the required anti-theft inspection, and has, affixed to the driver's door jamb, a decal stating 'Rebuilt Salvage Vehicle—Anti-theft Inspection Passed/No Safety Inspection Pursuant to National Criteria' in those States not requiring a safety inspection pursuant to section 33302(b)(8).

''(5) REBUILT SALVAGE TITLE.—The term 'rebuilt salvage title' means the passenger motor vehicle ownership document issued by the State to the owner of a rebuilt salvage vehicle. A rebuilt salvage title shall be conspicuously labeled either with the words 'Rebuilt Salvage Vehicle—Anti-theft and Safety Inspections Passed' or 'Rebuilt Salvage Vehicle—Anti-theft Inspection Passed/No Safety Inspection Pursuant to National Criteria,' as appropriate, across the front.

''(6) NONREPAIRABLE VEHICLE.—The term 'nonrepairable vehicle' means any passenger motor vehicle, other than a flood vehicle, which is incapable of safe operation for use on roads or highways and which has no resale value except as a source of parts or scrap only or which the owner irreversibly designates as a source of parts or scrap. Such passenger motor vehicle shall be issued a nonrepairable vehicle certificate and shall never again be titled or registered.

''(7) NONREPAIRABLE VEHICLE CERTIFICATE.—The term 'nonrepairable vehicle certificate' means a passenger motor vehicle ownership document issued by the State to the owner of a nonrepairable vehicle. A nonrepairable vehicle certificate shall be conspicuously labeled with the word 'Nonrepairable' across the front.

''(8) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

''(9) LATE MODEL VEHICLE.—The term 'Late Model Vehicle' means any passenger motor vehicle which—

''(A) has a manufacturer's model year designation of or later than the year in which the vehicle was wrecked, destroyed, or damaged, or any of the six preceding years; or

''(B) has a retail value of more than $7,500. The Secretary shall adjust such retail value by $500 increments every 5 years beginning with an increase to $8,000 on January 1, 2005.

''(10) RETAIL VALUE.—The term 'retail value' means the actual cash value, fair market value, or retail value of a passenger motor vehicle as—

''(A) set forth in a current edition of any nationally recognized compilation (to include automated databases) of retail values; or

''(B) determined pursuant to a market survey of comparable vehicles with regard to condition and equipment.

''(11) COST OF REPAIRS.—The term 'cost of repairs' means the estimated retail cost of parts needed to repair the vehicle or, if the vehicle has been repaired, the actual retail cost of the parts used in the repair, and the cost of labor computed by using the hourly labor rate and time allocations that are reasonable and customary in the automobile repair industry in the community where the repairs are to be performed.

''(12) FLOOD VEHICLE.—

''(A) IN GENERAL.—The term 'flood vehicle' means any passenger motor vehicle that—

''(i) has been acquired by an insurance company as part of a damage settlement due to water damage; or

''(ii) has been submerged in water to the point that rising water has reached over the door sill, has entered the passenger or trunk compartment, and has exposed any electrical, computerized, or mechanical component to water, except where a passenger motor vehicle which, pursuant to an inspection conducted by an insurance adjuster or estimator, a motor vehicle repairer or motor vehicle dealer in accordance with inspection guidelines or procedures established by the Secretary or the State, is determined—

''(I) to have no electrical, computerized, or mechanical components which were damaged by water; or

''(II) to have one or more electrical, computerized, or mechanical components which were damaged by water and where all such damaged components have been repaired or replaced.

''(B) INSPECTION NOT REQUIRED FOR ALL FLOOD VEHICLES.—No inspection under subparagraph (A) shall be required unless the owner or insurer of the passenger motor vehicle is seeking to avoid a brand of 'Flood' pursuant to this chapter.

''(C) INSPECTION MUST BE BY INDEPENDENT PARTY.—A motor vehicle repairer or motor vehicle dealer may not carry out an inspection under subparagraph (A) on a passenger motor vehicle that has been repaired, or is to be sold or leased, by that repairer or dealer.

''(D) EFFECT OF DISCLOSURE.—Disclosing a passenger motor vehicle's status as a flood vehicle or conducting an inspection pursuant to subparagraph (A) shall not impose on any person any liability for damage to (except in the case of damage caused by the inspector at the time of the inspection) or reduced value of a passenger motor vehicle.

''(b) CONSTRUCTION.—The definitions set forth in subsection (a) only apply to vehicles in a State which are wrecked, destroyed, or otherwise damaged on or after the date on which such State complies with the requirements of this chapter and the rule promulgated pursuant to section 33302(b).

