of the Social Security Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LOTT (for Mr. MCCAIN (for himself and Mr. HOLLINGS)):

S. 1248. A bill to correct errors in the authorizations of certain programs administered by the National Highway Traffic Administration; to the Committee on Commerce, Science, and Transportation.

By Mr. TORRICELLI:

S. 1249. A bill to deny Federal public benefits to individuals who participated in Nazi persecution; to the Committee on the Judiciary.

By Mr. ROCKEFELLER:

S. 1250. A bill to amend title 38, United States Code, to ensure a continuum of health care for veterans, to require pilot programs relating to long-term health care for veterans, and for other purposes; to the Committee on Veterans' Affairs.

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

S. 1251. A bill to direct the Secretary of Veterans Affairs to establish a national cemetery for veterans in the Miami, Florida metropolitan area; to the Committee on Veterans' Affairs.

By Mr. DORGAN (for himself, Mr. BINGAMAN, and Mr. BYRD):

S. 1252. A bill to provide parents, taxpayers, and educators with useful, understandable school reports; to the Committee on Health, Education, Labor, and Pensions.

By Mr. INOUYE (for himself, Mr. AKAKA, Mr. HOLLINGS, Mr. KERRY, Mr. BREAUX, and Mrs. BOXER):

S. 1253. A bill to authorize the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, to provide financial assistance for coral reef conservation projects, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ROTH:

S. 1254. An original bill to establish a comprehensive strategy for the elimination of market-distorting practices affecting the global steel industry, and for other purposes; from the Committee on Finance; placed on the calendar.

By Mr. ABRAHAM (for himself, Mr. TORRICELLI, Mr. HATCH, and Mr. MCCAIN):

S. 1255. A bill to protect consumers and promote electronic commerce by amending certain trademark infringement, dilution, and counterfeiting laws, and for other purposes; to the Committee on the Judiciary.

By Mr. DASCHLE:

S. 1256. A bill entitled the ''Patients' Bill of Rights''; read the first time.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAMS;

S. 1245. A bill to allow access for researchers to Continuous Work History Sample data of the Social Security Administration; to the Committee on Finance.

SOCIAL SECURITY'S CONTINUOUS WORK HISTORY SAMPLE (CWHS)

Mr. GRAMS. Mr. President, I want to take this opportunity to introduce another Social Security-related bill.

This bill would give all researchers access to Social Security's Continuous Work History Sample (CWHS).

The access to the CWHS is critical for the general public and other government agencies to fully evaluate the working of the current system and estimate the budgetary impact of any changes that need to be made in the future.

The CWHS is a key set of data which holds information on the work and benefit histories of Social Security program participants. Until 1976, this data was widely available to federal, state agencies, universities and private research groups.

There is no evidence of any misuse of the CWHS in the period before 1976.

The 1976 Tax Reform Act denied access to CWHS data to almost all users outside of the Internal Revenue Service and the Social Security Administration.

Although it later extended the access to a few units of government agencies, private researchers are still denied access. The excuse was to protect privacy.

However, the IRS is covered by the same law. But it has interpreted the law to enable it to make samples of individual tax returns available to researchers on the basis that identifiers must be removed and the research must be bona fide.

Mr. President, if the IRS can make its data available to researchers, why cannot the SSA do the same?

Last year, during a Budget Committee hearing, I asked SSA Commissioner Apfel about this. Here is his reply:

> The SSA supports, in principle, the idea of making data from our administrative records available to researchers in order to better inform the ongoing debate on the future of Social Security.

The National Research Council and other academic institutions also support to give researchers access to the CWHS.

My legislation would amend the 1976 Tax Reform Act to allow bona fide researchers access to CWHS data, and at the same time protect the confidentiality and privacy of program participants.

It also requires researchers to sign a legally binding agreement that restricts use of the data to the research and forbids the disclosure of information that could be used to identify individuals.

Mr. President, this is ''good government'' legislation. Allowing access to CWHS data will open the entire Social Security system to outside scrutiny.

It will significantly improve oversight of the program and enable Americans to know everything they need to know about how the system operates and what changes are needed to make it solvent.

I, therefore, urge my colleagues to support these legislative initiatives.

By Mr. TORRICELLI (for himself, Mr. LIEBERMAN and Mr. DODD):

S. 1246. A bill to amend title 4 of the United States Code to prohibit the imposition of discriminatory commuter taxes by political subdivisions of States; to the Committee on Finance.

TAX FAIRNESS FOR COMMUTERS ACT

Mr. TORRICELLI. Mr. President, I rise today with my colleagues from Connecticut, Senator LIEBERMAN and Senator DODD to introduce the Tax Fairness for Commuters Act. Last month, Governor Pataki of New York signed legislation to ''repeal'' the New York City commuter tax. However, the legislation signed into law only repealed the tax for residents of New York. The over 300,000 residents of Connecticut and New Jersey will still be subjected to this tax.

I believe that the lawsuit jointly undertaken by New Jersey and Connecticut along with the city of New York and affected commuters will ultimately prevail and this attempt will be proven unconstitutional. However, I am concerned about the attempted precedent that has been set.

Our legislation will remove the temptation of any State or any city to impose higher taxes on non-residents than it does on residents. The bill is very simple. It says that a State or city may not impose a higher tax on the income earned by non-residents than it does on residents. I hope that each Senator, no matter what part of the country they are from, will recognize the inherent danger in discriminatory taxes of this nature and will support this effort.

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

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

S. 1246

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

SECTION 1. PROHIBITION ON IMPOSITION OF DISCRIMINATORY COMMUTER TAXES BY POLITICAL SUBDIVISIONS OF STATES.

(a) IN GENERAL.—Chapter 4 of title 4, United States Code, is amended by adding at the end the following:

''§ 116. Prohibition on imposition of discriminatory commuter taxes by political subdivisions of States

''A political subdivision of a State may not impose a tax on income earned within such political subdivision by nonresidents of the political subdivision unless the effective rate of such tax imposed on such nonresidents who are residents of such State is not less than such rate imposed on such nonresidents who are not residents of such State.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 4 of title 4, United States Code, is amended by adding at the end the following:

''116. Prohibition on imposition of discriminatory commuter taxes by political subdivisions of States.''.

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

Mr. LIEBERMAN. Mr. President, I rise today to join my distinguished colleague from New Jersey, Senator TORRICELLI, and my colleague from Connecticut, Senator DODD, to introduce legislation that would amend title 4 of the United States Code to prohibit the imposition of discriminatory commuter taxes by political subdivisions of States.

On May 26, 1999, New York Governor George Pataki signed into law a repeal of the commuter tax for people who work in New York City but live outside of the five boroughs. This repeal only applies to residents of New York state; it does not include the 330,000 people from New Jersey and Connecticut who work in New York City.

In 1966, Governor Nelson Rockefeller and Mayor John Lindsay initiated the commuter tax. To the present day, New York City has enforced the 0.45% tax on commuters' income much like a payroll tax. Estimates show that this tax generates $360 million a year in revenue that helps to supports services such as police and fire protection and emergency medical care. New York state residents contribute $210 million a year in commuter tax revenue, while New Jersey and Connecticut residents account for the remaining $150 million in tax revenue. The commuter tax repeal eliminates more than $200 million from New York City's annual tax revenue.

New York State's unilateral, partial repeal of the commuter tax only for its residents is an unfortunate development after 33 years of assessing the tax on all commuters who work in New York City. This is an unprecedented action on the part of a legislative body and state executive to repeal a tax on its residents but maintain it for nonresidents. The imposition of taxes only on out-of-state commuters could violate the equal protection clause of the 14th Amendment. Limited repeal discriminates against out-of-state commuters and inhibits interstate commerce and travel.

Approximately 86,000 of my constituents work in New York City, contributing an estimated $100 million in commuter tax revenue; 244,000 New Jersey constituents account for an estimated $50 million in tax revenue that goes to New York City. According to Connecticut Attorney General Richard Blumenthal, the taxable income of Connecticut commuters is lower than non-commuters because of this tax that commuters pay to New York. The commuter tax essentially draws away millions of dollars in tax revenue from Connecticut and gives them to New York City to subsidize services and other public works.

This Connecticut and New Jersey subsidy to New York City is unacceptable. If a commuter tax is imposed all commuters—whether they are from Newark, New Rochelle, or New Haven—are equally responsible to bear it. There is no reason that our commuter constituents should be paying for New York City services while New York state residents are not.

Senator TORRICELLI and I are joined by others who have taken action to force a repeal of the law passed by the New York state legislature. Two attorneys, Richard Swanson and Thomas Igoe, filed a complaint in Manhattan Supreme Court that seeks class-action status for other commuters from New Jersey and Connecticut. Swanson from New Jersey and Igoe from Connecticut are colleagues at the Manhattan law firm of Thelen, Reid & Priest. Moreover, Governor Rowland of Connecticut and Governor Whitman of New Jersey plan to challenge the constitutionality of the commuter tax repeal bill in federal courts. New York City Mayor Rudolph Giuliani also intends to file a lawsuit against the state, although his claim stands on different grounds than the ones brought forth by Governors Whitman and Rowland.