''§ 33302. Passenger motor vehicle titling

''(a) CARRY-FORWARD OF STATE INFORMATION.—For any passenger motor vehicle, the ownership of which is transferred on or after the date that is 1 year after the date of the enactment of the National Salvage Motor Vehicle Consumer Protection Act of 1999, any State receiving funds under section 33308 of this chapter, in licensing such vehicle for use, shall disclose in writing on the certificate of title whenever records readily accessible to the State indicate that the passenger motor vehicle was previously issued a title that bore any word or symbol signifying that the vehicle was 'salvage', 'older model salvage', 'unrebuildable', 'parts only', 'scrap', 'junk', 'nonrepairable', 'reconstructed', 'rebuilt', or any other symbol or work of like kind, or that it has been damaged by flood, and the name of the State that issued that title.

''(b) NATIONALLY UNIFORM TITLE STANDARDS AND CONTROL METHODS.—Not later than 18 months after the date of the enactment of the National Salvage Motor Vehicle Consumer Protection Act of 1999, the Secretary shall by rule require any State receiving funds under section 33308 of this chapter, in licensing any passenger motor vehicle where ownership of such passenger motor vehicle is transferred more than 2 years after publication of such final rule, to apply uniform standards, procedures, and methods for the issuance and control of titles for motor vehicles and for information to be contained on such titles. Such titling standards, control procedures, methods, and information shall include the following requirements:

''(1) A State shall conspicuously indicate on the face of the title or certificate for a passenger motor vehicle, as applicable, if the passenger motor vehicle is a salvage vehicle, a nonrepairable vehicle, a rebuilt salvage vehicle, or a flood vehicle.

''(2) Such information concerning a passenger motor vehicle's status shall be conveyed on any subsequent title, including a duplicate or replacement title, for the passenger motor vehicle issued by the original titling State or any other State.

''(3) The title documents, the certificates, and decals required by section 33301(4), and the issuing system shall meet security standards minimizing the opportunities for fraud.

''(4) The certificate of title shall include the passenger motor vehicle make, model, body type, year, odometer disclosure, and vehicle identification number.

''(5) The title documents shall maintain a uniform layout, to be established in consultation with the States or an organization representing them.

''(6) A passenger motor vehicle designated as nonrepairable shall be issued a nonrepairable vehicle certificate and shall not be retitled.

''(7) No rebuilt salvage title shall be issued to a salvage vehicle unless, after the salvage vehicle is repaired or rebuilt, it complies with the requirements for a rebuilt salvage vehicle pursuant to section 33301(4). Any State inspection program operating under this paragraph shall be subject to continuing review by and approval of the Secretary. Any such anti-theft inspection program shall include the following:

''(A) A requirement that the owner of any passenger motor vehicle submitting such vehicle for an anti-theft inspection provide a completed document identifying the vehicle's damage prior to being repaired, a list of replacement parts used to repair the vehicle, and proof of ownership of such replacement parts, as may be evidenced by bills of sale, invoices, or, if such documents are not available, other proof of ownership for the replacement parts. The owner shall also include an affirmation that the information in the declaration is complete and accurate and that, to the knowledge of the declarant, no stolen parts were used during the rebuilding.

''(B) A requirement to inspect the passenger motor vehicle or any major part of any major replacement part required to be marked under section 33102 for signs of such mark or vehicle identification number being illegally altered, defaced, or falsified. Any such passenger motor vehicle or any such part having a mark or vehicle identification number that has been illegally altered, defaced, or falsified, and that cannot be identified as having been legally obtained (through bills of sale, invoices, or other ownership documentation), shall be contraband and subject to seizure. The Secretary, in consultation with the Attorney General, shall, as part of the rule required by this section, establish procedures for dealing with those parts whose mark or vehicle identification number is normally removed during industry accepted remanufacturing or rebuilding practices, which parts shall be deemed identified for purposes of this section if they bear a conspicuous mark of a type, and applied in such a manner, as designated by the Secretary, indicating that they have been rebuilt or remanufactured. With respect to any vehicle part, the Secretary's rule, as required by this section, shall acknowledge that a mark or vehicle identification number on such part may be legally removed or altered as provided for in section 511 of title 18, United States Code, and shall direct inspectors to adopt such procedures as may be necessary to prevent the seizure of a part from which the mark or vehicle identification number has been legally removed or altered.

''(8) Any safety inspection for a rebuilt salvage vehicle performed pursuant to this chapter shall be performed in accordance with nationally uniform safety inspection criteria established by the Secretary. A State may determine whether to conduct such safety inspection itself, contract with one or more third parties, or permit self-inspection by a person licensed by such State in an automotive-related business, all subject to criteria promulgated by the Secretary hereunder. Any State inspection program operating under this paragraph shall be subject to continuing review by and approval of the Secretary. A State requiring such safety inspection may require the payment of a fee for the privilege of such inspection or the processing thereof.

''(9) No duplicate or replacement title shall be issued unless the word 'duplicate' is clearly marked on the face thereof and unless the procedures for such issuance are substantially consistent with Recommendation three of the Motor Vehicle Titling, Registration and Salvage Advisory Committee.

''(10) A State shall employ the following titling and control methods:

''(A) If an insurance company is not involved in a damage settlement involving a salvage vehicle or a nonrepairable vehicle, the passenger motor vehicle owner shall apply for a salvage title or nonrepairable vehicle certificate, whichever is applicable, before the passenger motor vehicle is repaired or the ownership of the passenger motor vehicle is transferred, but in any event within 30 days after the passenger motor vehicle is damaged.

''(B) If an insurance company, pursuant to a damage settlement, acquires ownership of a passenger motor vehicle that has incurred damage requiring the vehicle to be titled as a salvage vehicle or nonrepairable vehicle, the insurance company or salvage facility or other agent on its behalf shall apply for a salvage title or nonrepairable vehicle certificate within 30 days after the title is properly assigned by the owner to the insurance company and delivered to the insurance company or salvage facility or other agent on its behalf with all liens released.

''(C) If an insurance company does not assume ownership of an insured's or claimant's passenger motor vehicle that has incurred damage requiring the vehicle to be titled as a salvage vehicle or nonrepairable vehicle, the insurance company shall notify—

''(i) the owner of the owner's obligation to apply for a salvage title or nonrepairable vehicle certificate for the passenger motor vehicle; and

''(ii) the State passenger motor vehicle titling office that a salvage title or nonrepairable vehicle certificate should be issued for the vehicle,

except to the extent such notification is prohibited by State insurance law. The notices shall be made in writing within 30 days after the insurance company determines that the damage will require a salvage title or a nonrepairable certificate and that the vehicle will be left with the owner.

''(D) If a leased passenger motor vehicle incurs damage requiring the vehicle to be titled as a salvage vehicle or nonrepairable vehicle, the lessor shall apply for a salvage title or nonrepairable vehicle certificate within 21 days after being notified by the lessee that the vehicle has been so damaged, except when an insurance company, pursuant to a damage settlement, acquires ownership of the vehicle. The lessee of such vehicle shall inform the lessor that the leased vehicle has been so damaged within 30 days after the occurrence of the damage. Nothing in this subparagraph requires that the requirements for notification be contained in the lease itself, as long as effective notice is provided by the lessor to the lessee of the requirements.

''(E) Any person acquiring ownership of a damaged passenger motor vehicle that meets the definition of a salvage or nonrepairable vehicle for which a salvage title or nonrepairable vehicle certificate has not been issued, shall apply for a salvage title or nonrepairable vehicle certificate, whichever is applicable. This application shall be made before the vehicle is further transferred, but

in any event, within 30 days after ownership is acquired. The requirements of this subparagraph shall not apply to any scrap metal processor which acquires a passenger motor vehicle for the sole purpose of processing it into prepared grades of scrap and which so processes such vehicle.

''(F) State records shall note when a nonrepairable vehicle certificate is issued. No State shall issue a nonrepairable vehicle certificate after 2 transfers of ownership.

''(G) When a passenger motor vehicle has been flattened, baled, or shredded, whichever comes first, the title or nonrepairable vehicle certificate for the vehicle shall be surrendered to the state within 30 days. If the second transferee on a nonrepairable vehicle certificate is unequipped to flatten, bale, or shred the vehicle, such transferee shall, at the time of final disposal of the vehicle, use the services of a professional automotive recycler or professional scrap processor who is hereby authorized to flatten, bale, or shred the vehicle and to effect the surrender of the nonrepairable vehicle certificate to the State on behalf of such second transferee. State records shall be updated to indicate the destruction of such vehicle and no further ownership transactions for the vehicle will be permitted. If different than the State of origin of the title or nonrepairable vehicle certificate, the State of surrender shall notify the State of origin of the surrender of the title or nonrepairable vehicle certificate and of the destruction of such vehicle.