The partial commuter tax repeal bill that Governor Pataki signed includes a provision that says that the tax will be repealed for all commuters if a partial repeal is found unconstitutional in federal courts. Even if the lawsuits succeed in their legal challenges, we still need legislation that will prevent state governments from discriminating against nonresidents and imposing unfair commuter taxes in the future.

By Mr. GRAMS:

S. 1247. A bill to develop and apply a Consumer Price Index that accurately reflects the cost-of-living for older Americans who receive Social Security benefits under title II of the Social Security Act; to the Committee on Banking, Housing, and Urban Affairs.

FAIR COST OF LIVING ADJUSTMENT FOR SENIORS ACT OF 1999

Mr. GRAMS. Mr. President, 1999 has been declared the ''International Year of the Older Person'' by the United Nations.

In honor of this special tribute, I rise today to introduce legislation specially designed to provide fair and accurate Social Security benefits in order to help all Americans achieve retirement security.

I believe senior citizens in this country have made, and continue to make, valuable contributions to their families, communities and to society as a whole.

One of the most troubling aspects of the debate over Social Security's future has been attempts to frighten older Americans. Many seniors fear that they may lose their Social Security benefits.

To ease their fears and worries, I introduced legislation last month that would require the government to legally guarantee seniors full Social Security benefits plus accurate COLA adjustments.

In essence, this bill would give older Americans property rights to their Social Security benefits, which they do not have now. It is no wonder they now worry about loss of benefits.

However, an accurate method for how we calculate Social Security remains a subject of debate.

In order to understand this issue, Mr. President, we need to go back and take a closer look at how seniors' COLAs are currently calculated by the government.

To compensate for the effects of inflation, Congress passed legislation in 1972 to give Social Security beneficiaries an automatic cost of living adjustment, or a COLA.

This COLA is based on the Consumer Price Index (CPI) as tracked and surveyed by the Bureau of Labor Statistics (BLS) under the Labor Department.

Currently, the BLS produces two official CPIs, one for All Urban Consumers called the CPI–U, and one for Urban Wage Earners and Clerical Workers, called the CPI–W.

The CPI–U represents the spending habits of about 80 percent of the population of this nation, and the CPI–W is a subset of the formula, representing about 32 percent of the total population. The government uses the later the CPI–W to measure COLAs for Social Security benefits.

But clearly, this does not reflect the older American population and their consumption habits. Spending habits of urban wage earners cannot be equated with those seniors. Nevertheless, the government continues to use it calculating COLAs for Social Security beneficiaries.

Back in 1987, after considerable criticism of the CPI–W and its applicability to senior consumers, Congress amended the Older Americans Act of 1965 to require the BLS to develop an experimental CPI that would better reflect the buying habits of consumers 62 years of age or older. This is now known as the CPI–E.

The CPI–E places greater weight on the cost of such goods and services as medical care and prescription drugs, areas where seniors spend more than other Americans.

Although it's still experimental, the preliminary finding shows annual increases in Social Security benefit payments received by older Americans are not keeping pace with inflation on the goods and services on which they spend much of their money.

Over the past 15 years, goods purchased by seniors increased 6 percentage points more than goods purchased by the general public. Their medical costs skyrocketed 156 percent. The main reason that the CPI–E has been higher than the other two CPIs.

My concern is, as inflation on medical and pharmaceutical goods continues to rise, without a fair COLA increase, older Americans' hard-earned Social Security benefits are worth less and less. Their purchasing power will continue to diminish.

Mr. President, that's why I am introducing legislation today to prevent that from happening. My legislation is simple and straightforward. It first calls for the establishment of a CPI Review Committee made up of well-known economists who have expertise in the field, plus representatives of our senior citizens population.

The Committee will be given the task of studying how to analyze and improve the CPI–E method, make recommendations, and form an implementation plan to produce a CPI that accurately reflects the senior population

and their consumption that will be used to determine the Social Security COLA each year.

Appointing economic professionals will de-politicize this issue, and allow us to make sound policy based on merits rather than on political consideration.

This is also consistent with the measures recommended by the Advisory Commission to Study the Consumer Price Index, or the Boskin Commission, which calls for Congress to establish an independent committee or commission of experts to review progress in developing a new system of measuring the overall cost of living adjustments.

Within a year, the Committee I recommend is required to complete its work. A pilot program will test the accuracy of the CPI–E over a 3 year period by using improved and recommended methods.

However, I must point out that the experimental CPI–E currently computed by the BLS has limitations. For instance, the number of consumer units was relatively small, only 19 percent of the total sample.

Expenditure weights used in the construction of the CPI–E have a higher sampling error than those used for larger populations.

That's the reason that my legislation specifically instructs the Committee to remove this and other major limitations. To construct an improved CPI–E that is more scientific, accurate and representative of older Americans' spending habits.

We had the right idea in 1987. My legislation will improve on that law after we've had some time to analyze it.

Now, Mr. President, I know some of my colleagues will raise questions about this bill.

First, they are going to say, what about the issue of cost? Mr. President, it is perhaps true that moving from the CPI–W to the improved CPI–E to determine Social Security COLA increases may increase federal spending.

As a consistent fiscal conservative, I am concerned about the budgetary impact. I believe we must exercise caution and discipline on how government spends our money.

However, the issue of a fair Social Security COLA is not at its root a fiscal one, but rather an issue of fairness, particularly in the case of retired workers who rely upon their fixed Social Security pensions for survival.

I have argued repeatedly that the federal government has entered into a sacred covenant with the American people to provide benefits for their retirement if they pay into the system.

We have also committed to give them a fair COLA to keep up with inflation. It's our moral and contractual duty to honor that commitment, and to ensure the program will be there for current and future beneficiaries.

Senior citizens are a unique consumer population that should not be lumped into a category that considers spending habits the same as the average American family of four.

Once again, Mr. President, this is an issue of fairness and justice, not an issue of cost. All my legislation asks for is an accurate CPI and a fair COLA, up or down.

Second question: if an official CPI–E is created, wouldn't it set a potentially dangerous precedent for creating a CPI for every seemingly distinct population group? The answer is no.

Senior citizens comprise nearly 60 percent of Social Security beneficiaries, and this number will increase substantially as the Baby Boomer generation retires. Furthermore, the Social Security program is specifically intended to benefit senior citizens. It's only fair and rational to create an accurate CPI for them.

However, we have not forgotten that there is another distinct group of Social Security beneficiaries who receive disability benefits.

Because this group also spends more of their money for medical and pharmaceutical goods and services, their purchasing power could be affected by the inaccurate CPI and therefore COLA increase.

My legislation specifically requires the Committee to look into this issue and make recommendations on how to resolve it.

Third question: would this legislation overlap and contradict the study conducted by the Boskin Commission? The answer again is no.

On the contrary, my legislation is a complement to the Boskin Commission report. It parallels the general recommendations of the Boskin Commission.

These include development of a new Consumer Expenditure Survey that is larger and therefore more representative of the American consumer; development of a new market basket of goods and services that can register changes in the quality of products, the introduction of new products, and the substitution of less or more expensive goods when prices change; and development of a point-of-purchase survey that can register consumer shifts to lower price outlets.

Finally, would this legislation set back Social Security reform efforts? The answer is no. As I mentioned earlier, it would be wrong to let Social Security beneficiaries bear the burden of a mistake which is not of their own making.

In fact, when we give a legal guarantee to older Americans that they will receive Social Security benefits in full plus a fair COLA increase and take this fear away from them, it will be much easier to move the retirement system from a PAYGO system to a fully funded system.

This would in effect secure retirement income for our children and grandchildren.

In conclusion, Mr. President, retirement security for today's and tomorrow's seniors is essential to the social stability and economic prosperity of our society. This is all my legislation attempts to achieve.

I urge the Senate to make this issue the top priority for the 106th Congress. Working together, we will meet the demographic challenges and move towards a society that allows all ages to progress in the new millennium.

By Mr. LOTT (for Mr. MCCAIN (for himself and Mr. HOLLINGS)):

S. 1248. A bill to correct errors in the authorizations of certain programs administered by the National Highway Traffic Safety Administration; to the Committee on Commerce, Science, and Transportation.

LEGISLATION TO INCREASE THE NHTSA AUTHORIZATION LEVEL

● Mr. MCCAIN. Mr. President, I rise to introduce legislation that would increase the authorization level of the National Highway Traffic Safety Administration. The recently passed TEA–21 legislation authorized NHTSA at its requested level, approximately $87.4 million.

Although the Department of Transportation requested $87.4 million, Secretary Slater now informs us that this authorization level will not permit the funding of key safety initiatives. The bill would increase the funding levels to approximately $107.8 million. This amount is consistent with the amount recently reported by the House Commerce Committee. It is my intention to move this matter quickly in the committee.