''(H) When a salvage title is issued, the State records shall so note. No State shall permit the retitling for registration purposes or issuance of a rebuilt salvage title for a passenger motor vehicle with a salvage title without a certificate of inspection, which complies with the security and guideline standards established by the Secretary pursuant to paragraphs (3), (7), and (8), as applicable, indicating that the vehicle has passed the inspections required by the State. This subparagraph does not preclude the issuance of a new salvage title for a salvage vehicle after a transfer of ownership.

''(I) After a passenger motor vehicle titled with a salvage title has passed the inspections required by the State, the inspection official will affix the secure decal required pursuant to section 33301(4) to the driver's door jamb of the vehicle and issue to the owner of the vehicle a certificate indicating that the passenger motor vehicle has passed the inspections required by the State. The decal shall comply with the permanency requirements established by the Secretary.

''(J) The owner of a passenger motor vehicle titled with a salvage title may obtain a rebuilt salvage title or vehicle registration, or both, by presenting to the State the salvage title, properly assigned, if applicable, along with the certificate that the vehicle has passed the inspections required by the State. With such proper documentation and upon request, a rebuilt salvage title or registration, or both, shall be issued to the owner. When a rebuilt salvage title is issued, the State records shall so note.

''(11) A seller of a passenger motor vehicle that becomes a flood vehicle shall, prior to the time of transfer of ownership of the vehicle, give the transferee a written notice that the vehicle has been damaged by flood, provided such person has actual knowledge that such vehicle has been damaged by flood. At the time of the next title application for the vehicle, disclosure of the flood status shall be provided to the applicable State with the properly assigned title and the word 'Flood' shall be conspicuously labeled across the front of the new title.

''(12) In the case of a leased passenger motor vehicle, the lessee, within 15 days of the occurrence of the event that caused the vehicle to become a flood vehicle, shall give the lessor written disclosure that the vehicle is a flood vehicle.

''(13) Ownership of a passenger motor vehicle may be transferred on a salvage title, however, a passenger motor vehicle for which a salvage title has been issued shall not be registered for use on the roads or highways unless it has been issued a rebuilt salvage title.

''(14) Ownership of a passenger motor vehicle may be transferred on a rebuilt salvage title, and a passenger motor vehicle for which a rebuilt salvage title has been issued may, if permitted by State law, be registered for use on the roads and highways.

''(15) Ownership of a passenger motor vehicle may only be transferred 2 times on a nonrepairable vehicle certificate. A passenger motor vehicle for which a nonrepairable vehicle certificate has been issued can never by title or registered for use on roads or highways.

''(c) ELECTRONIC PROCEDURES.—A State may employ electronic procedures in lieu of paper documents whenever such electronic procedures provide the same information, function, and security otherwise required by this section.

''(d) NATIONAL RECORD OF COMPLIANT STATES.—The Secretary shall establish a record of the States which are in compliance with the requirements of subsections (a) and (b) of this section. The Secretary shall work with States to update this record upon the enactment of a State law which causes a State to come into compliance or become noncompliant with the requirements of subsections (a) and (b) of this section. Not later than 18 months after the enactment of the National Salvage Motor Vehicles Consumer Protection Act of 1999, the Secretary shall establish a mechanism or mechanisms to identify to interested parties whether a State is in compliance with the requirements of subsections (a) and (b) of this section.

"§ 33303. Disclosure and label requirements on transfer of rebuilt salvage vehicles

''(a) WRITTEN DISCLOSURE REQUIREMENTS.—

''(1) GENERAL RULE.—Under regulations prescribed by the Secretary of Transportation, a person transferring ownership of a rebuilt salvage vehicle shall, prior to the time of transfer of ownership of the vehicle, give the transferee a written disclosure that the vehicle is a rebuilt salvage vehicle when such person has actual knowledge of the status of such vehicle.

''(2) FALSE STATEMENT.—A person making a written disclosure required by a regulation prescribed under paragraph (1) of this subsection may not make a false statement in the disclosure.

''(3) COMPLETENESS.—A person acquiring rebuilt salvage vehicle for resale may accept a disclosure under paragraph (1) only if it is complete.

''(4) REGULATIONS.—The regulations prescribed by the Secretary shall provide the way in which information is disclosed and retained under paragraph (1).

''(b) LABEL REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary shall by regulation require that a label be affixed to the windshield or window of a rebuilt salvage vehicle before its first sale at retail containing such information regarding that vehicle as the Secretary may require. The label shall be affixed by the individual who conducts the applicable State antitheft inspection in a participating State.

''(2) REMOVAL, ALTERATION, OR ILLEGIBILITY OF REQUIRED LABEL.—No person shall willfully remove, alter, or render illegible any label required by paragraph (1) affixed to a rebuilt salvage vehicle before the vehicle is delivered to the actual custody and possession of the first retail purchaser.

''(c) LIMITATION.—The requirements of subsections (a) and (b) shall only apply to a transfer of ownership of a rebuilt salvage vehicle where such transfer occurs in a State which, at the time of the transfer, is complying with subsections (a) and (b) of section 33302.

"§ 33304. Report on funding

''The Secretary shall, contemporaneously with the issuance of a final rule pursuant to section 33302(b), report to appropriate committees of Congress whether the costs to the States of compliance with such rule can be met by user fees for issuance of titles, issuance of registrations, issuance of duplicate titles, inspection of rebuilt vehicles, or for the State services, or by earmarking any moneys collected through law enforcement action to enforce requirements established by such rule.

"§ 33305. Effect on State law

''(a) IN GENERAL.—Unless a State is in compliance with subsection (c) of section 33302, effective on the date the rule promulgated pursuant to section 33302 becomes effective, the provisions of this chapter shall preempt all State laws such a State that receives funds under section 33308 of this chapter, to the extent they are inconsistent with the provisions of this chapter or the rule promulgated pursuant to section 33302, which—

''(1) set forth the form of the passenger motor vehicle title;

''(2) define, in connection with a passenger motor vehicle part or part assembly separate from a passenger motor vehicle), any term defined in section 33301 or the terms 'salvage', 'nonrepairable', or 'flood', or apply any of those terms to any passenger motor vehicle (but not to a passenger motor vehicle part or part assembly separate from a passenger motor vehicle); or

''(3) set forth titling, recordkeeping, antitheft inspection, or control procedures in connection with any salvage vehicle, rebuilt salvage vehicle, nonrepairable vehicle, or flood vehicle.

''(b) EXCEPTIONS.—

''(1) PASSENGER MOTOR VEHICLE; OLDER MODEL SALVAGE.—Subsection (a)(2) does not preempt State use of the term—

''(A) 'passenger motor vehicle' in statutes not related to titling, recordkeeping, antitheft inspection, or control procedures in connection with any salvage vehicle, rebuilt salvage vehicle, nonrepairable vehicle, or flood vehicle ; or

''(B) 'older model salvage' to designate a wrecked, destroyed, or damaged vehicle that is older than a late model vehicle.

''(2) PRIVATE LAW ACTIONS.—Nothing in this chapter may be construed to affect any private right of action under State law.

''(c) CONSTRUCTION.—Additional disclosures of a passenger motor vehicle's title status or history, in addition to the terms defined in section 33301, shall not be deemed inconsistent with the provisions of this chapter. Such disclosures shall include disclosures made on a certificate of title. When used in connection with a passenger motor vehicle (but not in connection with a passenger motor vehicle part or part assembly separate from a passenger motor vehicle), any definition of a term defined in section 33301 which is different than the definition in that section or any use of any term listed in subsection (a), but not defined in section 33301, shall be deemed inconsistent with the provisions of this chapter. Nothing in this chapter shall preclude a State from disclosing on a rebuilt salvage title that a rebuilt salvage vehicle has passed a State safety inspection which differed from the nationally uniform criteria to be promulgated pursuant to section 33302(b)(8).

"§ 33306. Civil penalties

''(a) PROHIBITED ACTS.—It is unlawful for any person knowingly to—

''(1) make or cause to be made any false statement on an application for a title (or duplicate title) for a passenger motor vehicle or any disclosure made pursuant to section 33303;

''(2) fail to apply for a salvage title when such an application is required;

''(3) alter, forge, or counterfeit a certificate of title (or an assignment thereof), a nonrepairable vehicle certificate, a certificate verifying an anti-theft inspection or an anti-theft and safety inspection, a decal affixed to a passenger motor vehicle pursuant to section 33302(b)(10(I), or any disclosure made pursuant to section 33303;

''(4) falsify the results of, or provide false information in the course of, an inspection conducted pursuant to section 33302(b)(7) or (8);

''(5) offer to sell any salvage vehicle or nonrepairable vehicle as a rebuilt salvage vehicle;

''(6) fail to make any disclosure required by section 33302(b)(11);

''(7) fail to make any disclosure required by section 33303;

''(8) violate a regulation prescribed under this chapter;

''(9) move a vehicle or a vehicle title in interstate commerce for the purpose of avoiding the titling requirements of this chapter; or

''(10) conspire to commit any of the acts enumerated in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (9).