I know that no one in this body wants a situation where highway safety is degraded in any way. I look forward to working with my colleagues to address this important issue of highway safety in a manner that provides the appropriate funding level to meet safety needs while also meeting our budget obligations and the consensus of the Appropriations Committee.●

By Mr. TORRICELLI:

S. 1249. A bill to deny Federal public benefits to individuals who participated in Nazi persecution; to the Committee on the Judiciary.

THE NAZI BENEFITS TERMINATION ACT OF 1998

Mr. TORRICELLI. Mr. President, I rise today to introduce, the Nazi Benefits Termination Act of 1999. This legislation seeks to halt an unintended and unwarranted series of public benefits payments to utlimately deportable individuals who assisted or otherwise participated in persecution sponsored by the Nazis or their allies during World War II. The bill also closes a loophole in the current law which allows some of these deportable individuals to avoid the suspension of their benefits by fleeing the United States. Such individuals who illegally gain access to the bounty of the United States, for example, by misrepresenting the facts of their wartime conduct, should not be allowed to benefit from their deceit at the expense of the Treasury, including the Social Security Trust Funds. So too, individuals

who avoid entry of an order of deportation or removal by fleeing the United States should not be permitted to circumvent the intent of the law at the expense of the Trust Funds.

Recognizing the excellent work of the Department of Justice's Office of Special Investigations (OSI) in bringing and winning cases against those who participated in Nazi persecution, the Nazi Benefits Termination Act of 1999 delegates to the Attorney General the discretionary authority to initiate proceedings to prohibit the payment of public benefits to any benefits receipient or applicant whom the Attorney General has reason to believe may have been a participant in persecution sponsored by the Nazis or their allies. Although OSI's success in deporting former Nazi persecutors has resulted in the cessation of social security benefits payments to numerous persons, this bill will, among other things, permit termination of benefits even before (or without) an order of deportation. This bill will apply to persons eventually subject to deportation who have assisted in Nazi persecution in any way. Proof by a preponderance of the evidence of such assistance or other participation in persecution is required. The Attorney General need not prove that a particular respondent is or was a war criminal. Rather, this legislation adopts the Seventh Circuit Court of Appeals' properly broad interpretation of the Holtzman Amendment (now Sections 212(a)(3)(E) and 237(a)(4)(D) of the Immigration and Nationality Act) terms ''participated'' or ''assisted'' in persecution. In Schellong v. I.N.S., the Sevneth Circuit properly interpreted the Holtzman Amendment, which is incorporated into this bill's statutory standard. The standard set out by the Sixth Circuit in Petkiewytsch v. I.N.S., ignores the plain language of the Holtzman Amendment and is specifically rejected by this bill. The Nazi Benefits Termination Act of 1999, like the Holtzman Amendment, applies to persons who assisted or otherwise participated in Nazi-sponsored persecution in any way, and does not require a showing by the government of personal or direct involvement in atrocities, voluntariness or motive.

Section 2(b)(2)(B)(1) of the bill is drafted to cover naturalized citizens whose admission to the United States was unlawful due, inter alia, to assistance in persecution or who otherwise procured their citizenship illegally or by concealment of a material fact or misrepresentation.

Section 3(a) of the legislation provides that Immigration Judges appointed by the Attorney General pursuant to the procedure established under the regulations implementing Section 1101(b)(4) of Title 8 will preside over the benefits hearings established by this bill. The rules, procedures, and rights applicable in these hearings are to be governed by the terms of this bill, existing regulations under Title 8, and any necessary additional implementing regulations.

The preponderance-of-the-evidence burden of proof will apply in hearings conducted under Section 3(a) of the bill. This standard is applicable in federal benefits revocation proceedings and most civil proceedings. Under this standard, we can avoid the delays incident to assembly of proof in denaturalization and deportation cases brought against this class, and consequently stem current depletion of the Treasury.

Section 3(f) of the bill makes clear that findings under section 3(c)(3)(A) of the bill may be based upon the collateral estoppel effect of denaturalization, deportation, or other appropriate judgments.

It is important to pass this legislation to help protect the public against unintended and unwarranted waste in paying benefits to ultimately deportable individuals. This measure will help to conserve resources so that future generations can continue to rely upon social security and other necessary public benefits payments.

I hope all my colleagues will be able to support this important legislation and I ask unanimous consent that the legislation be printed in the RECORD.

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

S. 1249

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 ''Nazi Benefits Termination Act of 1999''.

SEC. 2. DENIAL OF FEDERAL PUBLIC BENEFITS TO NAZI PERSECUTORS.

(a) IN GENERAL.—Notwithstanding any other provision of law, an individual who is determined under this Act to have been a participant in Nazi persecution is not eligible for any Federal public benefit.

(b) DEFINITIONS.—In this Act:

(1) FEDERAL PUBLIC BENEFIT.—The term ''Federal public benefit'' shall have the meaning given such term by section 401(c)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, but shall not include any benefit described in section 401(b)(1) of such Act (and, for purposes of applying such section 401(b)(1), the term ''alien'' shall be considered to mean ''individual'').

(2) PARTICIPANT IN NAZI PERSECUTION.—The term ''participant in Nazi persecution'' means an individual who—

(A) if an alien, is shown by a preponderance of the evidence to fall within the class of persons who (if present within the United States) would be deportable under section 237(a)(4)(D) of the Immigration and Nationality Act; or

(B) if a citizen, is shown by a preponderance of the evidence—

(i) to have procured citizenship illegally or by concealment of a material fact or willful misrepresentation within the meaning of section 340(a) of the Immigration and Nationality Act; and

(ii) to have participated in Nazi persecution within the meaning of section 212(a)(3)(E) of the Immigration and Nationality Act.

SEC. 3. DETERMINATIONS.

(a) HEARING BY IMMIGRATION JUDGE.—If the Attorney General has reason to believe that an individual who has applied for or is receiving a Federal public benefit may have been a participant in Nazi persecution (within the meaning of section 2 of this Act), the Attorney General may provide an opportunity for a hearing on the record with respect to the matter. The Attorney General may delegate the conduct of the hearing to an immigration judge appointed by the Attorney General under section 101(b)(4) of the Immigration and Nationality Act.

(b) PROCEDURE.—

(1) RIGHT OF RESPONDENTS TO APPEAR.—

(A) CITIZENS, PERMANENT RESIDENT ALIENS, AND PERSONS PRESENT IN THE UNITED STATES.—At a hearing under this section, each respondent may appear in person if the respondent is a United States citizen, a permanent resident alien, or present within the United States when the proceeding under this section is initiated.

(B) OTHERS.—A respondent who is not a citizen, a permanent resident alien, or present within the United States when the proceeding under this section is initiated may appear by video conference.

(C) RULE OF INTERPRETATION.—This Act shall not be construed to permit the return to the United States of an individual who is inadmissible under section 212(a)(3)(E) of the Immigration and Nationality Act.

(2) OTHER RIGHTS OF RESPONDENTS.—At a hearing under this section, each respondent may be represented by counsel at no expense to the Federal Government, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas for the attendance of witnesses and presentation of evidence.

(3) RULES OF EVIDENCE.—Unless otherwise provided in this Act, rules regarding the presentation of evidence in the hearing shall apply in the same manner in which such rules would apply in a removal proceeding before a United States immigration judge under section 240 of the Immigration and Nationality Act.

(c) HEARINGS, FINDINGS AND CONCLUSIONS, AND ORDER.—

(1) FINDINGS AND CONCLUSIONS.—Within 60 days after the end of a hearing conducted under this section, the immigration judge shall make findings of fact and conclusions of law with respect to whether the respondent has been a participant in Nazi persecution (within the meaning of section 2 of this Act).

(2) ORDER.—

(A) FINDING THAT RESPONDENT HAS BEEN A PARTICIPANT IN NAZI PERSECUTION.—If the immigration judge finds, by a preponderance of the evidence, that the respondent has been a participant in Nazi persecution (within the meaning of section 2 of this Act), the immigration judge shall promptly issue an order declaring the respondent to be ineligible for any Federal public benefit, and prohibiting any person from providing such a benefit, directly or indirectly, to the respondent, and shall transmit a copy of the order to any governmental entity or person known to be so providing such a benefit.

(B) FINDING THAT RESPONDENT HAS NOT BEEN A PARTICIPANT IN NAZI PERSECUTION.—If the immigration judge finds that there is insufficient evidence for a finding under subparagraph (A) that a respondent has been a participant in Nazi persecution (within the meaning of section 2 of this Act), the immigration judge shall issue an order dismissing the proceeding.

(C) EFFECTIVE DATE; LIMITATION OF LIABILITY.—

(i) EFFECTIVE DATE.—An order issued pursuant to subparagraph (A) shall be effective on the date of issuance.