''(b) CIVIL PENALTY.—Any person who commits an unlawful act as provided in subsection (a) of this section shall be fined a civil penalty of up to $2,000 per offense. A separate violation occurs for each passenger motor vehicle involved in the violation.

"§ 33307. Actions by States

''(a) IN GENERAL.—When a person violates any provision of this chapter, the chief law enforcement officer of the State in which the violation occurred may bring an action—

''(1) to restrain the violation;

''(2) recover amounts for which a person is liable under section 33306; or

''(3) to recover the amount of damage suffered by any resident in that State who suffered damage as a result of the knowing commission of an unlawful act under section 33306(a) by another person.

''(b) STATUTE OF LIMITATIONS.—An action under subsection (a) shall be brought in any court of competent jurisdiction within 2 years after the date on which the violation occurs.

''(c) NOTICE.—The State shall serve prior written notice of any action under subsection (a) or (f)(2) upon the Attorney General of the United States and provide the Attorney General with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting an action, the Attorney General shall have the right—

''(1) to intervene in such action;

''(2) upon so intervening, to be heard on all matters arising therein; and

''(3) to file petitions for appeal.

''(d) CONSTRUCTION.—For purposes of bringing any action under subsection (a), nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(e) VENUE; SERVICE OF PROCESS.—Any action brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

''(f) ACTIONS BY STATE OFFICIALS.—

''(1) Nothing contained in this section shall prohibit an attorney general of a State or other authorized State official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such State, including those related to consumer protection.

''(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

"§ 33308. Incentive Grants

''(a) GENERAL AUTHORITY.—The Secretary of Transportation shall make a grant to each State that demonstrates to the satisfaction of the Secretary that it is taking appropriate actions to implement the provisions of this chapter.

''(b) GRANTS.—Pursuant to subsection (a), a grant to carry out this chapter in a fiscal year shall be provided to each qualifying State in an amount determined by multiplying—

''(1) the amount authorized for the fiscal year to carry out this chapter, by

''(2) the ratio that the amount of funds apportioned to each qualifying State under section 402 of title 23, United States Code, for the fiscal year bears to the total amount of funds apportioned to all qualifying States under section 402 of title 23, United States Code, for such fiscal year, except that no State eligible for a grant under this paragraph shall receive less than $250,000.

''(c) USE OF GRANTS.—Any State that receives a grant under this section shall use the funds to carry out the provisions of this chapter, including such conformance related activities as issuing titles, establishing and administering vehicle theft or salvage vehicles safety inspections, enforcement, and other related purposes.

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There is authorized to be appropriated to carry out this chapter $16,000,000 for fiscal year 2000.

''(2) AVAILABILITY OF FUNDS.—Funds authorized by this section shall remain available until expended.''.

(b) CONFORMING AMENDMENT.—The table of chapters for part C at the beginning of subtitle VI of title 49, United States Code, is amended by inserting at the end the following new item:

''333. AUTOMOBILE SAFETY AND TITLE DISCLOSURE REQUIREMENTS ..... 33301''.

SEC. 3. AMENDMENTS TO CHAPTER 305.

(a) DEFINITIONS.—

(1) Section 30501(4) of title 49, United States Code, is amended to read as follows:

''(4) 'nonrepairable vehicle', 'salvage vehicle', 'flood vehicle', and 'rebuilt salvage vehicle' have the same meanings given those terms in section 33301 of this title.''.

(2) Section 30501(5) of such title is amended by striking ''junk automobiles'' and inserting ''nonrepairable vehicles''.

(3) Section 30501(8) of such title is amended by striking ''salvage automobiles'' and inserting ''salvage vehicles''.

(4) Section 30501 of such title is amended by striking paragraph (7) and redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

(b) NATIONAL MOTOR VEHICLE TITLE INFORMATION SYSTEM.—

(1) Section 30502(d)(3) of title 49, United States Code, is amended to read as follows:

''(3) whether an automobile known to be titled in a particular State is or has been a nonrepairable vehicle, a rebuilt salvage vehicle, a flood vehicle, or a salvage vehicle;''.

(2) Section 30502(d)(5) of such title is amended to read as follows:

''(5) whether an automobile bearing a known vehicle identification number has been reported as a nonrepairable vehicle, a rebuilt salvage vehicle, a flood vehicle, or a salvage vehicle under section 30504 of this title.''.