(ii) LIMITATION OF LIABILITY.—Notwithstanding clause (i), a person or entity shall not be found to have provided a benefit to an

individual in violation of this Act until the person or entity has received actual notice of the issuance of an order under subparagraph (A) with respect to the individual and has had a reasonable opportunity to comply with the order.

(d) REVIEW BY ATTORNEY GENERAL; SERVICE OF FINAL ORDER.—

(1) REVIEW BY ATTORNEY GENERAL.—The Attorney General may, in her discretion, review any finding or conclusion made, or order issued, under subsection (c), and shall complete the review not later than 30 days after the finding or conclusion is so made, or order is so issued. Otherwise, the finding, conclusion, or order shall be final.

(2) SERVICE OF FINAL ORDER.—The Attorney General shall cause the findings of fact and conclusions of law made with respect to any final order issued under this section, together with a copy of the order, to be served on the respondent involved.

(e) JUDICIAL REVIEW.—Any party aggrieved by a final order issued under this section may obtain a review of the order by the United States Court of Appeals for the Federal Circuit by filing a petition for such review not later than 30 days after the final order is issued.

(f) ISSUE AND CLAIM PRECLUSION.—In any administrative or judicial proceeding under this Act, the ordinary rules of issue preclusion and claim preclusion shall apply.

SEC. 4. JURISDICTION OF UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT OVER APPEALS UNDER THIS ACT.

Section 1295(a) of title 28, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and inserting ''; and''; and

(3) by adding at the end the following:

''(15) of an appeal from a final order issued under the Nazi Benefits Termination Act of 1999.''.

By Mr. ROCKEFELLER:

S. 1250. A bill to amend title 38, United States Code, to ensure a continuum of health care for veterans, to require pilot programs relating to long-term health care for veterans, and for other purposes; to the Committee on Veterans' Affairs.

THE VETERANS' LONG-TERM CARE ENHANCEMENT ACT OF 1999

Mr. ROCKEFELLER. Mr. President, I am pleased to introduce the ''Veterans' Long-Term Care Enhancement Act of 1999.'' There is no doubt that demand for long-term care—for veterans and non-veterans alike—is increasing. In the Department of Veterans Affairs (VA), however, we face an even more pressing demand.

The numbers are staggering. About 34 percent of the total veteran population is 65 years or older, compared with about 13 percent of the total United States population. In the year 2000, the number of veterans aged 65 or older will peak at 9.3 million. In my state of West Virginia alone, we have approximately 57,000 World War II veterans.

Because VA has already faced considerable demand for long-term care, it has been forced to become a leader in this field. I am proud of VA's work in developing geriatric evaluation teams, home-based primary care, and adult day health care. Our older veterans are leading richer lives because of these innovations. But to quote from the Report of the Federal Advisory Committee on the Future of VA Long-Term Care, despite VA's high quality and long tradition, ''VA long-term care is marginalized and unevenly funded.''

Frequently I hear from families of World War II combat veterans who need long-term care because of a debilitating disease, such as Alzheimer's or Parkinson's, or a stroke. A number of these families do not have the money to place the veteran in a private nursing home for the necessary long-term care; and because of the veteran's sacrifices during World War II, they turn to the VA.

Or I will get a call from a wife of an aging, sick veteran who wants desperately to keep her husband at home with her, but in order to do that she needs home health care services, so she turns to the VA.

But when these West Virginian families are told by VA that the services they need are not available to them, they simply cannot understand how they could be denied, and they turn to me in despair.

The challenge for all of us, of course, is to find a way to furnish the appropriate array of services, in a cost efficient way, to all those needing extended care.

As the Senate Committee on Veterans' Affairs noted in its March 15, 1999, letter to the Budget Committee with the Committee's views on VA's budget for FY 2000, ''The health care issue that VA must face over the intermediate term—indeed, the health care issue that the Nation must face over the next decade—is the need for long-term care among the aging World War II generation. WWII veterans saved Western civilization. We cannot turn our backs on them now.''

At the outset, I want to say that my wish would be for VA to provide long-term care to all veterans who need and want it. While the legislation I am introducing today is only one step toward determining what VA should be doing to meet the needs of veterans for long-term care, I believe that it is an important step in that regard.

There are three key elements in the bill. First, are provisions which clarify that long-term care is not only nursing home care, and that existing differences in law between eligibility for institutional long-term care and other types of care offered by VA do not affect VA's ability to furnish a full array of noninstitutional long-term care services.

Specifically, the provision would add ''noninstitutional extended care services'' to the definition of ''medical services,'' thereby removing any doubt about VA's authority to furnish such services to veterans eligible for and enrolled in VA care. The term would be defined to include the following: home-based primary care; adult day health care; respite care; palliative and end-of-life care; and homemaker or home health aide visits.

Second, the bill would add clear authority for VA to furnish assisted living services, including to the spouses of veterans. VA already furnishes a form of assisted living services through its domiciliary care program, but the provision in the bill would provide express authority to furnish this modality of care to older veterans, thereby expanding the continuum of extended care services offered by VA.

Third, VA would be mandated to carry out a series of pilot programs, over a period of three years, which would be designed to gauge the best way for VA to meet veterans' long-term care needs—either directly, through cooperative arrangements with community providers, or by purchasing services from non-VA providers.

While VA has developed significant expertise in long-term care over the past 20-plus years, it has not done so with any mandate to share its learning with others, nor has it pushed its program development beyond that which met the current needs at the time. Some experts even believe that VA's expertise is gradually eroding.

For VA's expertise to be of greatest use to others, it needs both to better capture what it has done and to develop new learning that would be most applicable to other health care entities.

Those who would benefit by further action to develop and capitalize on VA's long-term care expertise include older veterans, primarily our honored World War II veterans; those health organizations, including academic medicine and research entities, with which VA is now connected; and finally, the rest of the U.S. health care system, and ultimately all Americans who will need some form of long-term care services.

Each element of the pilot program would establish and carry out a comprehensive long-term care program, with a full array of services, ranging from inpatient long-term care—in intermediate care beds, in nursing homes, and in domiciliary care facilities—to comprehensive noninstitutional services, which include hospital-based home care, adult day health care, personal assistance services, respite care, and other community-base interventions.

In each element of the pilot programs, VA would also be mandated to furnish case management services, to ensure that veterans participating in the pilot programs receive the optimal treatment and placement for services. Some form of assisted living services for veterans and their families would be provided, as well. Preventive health care services, such as screening and patient education, and a particular focus on end-of-life care are also emphasized. In my view, VA must have ready access to all of these services.

As part of the pilot program, VA would be encouraged to seek the involvement of State Veterans Homes, so

as to draw them into noninstitutional approaches to long-term care. Our State Veterans Homes are valuable assets.

Finally, a key purpose of the pilot program would be to test and evaluate various approaches to meeting the long-term care needs of eligible veterans, both to develop approaches that could be expanded across VA, as well as to demonstrate to others outside of VA the effectiveness and impact of various approaches to long-term care. To this end, the pilot program within in the ''Veterans' Long-Term Care Enhancement Act of 1999'' would include specific data collection on matters such as cost effectiveness, quality of health care services provided, enrollee and health care provider satisfaction, and the ability of participants to carry out basic activities of daily living.

From this effort, a number of things would result. First, VA would gain more precise information on exactly which services to offer, how best to coordinate those services, and the relative cost and effectiveness of various services. There is no doubt that our veterans would benefit from such findings.

Second, there would be a concrete demonstration of the feasibility of furnishing a coordinated range of long-term care services, which in turn could lead to a greater likelihood that such an approach would be shared with, and replicated by, others.

Third, the value of such an approach, measured in quality of care, quality of life, cost effectiveness, and patient and provider satisfaction would be demonstrated, thereby promoting its use by others.

Mr. President, I look forward to working with the chairmen and the members of the Committees on Veterans' Affairs—in both the House of Representatives and the Senate—to advance the cause of long-term care in VA.

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

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

S. 1250

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 ''Veterans' Long-Term Care Enhancement Act of 1999''.

SEC. 2. CONTINUUM OF CARE FOR VETERANS.

(a) INCLUSION OF NONINSTITUTIONAL EXTENDED CARE SERVICES IN DEFINITION OF MEDICAL SERVICES.—Section 1701 of title 38, United States Code, is amended—

(1) in paragraph (6)(A)(i), by inserting ''noninstitutional extended care services,'' after ''preventive health services,''; and

(2) by adding at the end the following new paragraphs:

''(10) The term 'noninstitutional extended care services' includes—

''(A) home-based primary care;

''(B) adult day health care;

''(C) respite care;

''(D) palliative and end-of-life care; and

''(E) homemaker or home health aide visits.

''(11) The term 'respite care' means hospital or nursing home care which—

''(A) is of limited duration;

''(B) is furnished on an intermittent basis to an individual who is suffering from a chronic illness and who resides primarily at home; and

''(C) is furnished for the purpose of helping the individual to continue residing primarily at home.''.

(b) ASSISTED LIVING.—Subchapter II of chapter 17 of such title is amended by adding at the end the following new section:

''§ 1720F. Assisted living

''(a) The Secretary may, subject to subsection (b), provide assisted living services to a veteran who is eligible to receive care under section 1710 of this title and to the spouse of such veteran in connection with the provision of such services to such veteran.

''(b) The Secretary may not provide assisted living services under this section to a veteran eligible to receive care under section 1710(a)(3) of this title, or to a spouse of any veteran, unless such veteran or spouse agrees to pay the United States an amount equal to the cost, as determined in regulations prescribed by the Secretary, of the provision of such services.

''(c) For purposes of this section, the term 'assisted living services' means services which provide personal care, activities, health-related care, supervision, and other assistance on a 24-hour basis within a residential or similar setting which—

''(1) maximizes flexibility in the provision of such care, activities, supervision, and assistance;

''(2) maximizes the autonomy, privacy, and independence of an individual; and

''(3) encourages family and community involvement with the individual.''.

(c) CONFORMING AMENDMENTS.—(1)(A) Section 1720 of such title is amended by striking subsection (f).

(B) The section heading of such section is amended by striking ''**; adult day health care**''.

(2) Section 1720B of such title is repealed.

(d) CLERICAL AMENDMENTS.—The table of sections for chapter 17 of such title is amended—

(1) in the item relating to section 1720, by striking ''; adult day health care'';

(2) by striking the item relating to section 1720B; and

(3) by inserting after the item relating to section 1720E the following new item:

''1720F. Assisted living.''.

SEC. 3. PILOT PROGRAMS RELATING TO LONG-TERM CARE OF VETERANS.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall carry out three pilot programs for the purpose of determining the feasibility and practicability of a variety of methods of meeting the long-term care needs of eligible veterans. The pilot programs shall be carried out in accordance with the provisions of this section.

(b) LOCATIONS OF PILOT PROGRAMS.—(1) Each pilot program under this section shall be carried out at two Veterans Integrated Service Networks (VISNs) selected by the Secretary for purposes of this section.

(2) The Secretary may not carry out more than one pilot program in any given Veterans Integrated Service Network.

(c) SCOPE OF SERVICES UNDER PILOT PROGRAMS.—(1) The services provided under the pilot programs under this section shall include a comprehensive array of health care services and other services that meet the long-term care needs of veterans, including—

(A) inpatient long-term care in intermediate care beds, in nursing homes, and in domiciliary care facilities;

(B) noninstitutional long-term care, including hospital-based primary care, adult day care, personal assistance services, respite care, and other community-based interventions and care; and

(C) assisted living services for veterans and their families.

(2) As part of the provision of services under the pilot programs, the Secretary shall also provide appropriate case management services.

(3) In providing services under the pilot programs, the Secretary shall emphasize the provision of preventive care services, including screening and education.

(d) DIRECT PROVISION OF SERVICES.—Under one of the pilot programs under this section, the Secretary shall provide long-term care services to eligible veterans directly through facilities and personnel of the Department of Veterans Affairs.

(e) PROVISION OF SERVICES THROUGH COOPERATIVE ARRANGEMENTS.—(1) Under one of the pilot programs under this section, the Secretary shall provide long-term care services to eligible veterans through a combination (as determined by the Secretary) of—

(A) services provided under cooperative arrangements with appropriate public and private non-Governmental entities, including community service organizations; and

(B) services provided through facilities and personnel of the Department.

(2) The consideration provided by the Secretary for services provided by entities under cooperative arrangements under paragraph (1)(A) shall be limited to the provision by the Secretary of appropriate in-kind services to such entities.

(f) PROVISION OF SERVICES BY NON-DEPARTMENT ENTITIES.—(1) Under one of the pilot programs under this section, the Secretary shall provide long-term care services to eligible veterans through arrangements with appropriate non-Department entities under which arrangements the Secretary acts solely as the case manager for the provision of such services.

(2) Payment for services provided to veterans under the pilot programs under this subsection shall be as follows:

(A) By the medicare program or the medicaid program, but only—

(i) if the veterans concerned are entitled to benefits under such programs; and

(ii) to the extent that payment for such services is provided for under such programs.

(B) By the Department, to the extent that payment for such services is not otherwise provided for under subparagraph (A).

(g) DATA COLLECTION.—As part of each pilot program under this section, the Secretary shall collect data regarding—

(1) the cost-effectiveness of such program, including any savings achieved under such program when compared with the medicare program, medicaid program, or other Federal program serving similar populations;

(2) the quality of the services provided under such program;

(3) the satisfaction of participating veterans, non-Department, and non-Government entities with such program; and

(4) the effect of such program on the ability of veterans to carry out basic activities of daily living over the course of such veterans' participation in such program.

(h) REPORTS.—(1) The Secretary shall annually submit to Congress a report on the pilot programs under this section.

(2) Each report under paragraph (1) shall include the following:

(A) A detailed description of activities under the pilot programs during the one-year period ending on the date of the report.

(B) An evaluation of the data collected under subsection (g) during that period.

(C) Any other matters regarding the programs that the Secretary considers appropriate.

(i) DURATION OF PROGRAMS.—(1) The Secretary shall commence carrying out the pilot programs required by this section not later than 90 days after the date of the enactment of this Act.

(2) The authority of the Secretary to provide services under the pilot programs shall cease on the date that is three years after the date of the commencement of the pilot programs under paragraph (1).

(j) DEFINITIONS.—In this section:

(1) The term ''eligible veteran'' means the following:

(A) Any veteran entitled to hospital care and medical services under section 1710(a)(1) of title 38, United States Code.

(B) Any veteran (other than a veteran described in subparagraph (A)) if the veteran is enrolled in the system of annual patient enrollment under section 1705 of title 38, United States Code.

(2) The term ''long-term care needs'' means the need by an individual for any of the following services:

(A) Personal care.

(B) Nursing home and home health care services.

(C) Habilitation and rehabilitation services.

(D) Adult day care services.

(E) Case management services.

(F) Social services.

(G) Assistive technology services.

(H) Home and community based services, including assistive living.

By Mr. DORGAN (for himself, Mr. BINGAMAN, and Mr. BYRD):

S. 1252. A bill to provide parents, taxpayers, and educators with useful, understandable school reports; to the Committee on Health, Education, Labor, and Pensions.

STANDARDIZED SCHOOL REPORT CARD ACT

Mr. DORGAN. Madam President, I am introducing today a piece of legislation called the Standardized School Report Card Act, along with my colleagues, Senator BINGAMAN and Senator BYRD.

Every 6 to 9 weeks every parent in this country who has children in our public schools gets a report card to tell him or her how that student is doing in school.

Rarely, however, do parents get a report card telling them how the school is doing for the students.

A number of States already do have school report cards—about 36, actually—but they vary around the country. Some have almost no information. Others are hundreds of pages long and very difficult to understand. Regardless, however, most parents never see a report card for their child's school.

I think it would be useful, and my colleagues do as well, to ask that there be a uniform or standardized school report card that will allow parents to understand what they are getting for the dollars they are investing in that school. What is their school doing versus the neighboring town's school? How are the schools in one State doing versus schools in another State? How can you compare what the parents and taxpayers are getting with respect to the dollars invested in education?

The Standardized School Report Card Act will require schools to report on eight key, basic areas in their report card and do so in an easily understandable manner.

The eight areas graded in the report cards would be: students' performance, attendance and graduation rates, professional qualifications of teachers, average class size, school safety, parental involvement, student drop-out rates, and access to technology.

Some might say this legislation is unnecessary because there are already some States that do have school report cards. As I have already indicated, that is true. However, the content varies widely, so they are not good tools for comparison.

In my home State of North Dakota, the State Department of Public Instruction has designed a school district profile that is published for each school district. It does include a lot of interesting information, but a numbers of areas that are required under this legislation are not covered at all.

My point is that we have a public education system in this country on which we spend a great deal of money. We send our young boys and girls to the classroom door, and we invest money, we build the schools, pay teachers, and buy the books. The question is, What do we get for all of that?

Most of the classrooms I have visited are led and taught by wonderful teachers. I am very impressed by many of the schools I have had an opportunity to visit across the country and especially in North Dakota. As a nation, when we spend $350 billion a year to provide an education to elementary and secondary students, parents and taxpayers need some uniform way to understand how there school is doing versus other schools. How is our State doing versus other States relative to the investments we are making in education?

That is the basis for the school report card legislation which I am introducing today. I am pleased to be joined by Senators BINGAMAN and BYRD in introducing this bill, and I hope others of our colleagues will join us in cosponsoring it.

Mr. BINGAMAN. Mr. President, I am pleased to join my distinguished colleagues, Senators DORGAN and BYRD, in introducing the Standardized School Report Card Act. This bill would require States and schools to distribute an annual, easy-to-read report card to parents, taxpayers, educators, and the public. One of the top issues facing the nation's education system is the need for greater accountability and the need for greater parent involvement in schools. The bill we are introducing today will go a long way in helping to achieve these goals.