(c) STATE PARTICIPATION.—Section 30503 of title 49, United States Code, is amended to read as follows:

"§ 30503. State participation

''(a) STATE INFORMATION.—Each State receiving funds appropriated under subsection (c) shall make titling information maintained by that State available for use in operating the National Motor Vehicle Title Information System established or designated under section 30502 of this title.

''(b) VERIFICATION CHECKS.—Each State receiving funds appropriated under subsection (c) shall establish a practice of performing an instant title verification check before issuing a certificate of title to an individual or entity claiming to have purchased an automobile from an individual or entity in another State. The check shall consist of—

''(1) communicating to the operator—

''(A) the vehicle identification number of the automobile for which the certificate of title is sought;

''(B) the name of the State that issued the most recent certificate of title for the automobile; and

''(C) the name of the individual or entity to whom the certificate of title was issued; and

''(2) giving the operator an opportunity to communicate to the participating State the results of a search of the information.

''(c) GRANTS TO STATES.—

''(1) In cooperation with the States and not later than January 1, 1994, the Attorney General shall—

''(A) conduct a review of systems used by the States to compile and maintain information about the titling of automobiles; and

''(B) determine for each State the cost of making titling information maintain by that State available to the operator to meet the requirements of section 30502(d) of this title.

''(2) The Attorney General may make reasonable and necessary grants to participating States to be used in making titling information maintained by those States available to the operator.

''(d) REPORT TO CONGRESS.—Not later than October 1, 1999, the Attorney General shall report to Congress on which States have met the requirements of this section. If a State has not met the requirements, the Attorney General shall describe the impediments that have resulted in the State's failure to meet the requirements.''.

''(d) REPORTING REQUIREMENTS.—Section 30504 of title 49, United States Code, is amended by striking ''junk automobiles or salvage automobiles'' every place it appears and inserting ''nonrepairable vehicles, rebuilt salvage vehicles, flood vehicles, or salvage vehicles''.

SEC. 4. DEALER NOTIFICATION PROGRAM FOR PROHIBITED SALE OF NONQUALIFYING VEHICLES FOR USE AS SCHOOLBUSES.

Section 30112 of title 49, United States Code, is amended by adding at the end thereof the following:

''(c) NOTIFICATION PROGRAM FOR DEALERS CONCERNING SALES OF VEHICLES AS

SCHOOLBUSES.—Not later than September 1, 1999, the Secretary shall develop and implement a program to notify dealers and distributors in the United States that subsection (a) prohibits the sale or delivery of any vehicle for use as a schoolbus (as that term is defined in section 30125(a)(1) of this title) that does not meet the standards prescribed under section 30125(b) of this title.''.

By Mr. HATCH (for himself, Mr. CLELAND, Mr. ABRAHAM, Mr. ALLARD, Mr. ASHCROFT, Mr. BAUCUS, Mr. BOND, Mr. BREAUX, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. CAMPBELL, Ms. COLLINS, Mr. COVERDELL, Mr. CRAIG, Mr. CRAPO, Mr. DEWINE, Mr. DOMENICI, Mr. ENZI, Mrs. FEINSTEIN, Mr. FITZGERALD, Mr. FRIST, Mr. GORTON, Mr. GRAHAM, Mr. GRAMM, Mr. GRAMS, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HELMS, Mr. HOLLINS, Mr. HUTCHINSON, Mrs. HUTCHISON, Mr. INHOFE, Mr. JOHNSON, Mr. KYL, Mrs. LINCOLN, Mr. LOTT, Mr. LUGAR, Mr. MACK, Mr. MCCAIN, Mr. MURKOWSKI, Mr. NICKLES, Mr. REID, Mr. ROBERTS, Mr. ROTH, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH of New Hampshire, Ms. SNOWE, Mr. SPECTER, Mr. STEVENS, Mr. THOMAS, Mr. THOMPSON, Mr. THURMOND and Mr. WARNER):

S.J. Res. 14. A joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

FLAG PROTECTION CONSTITUTIONAL AMENDMENT

Mr. HATCH. Mr. President, it is with great honor and reverence that I rise today with my friend and colleague, Senator CLELAND, to introduce a bipartisan constitutional amendment to permit Congress to enact legislation prohibiting the physical desecration of the American flag.

The American flag serves as a symbol of our great nation. The flag represents our country in a way nothing else can; it represents the common bond shared by an otherwise diverse people. Whatever our differences of party, race, religion, or socio-economic status, the flag reminds us that we are very much one people, united in a shared destiny, bonded in a common faith in our nation.