In our efforts to make schools accountable for the resources they are given, we must develop better means for measuring and communicating progress in our schools; if we cannot measure progress, we cannot attain it. Our bill would require each school to report several key measures of progress. The bill would require reports of student performance in language arts and mathematics, as well as any other subject areas in which the State requires assessment. The report cards would breakdown student data by gender, major racial and ethnic groups, English proficiency, migrant status, disability status, and economic status. In this way, we can ensure that our schools are meeting the needs of all students and that all students are being taught to the same high standards. I also requested that the bill require reporting of dropout rates, because our educational system needs to do everything possible to keep our children in school until graduation. Many States with report cards do not currently report this measure of educational progress. Obviously, we are not making much progress if our children are giving up prior to graduation. We need to target our efforts to ensure that our children stay in school and an important step in achieving that goal is to monitor and raise awareness of the problem.

The report cards required in this bill also would provide parents and taxpayers with valuable information regarding the resources available and environment at each school. Our bill would require schools to report average class sizes and student access to technology, including the number of computers for educational purposes, the number of computers per classroom, and the number of computers connected to the Internet. In addition, schools would be required to report measures of school safety, including the safety of school facilities and incidents of school violence, and measures of parental involvement. Based on this information, parents—as consumers of public education—can make informed decisions about their children's education and monitor how public resources are being used in their community.

Last session, I introduced an amendment to the Higher Education Act—which was ultimately passed and signed into law—which requires colleges of education to report their performance in producing qualified teachers. That effort will help to ensure that teachers coming into a school system have been properly prepared to teach. The bill we are introducing today will build on that legislation, by holding states and schools district accountable for the training, level of preparation, and proper placement of new teachers as well as teachers already in the system. Under the Standardized Report Card Act, schools would be required to report the professional qualifications of its teachers, including the number of teachers teaching out of field and the number of teachers with emergency certification.

I have spoken with many parents in my home state of New Mexico about

their role in the public education system. These parents are eager to support their local schools and participate in their children's education. But in order to do this, they need to be better informed about how schools are performing and what resources are being devoted to each school.

With over $350 billion spent each year on education, parents and taxpayers deserve to know how their schools are performing. We owe it to them and to ourselves to provide public measures of progress which will assist our communities in their efforts to improve our systems of education. Mr. President, I ask my colleagues to join me by supporting the standardized School Report Card Act.

By Mr. INOUYE (for himself, Mr. AKAKA, Mr. HOLLINGS, Mr. KERRY, and Mr. BREAUX, and Mrs. BOXER):

S. 1253. A bill to authorize the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, to provide financial assistance for coral reef conservation projects, and for other purposes; to the Committee on Commerce, Science, and Transportation.

CORAL REEF PROTECTION ACT OF 1999

Mr. INOUYE. Mr. President, I rise today to introduce the Coral Reef Protection Act of 1999.

This legislation will provide one hundred million dollars over a period of five years to preserve, sustain and restore the health of U.S. coral reef ecosystems; assist in the conservation and protection of coral reefs by supporting conservation programs; and provide financial resources for those programs. Additionally, this legislation will leverage the federal dollars appropriated for these purposes by establishing a formal mechanism for collecting and allocating matching monetary donations from the private sector to be used for coral reef conservation projects.

The United States has substantial coral reef holdings in both the Atlantic and Pacific Oceans totaling more than 6,500 square miles. More than 83% of these reefs lie among the islands of Hawaii and another 10% of them live among the other American islands in the Pacific including American Samoa, Johnston Island, Palmyra Atoll, and the Northern Mariana Islands. Hawaii, alone, is home to 47 different species of coral. These coral reefs provide numerous recreational opportunities, are linked ecologically to adjacent coastal ecosystems such as mangroves and sea grasses, support substantial biodiversity, and protect shorelines from wave damage. They also support major economic activities, such as tourism and fishing, in coastal communities that generate billions of dollars annually. Despite this importance to both the environment and the American economy, little is currently known about the condition of coral reefs in the United States. Two points, however, are clear: coral reefs are threatened whenever they are close to large concentrations of people, and coral reefs are in decline.

This legislation will provide funding for research, conservation and restoration of these extremely important resources and will complement the efforts of the President's Coral Reef Task Force which was established by Executive Order last year. I ask that the bill be printed in the RECORD.

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

S. 1253

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 ''Coral Reef Protection Act of 1999''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Coral reefs and coral reef ecosystems are considered the marine equivalent of tropical rain forests, containing some of the planet's richest biological diversity, habitats, and systems and supporting thousands of fish, invertebrates, reef algae, plankton, sea grasses, and other species.

(2) Coral reefs and coral reef ecosystems have great commercial, recreational, cultural, and esthetic value to human communities as shoreline protection, areas of natural beauty, and sources of food, pharmaceuticals, jobs, and revenues through a wide variety of activities, including education, research, tourism, and fishing.

(3) Studies indicate that coral reefs in the United States and around the world are being degraded and severely threatened by human and environmental impacts including land-based pollution, overfishing, destructive fishing practices, vessel groundings, and climate change.

(4) Since 1994, under the United States Coral Reef Initiative, Federal agencies, State, local, territorial, commonwealth, and local governments, nongovernmental organizations, and commercial interests have worked together to design and implement additional management, education, monitoring, research, and restoration efforts to conserve coral reef ecosystems.

(5) 1997 was recognized as the Year of the Reef to raise public awareness about the importance of conserving coral reefs and to facilitate actions to protect coral reef ecosystems.

(6) On October 21, 1997, the 105th Congress passed House Concurrent Resolution 8, a concurrent resolution recognizing the significance of maintaining the health and stability of coral reef ecosystems by promoting comprehensive stewardship for coral reef ecosystems, discouraging unsustainable fisheries or other practices harmful to coral reefs, encouraging research, monitoring, assessment of, and education on coral reef ecosystems, improving coordination of coral reef efforts and activities of Federal agencies, academic institutions, nongovernmental organizations, and industry, and promoting preservation and sustainable use of coral reef resources worldwide.

(7) 1998 was declared to be the International Year of the Ocean to raise public awareness and increase actions to conserve and use in a sustainable manner the broader ocean environment, including coral reefs.

(8) On June 11, 1998, President William Jefferson Clinton signed Executive Order 13089 (64 Fed. Reg. 323701) which recognizes the importance of conserving coral reef ecosystems, establishes the Coral Reef Task Force under the joint leadership of the Departments of Commerce and Interior, and directs Federal agencies whose actions may affect United States coral reef ecosystems to take steps to protect, manage, research, and restore such ecosystems.

(9) The Nation benefits from—

(A) specific actions and programs involving coral reefs and coral reef ecosystems including National Marine Sanctuaries, National Wildlife Refuges, National Parks, and other marine protected areas that conserve for future generations vital marine resources, ecosystems, and habitats;

(B) the identification of coral habitats as essential fish habitat under the Magnuson-Stevens Fishery Conservation and Management Act, which requires aggressive efforts to minimize adverse effects on such habitat caused by fishing;

(C) identification of other actions to encourage the conservation and enhancement of such habitat; and

(D) State and territorial coastal management programs for the protection, development, and where possible, restoration and enhancement of the resources of the Nation's coastal zone for this and succeeding generations under the Coastal Zone Management Act and other related statutes.

(10) Legislation solely dedicated to the comprehensive and coordinated conservation, management, protection, and restoration of coral reefs and coral reef ecosystems would supplement Executive Order 13089 and House Concurrent Resolution 8, and complement the management, protection, and conservation provided by such programs as those administered under the National Marine Sanctuaries Act, Coastal Zone Management Act, and Magnuson-Stevens Fishery Conservation and Management Act, as well as those administered by other Federal, State, and territorial agencies.

SEC. 3. POLICY.

It is the policy of the United States—

(1) to conserve and protect the ecological integrity of coral reef ecosystems;

(2) to maintain the health, natural conditions, and dynamics of those ecosystems;

(3) to reduce and remove human stresses affecting reefs;

(4) to restore coral reef ecosystems injured by human activities; and

(5) to promote the long-term sustainable use of coral reef ecosystems.

SEC. 4. PURPOSES.

The purposes of this Act are—

(1) to preserve, sustain, and restore the health of coral reef ecosystems;

(2) to assist in the conservation and protection of coral reefs by supporting conservation programs;

(3) to provide financial resources for those programs; and

(4) to establish a formal mechanism for collecting and allocating monetary donations from the private sector to be used for coral reef conservation projects.

SEC. 5. DEFINITIONS.

In this Act:

(1) CORAL.—The term ''coral'' means species of the phylum Cnidaria, including—

(A) all species of the orders Antipatharia (black corals), Scleractinia (stony corals), Alcyonacea (soft corals), Gorgonacea (horny corals), Stolonifera (organpipe corals and others), and Helioporacea (blue coral) of the class Anthozoa; and

(B) all species of the order Hydrocorallina (fire corals and hydrocorals) of the class Hydrozoa.

(2) CORAL REEF.—The term ''coral reef'' means any reef, shoal, or other natural feature composed primarily of the solid skeletal structures in which stony corals are major framework constituents, within all maritime areas and zones subject to the jurisdiction or

control of the United States (e.g. Federal, State, territorial, or commonwealth waters), including in the south Atlantic, Caribbean, Gulf of Mexico, and Pacific Ocean.

(3) CORAL REEF ECOSYSTEM.—The term ''coral reef ecosystem'' means the interacting complex of species (including reef plants of the phlya Chlorophyta, Phaeophyta, and Rhodophyta) and nonliving variables associated with coral reefs and their habitats which—

(A) function as an ecological unit in nature; and

(B) are mutually dependent on this function to continue.

(4) CONSERVATION.—The term ''conservation'' means the use of methods and procedures necessary to preserve or sustain coral reefs and coral reef ecosystems as diverse, viable, and self-perpetuating ecosystems, including—

(A) all activities associated with resource management, such as assessment, science, conservation, protection, restoration, sustainable use, management of habitat, and water quality;

(B) habitat monitoring;

(C) assistance in the development of management strategies for marine protected areas and marine resources consistent with the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C.1801 et seq.) and other Federal, State, and territorial statutes;

(D) law enforcement;

(E) conflict resolution initiatives;

(F) community outreach and education; and

(G) promotion of safe and ecologically sound navigation.

(5) PERSON.—The term ''person'' has the meaning given that term by section 1 of title 1, United States Code, but includes departments, agencies, and instrumentalities of the United States Government or any State or local government.

(6) FOUNDATION.—The term ''foundation'' means any qualified non-profit organization that specializes in natural resource conservation.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(8) STATE.—The term ''State'' means any coastal State of the United States that contains coral within its seaward boundaries, and American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, and any other commonwealth, territory, or possession of the United States that contains coral within its seaward boundaries.

SEC. 6. CORAL REEF RESTORATION AND CONSERVATION PROGRAM.

(a) FINANCIAL ASSISTANCE.—The Secretary subject to the availability of funds, may provide financial assistance for projects that—

(1) provide for the restoration of degraded or injured coral reefs or coral reef ecosystems, including developing and implementing cost-effective methods to restore or enhance degraded or injured coral reefs and coral reef ecosystems; or

(2) provide for the conservation of coral reefs or coral reef ecosystems through projects other than those under paragraph (1), that provide for the management, conservation, and protection of coral reefs and coral reef ecosystems, including mapping and assessment, management, protection (including enforcement), scientific research, and short-term and long-term monitoring that benefits the long-term conservation of coral reefs and coral reef ecosystems.

(b) MATCHING REQUIREMENTS.—

(1) 75-PERCENT FEDERAL FUNDING.—Except as provided in paragraph (2), Federal funds for any project under this section shall not exceed 75 percent of the total cost of such project. In calculating that percentage, the non-Federal share of project costs may be provided by in-kind contributions and other noncash support.

(2) EXCEPTIONS.—

(A) SMALL PROJECTS.—There are no matching requirements for grants under subsection (a) for projects costing not more than $25,000.

(B) HIGHER LEVEL OF SUPPORT REQUIRED.—If the Secretary determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, then the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1).

(c) ELIGIBILITY.—Any relevant natural resource management authority of a State or territory of the United States or other government authority with jurisdiction over coral reefs or whose activities directly or indirectly affect coral reefs or coral reef ecosystems, or educational or non-governmental institutions with demonstrated expertise in the conservation of coral reefs, may submit a coral reef restoration or conservation proposal to the Secretary under subsection (a).

(d) ALLOCATION.—The Secretary shall ensure that financial assistance provided under subsection (a) during a fiscal year is distributed so that—

(1) not less than 40 percent of the funds available are awarded for coral reef restoration and conservation projects in the Pacific Ocean;

(2) not less than 40 percent of the funds available are awarded for coral reef restoration and conservation projects in the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea; and

(3) remaining funds are awarded for coral reef restoration and conservation projects that address emerging priorities or threats identified by the Secretary in consultation with the Coral Reef Task Force under subsection (j).

(e) PROJECT PROPOSALS.—Each proposal for a grant under this section shall include the following:

(1) The name of the individual or entity responsible for conducting the project.

(2) A succinct statement of the purposes of the project.

(3) A description of the qualifications of the individuals who will conduct the project.

(4) An estimate of the funds and time required to complete the project.

(5) Evidence of support of the project by appropriate representatives of States or territories of the United States or other government jurisdictions in which the project will be conducted.

(6) Information regarding the source and amount of matching funding available to the applicant, as appropriate.

(7) A description of how the project meets one or more of the criteria in subsection (g) of this section.

(8) Any other information the Secretary considers to be necessary for evaluating the eligibility of the project for funding under this Act.

(f) PROJECT REVIEW AND APPROVAL.—

(1) IN GENERAL.—The Secretary shall review each final coral reef conservation project proposal to determine if it meets the criteria set forth in subsection (g).

(2) REVIEW; APPROVAL OR DISAPPROVAL.—Not later than 3 months after receiving a final project proposal under this section, the Secretary shall—

(A) request written comments on the proposal from each Federal, State or territorial agency of the United States and other government jurisdictions, including the relevant regional fishery management councils established under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), or any National Marine Sanctuary, with jurisdiction or management authority over coral reefs or coral reef ecosystems in the area where the project is to be conducted, including the extent to which the project is consistent with locally-established priorities;

(B) for projects costing less than $25,000, provide for expedited peer review of the proposal;

(C) for projects costing $25,000 or greater, provide for the regional, merit-based peer review of the proposal and require standardized documentation of that peer review;

(D) after considering any written comments and recommendations based on the reviews under subparagraphs (A) and (B), approve or disapprove the proposal; and

(E) provide written notification of that approval or disapproval to the person who submitted the proposal, and each of those States, territories, and other government jurisdictions.

(g) CRITERIA FOR APPROVAL.—The Secretary may approve a final project proposal under this section based on the written comments received and the extent that the project will enhance the conservation of coral reefs by—

(1) implementing coral reef conservation programs which promote sustainable development and ensure effective, long-term conservation of coral reefs;

(2) addressing the conflicts arising from the use of environments near coral reefs or from the use of any living or dead specimens, port, or derivatives, or any product containing specimens, ports, or derivatives, of any coral or coral reef ecosystem;

(3) enhancing compliance with laws that prohibit or regulate the taking of corals, species associated with coral reefs, and coral products or regulate the use and management of coral reef ecosystems;

(4) developing sound scientific information on the condition of coral reef ecosystems or the threats to such ecosystems;

(5) promoting cooperative projects on coral reef conservation that involve affected local communities, non-governmental organizations, or others in the private sector; or

(6) increasing public knowledge and awareness of coral reef ecosystems and issues regarding their long term conservation.

(h) IMPLEMENTATION GUIDELINES.—Within 90 days after the date of enactment of this Act, the Secretary shall promulgate necessary guidelines for implementing this section. In developing those guidelines, the Secretary shall consult with regional and local entities, including States and territories, involved in setting priorities for conservation of coral reefs.

(i) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to any State or Federal agency with jurisdiction over coral reefs and coral reef ecosystems to further the purposes of this Act.

(j) CORAL REEF TASK FORCE.—The Secretary shall consult with the Coral Reef Task Force established under Executive Order 13089 (64 Fed. Reg. 323701), to obtain guidance in establishing coral reef conservation project priorities under this section.

SEC. 7. NATIONAL PROGRAM.

(a) IN GENERAL.—The Secretary may conduct activities that further the conservation of coral reefs or coral reef ecosystems on a regional, national, or international scale, or that further public awareness and education regarding coral reefs and coral reef ecosystems on a regional, national, or international scale. The activities should supplement and be consistent with the programs, policies, and statutes of affected States and territories, the National Marine Sanctuaries

Act, the Coastal Zone Management Act, and the Magnuson-Stevens Fishery Conservation and Management Act, other applicable Federal statutes, and, at a minimum, should include mapping and assessment, monitoring, management, and scientific research that benefits the long-term conservation of coral reefs and coral reef ecosystems.

(b) FINANCIAL ASSISTANCE.—The Secretary may enter into joint projects with any Federal, State, territorial, or local authority, or provide financial assistance to any person for projects consistent with subsection (a), including projects that—

(1) support, promote, and coordinate the assessment of, scientific research on, monitoring of, or restoration of coral reefs and coral reef ecosystems of the United States;

(2) cooperate with global programs that conserve, manage, protect, and study coral reefs and coral reef ecosystems; or

(3) enhance public awareness, understanding, and appreciation of coral reefs and coral reef ecosystems.

SEC. 8. DOCUMENTATION OF CERTAIN VESSELS.