Supreme Court Justice John Paul Stevens reminded us of the significance of our unique emblem when he wrote:

> A country's flag is a symbol of more than nationhood and national unity. It also signifies the ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas. . . . So it is with the American flag. It is more than a proud symbol of the courage, the determination, and the gifts of a nation that transformed 13 fledgling colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations.

Throughout our history, the flag has captured the hearts and minds of school teachers, construction workers, police officers, grandmothers, and public servants. Who can forget the image of Neil Armstrong and Buzz Aldrin planting the American flag on the moon? At that moment, the flag stood not only for the triumph of American know-how and the courage of Americans to explore the unknown, but also for freedom. It was a statement that whatever Americans do, we do to promote liberty, equality, and justice.

And, what of those children who recite the ''Pledge of Allegiance'' every morning in classrooms all across America? They are pledging to be good citizens, honest and loyal and just. In pledging allegiance to the flag, they are affirming their belief in ''liberty and justice for all.''

And, throughout our history, men and women in uniform have drawn courage from our flag and gave their lives for the values it symbolizes. No matter the era, no matter the color of uniform—whether Army green, Air Force blue, or Navy white—no matter the theater of battle—whether at Gettysburg, San Juan Hill, Iwo Jima, Korea, Da Nang, or the Persian Gulf—our men and women had one common bond: the American flag.

Consider the example of Army Corporal Joseph Quintero, a prisoner of the Japanese during World War II. Quintero secretly led a group of POWs in obtaining red, white, and blue material to make an American flag. The flag lifted the hearts of the Americans who were suffering from malnutrition, overwork, and physical abuse. When American planes started to attack the prison camp, Quintero waived Old Glory and the planes stopped the attack and saved numerous American lives. Even in the worst of conditions, Joseph Quintero knew the value of the American flag.

From my home State of Utah, there is the courageous example of Lt. William E. Hall, whose fearless actions in the Battle of the Coral Sea earned him the Congressional Medal of Honor. Lieutenant Hall attacked a Japanese aircraft carrier and then Japanese planes in a series of highly dangerous engagements. Though seriously wounded, Lt. Hall guided his plane back to a landing strip marked by the American flag.

General Schwarzkopf in a speech before Congress thanked the American people for their support of our troops in Operation Desert Storm, stating: ''The profits of doom, the naysayers, the protesters and the flag-burners all said that you wouldn't stick by us, but we knew better. We knew you'd never let us down. By golly, you didn't.''

We respect the sacrifices of our men and women in uniform because we respect what they died for. They did not give their lives for ground, prestige, wealth, or a monarch. They sacrificed their lives for freedom, opportunity, and justice—all represented by our nation's flag of 50 stars and thirteen stripes. Through the American flags at Arlington National Cemetery, on the Iwo Jima Memorial, and at every school yard, we honor those sacrifices. But there are those who do not.

In 1984, Greg Johnson led a group of radicals in a protest march. He doused an American flag with kerosene and set it on fire as his fellow protestors chanted: ''America, the red, white, and blue, we spit on you.'' While traditional First Amendment jurisprudence would protect Johnson's ability to speak and write about the flag, it did not protect his ability to physically destroy the flag.

But, in 1989, the Supreme Court abandoned the history and intent of the First Amendment by creating a new standard that made no distinction between oral and written speech about the flag and disrespectful conduct toward the flag. In *Texas* v. *Johnson*, five members of the Court, for the first time ever, overturned a conviction based solely on physical conduct toward the American flag. The majority argued that the First Amendment had somehow changed and that it now prevented a state from protecting the American flag from acts of physical desecration. When Congress responded with a federal flag protection statute, the Supreme Court, in *United States* v. *Eichman*, used its new and changed interpretation of the First Amendment to strike it down by a 5–4 vote.

Under this new interpretation of the First Amendment, it is assumed that the people, their elected legislators, and the courts can no longer distinguish between speech and conduct. Because of this assumed inability to make such distinctions, there are those who argue that our freedom to express political ideas is wholly dependent on treating Greg Johnson's burning of the American flag exactly like oral and written speech.

This ill-advised argument fails because its basic premise—that legislatures and courts cannot distinguish between oral and written expression and disrespectful physical conduct—is so obviously false. It is precisely this distinction that legislatures and courts did make for almost 200 years. Just as judges have distinguished which laws and actions comply with the constitutional command to provide ''equal protection of the laws'' and ''due process of law,'' so too have judges distinguished between free speech and destructive conduct, and have limited the latter.

Destructive conduct, such as breaking down the doors of the State Department, may be a way of expressing one's