Section 12102 of title 46, United States Code, is amended by adding at the end thereof the following:

''(e) A vessel otherwise eligible to be documented under this section may not be documented as a vessel of the United States if—

''(1) the owner of the vessel has abandoned any vessel on a coral reef located in waters subject to the jurisdiction of the United States; and

''(2) the abandoned vessel remains on the coral reef or was removed from the coral reef under section 5 or 6 of the Coral Reef Protection Act of 1999 (or any other provision of law in pari materia enacted after 1998),

unless the owner of the vessel has reimbursed the United States for environmental damage caused by the vessel and the funds expended to remove it.''.

SEC. 9. CERTAIN GROUNDED VESSELS.

(a) IN GENERAL.—The vessels described in subsection (b), and the reefs upon which such vessels may be found, are hereby designated for purposes of section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) as a site at which there is a substantial threat of release of a hazardous substance into the environment. For purposes of that Act, the site shall not be considered to have resulted from an act of God.

(b) DESCRIPTION OF SITE.—The vessels to which subsection (a) applies are 9 fishing vessels driven by Typhoon Val in 1991 onto coral reefs inside Pago Pago harbor near the villages of Leloaloa and Aua.

SEC. 10. REGULATIONS; CORAL REEF CONSERVATION FUND.

(a) REGULATIONS.—Within 90 days after the date of enactment of this Act, the Secretary shall promulgate necessary regulations for implementing this section. In developing those regulations, the Secretary shall consult with regional and local entities, including States and territories, involved in setting priorities for conservation of coral reefs.

(b) FUND.—The Secretary may enter into an agreement with a foundation authorizing the foundation to receive, hold, and administer funds received by the foundation pursuant to this section. The foundation shall invest, reinvest, and otherwise administer the funds and maintain such funds and any interest or revenues earned in a separate interest bearing account, hereafter referred to as the Fund, established by the foundation solely to support partnerships between the public and private sectors that further the purposes of this Act.

(c) AUTHORIZATION TO SOLICIT DONATIONS.—Consistent with section 3703 of title 16, United States Code, and pursuant to the agreement entered into under subsection (b) of this section, a foundation may accept, receive, solicit, hold, administer, and use any gift or donation to further the purposes of this Act. Such funds shall be deposited and maintained in the Fund established by a foundation under subsection (b) of this section.

(d) REVIEW OF PERFORMANCE.—The Secretary shall conduct a continuing review of the grant program administered by a foundation under this section. Each review shall include a written assessment concerning the extent to which that foundation has implemented the goals and requirements of this section.

(e) ADMINISTRATION.—Under the agreement entered into pursuant to subsection (b) of this section, the Secretary may transfer funds appropriated under section 11(b)(1) to a foundation. Amounts received by a foundation under this subsection may be used for matching, in whole or in part, contributions (whether in currency, services, or property) made to the foundation by private persons and State and local government agencies.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $20,000,000 for each of fiscal years 2000, 2001, 2002, 2003, and 2004 to carry out this Act, which may remain available until expended.

(b) USE OF AMOUNTS APPROPRIATED.—

(1) RESTORATION AND CONSERVATION PROJECTS.—Not more than $15,000,000 of the amounts appropriated under subsection (a) shall be used by the Secretary to support coral reef restoration and conservation projects under section 6(a), of which not more than 20 percent shall be used for technical assistance provided by the Secretary.

(2) NATIONAL PROGRAM.—Not more than $5,000,000 of the amounts appropriated under subsection (a) shall be used by the Secretary to support coral reef conservation projects under section 7.

(3) ADMINISTRATION.—Not more than 1 percent of the amounts appropriated under paragraph 1 may be used by the Secretary for administration of this Act.

By Mr. ABRAHAM (for himself, Mr. TORRICELLI, Mr. HATCH, and Mr. MCCAIN):

S. 1255. A bill to protect consumers and promote electronic commerce by amending certain trademark infringement, dilution, and counterfeiting laws, and for other purposes; to the Committee on the Judiciary.

ANTICYBERSQUATTING CONSUMER PROTECTION ACT

Mr. ABRAHAM. Mr. President, I rise today to introduce the Anticybersquatting Consumer Protection Act on behalf of myself, Senator TORRICELLI, Senator HATCH, and Senator MCCAIN. This legislation will combat a new form of high-tech fraud that is causing confusion and inconvenience for consumers, increasing costs for people doing business on the internet, and posing an enormous threat to a century of pre-Internet American business efforts. The fraud is commonly called ''cybersquatting,'' a practice whereby individuals reserve internet domain names or other identifiers of online locations that are similar or identical to trademarked names. The easiest prey for cybersquatters has turned out to be computer-unsavvy trademark-owners in the non-internet world. Once a ''brick and mortar'' trademark is registered as an on-line identifier or domain name, the ''cybersquatter'' can engage in a variety of nefarious activities—from the relatively-benign parody of a business or individual, to the obscene prank of redirecting an unsuspecting consumer to pornographic content, to the destructive worldwide slander of a centuries-old brand name. For the enterprising cybersquatter, holding out a domain name for extortionate compensation is a tried-and-true business practice, and the net effect of this behavior is to undermine consumer confidence, discourage consumer use of the internet, and destroy the value of brand-names and trademarks of this nation's businesses.

Many companies simply pay extortionate prices to cybersquatters in order to rid themselves of a headache with no certain outcome. For example, Gateway recently paid $100,000 to a cybersquatter who had placed pornographic images to the website ''www.gateway20000''. Rather than simply give up, several companies already have instead sought protection from cybersquatters through the legal system. For example, the investment firm Paine Webber was forced to sue an internet Web site, wwwpainewebber.com'' and its creator. The domain name at issue took advantage of a typographical error—the missing ''.'' (dot) between ''www'' and ''painewebber''—in order to direct consumers desiring to do business with Paine Webber to a website containing pornographic images. As with much of the pre-internet law that is applied to this post-internet world, precedent is still developing, and at this point, one cannot predict with certainty which party to a dispute will win, and on what grounds, in the future.

Mr. President, some Americans continue to do a thriving, if unethical, business collecting and selling internet addresses containing trademarked names. Whether perpetrated to defraud the public or to extort the trademark owner, squatting on internet addresses using trademarked names is wrong. It must be stopped for the sake of consumers, for the sake of trademark owners and for the sake of the vast, growing electronic commerce that is doing so much to spur economic growth and innovation in this country.

Mr. President, the Anticybersquatting Consumer Protection Act will help to establish uniform rules for dealing with this attack on interstate commerce. This legislation would establish penalties for criminal use of a counterfeit trademark as a domain name. Using a company's trademark or its variant as the address of an internet site would constitute criminal use of a counterfeit trademark if the defendant registered the address either knowingly and fraudulently or in bad faith. Among the evidence establishing bad faith would be registry of a domain name with (1) intent to cause confusion

or mistake or deception, to dilute the distinctive quality of a famous trademark, or intent to divert consumers from the trademark owner's domain to one's own; and (2) providing false information on the application to register the identifier, or offering to transfer the registration to a rightful owner for consideration for any thing of value. Bad faith could not be shown where the identifier is the defendant's legal first name or surname or where the defendant used the identifier in legitimate commerce before the earlier of either the first use of the registered trademark or the effective date of its registration. Violation of this prohibition would constitute a Class B misdemeanor for the first offense; subsequent offenses would be classified as Class E felonies.

In addition, Mr. President, the Anticybersquatting Consumer Protection Act provides for statutory civil damages in trademark cases of at least $1,000, but not more than $100,000 ($300,000 if the registration or use of the trademark was willful) per trademark per identifier. The plaintiff may elect these damages in lieu of actual damages or profits at any time before final judgment.

These provisions will discourage anyone from ''squatting'' on addresses in cyberspace to which they are not entitled. In the process it will protect consumers from fraud, protect the value of countless trademarks, and encourage continued growth in our electronic commerce industry.

Mr President, the growth of the Internet has provided businesses and individuals with unprecedented access to a worldwide source of information, commerce, and community. Unfortunately, those bad actors seeking to cause harm to businesses and individuals have seen their opportunities increase as well. In my opinion, on-line extortion in this form is unacceptable and outrageous. Whether it's people extorting companies by registering company names, misdirecting Internet users to inappropriate sites, or otherwise attempting to damage a trademark that a business has spent decades building into a recognizable brand, persons engaging in cybersquatting activity should be held accountable for their actions.

I urge my colleagues to support this important legislation, and I ask unanimous consent that the full text of the bill, a section by section analysis and additional materials be printed in the RECORD.

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

S. 1255

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 ''Anticybersquatting Consumer Protection Act''.

SEC. 2. FINDINGS.

Congress finds that the unauthorized registration or use of trademarks as Internet domain names or other identifiers of online locations (commonly known as ''cybersquatting'')—

(1) results in consumer fraud and public confusion as to the true source or sponsorship of products and services;

(2) impairs electronic commerce, which is important to the economy of the United States; and

(3) deprives owners of trademarks of substantial revenues and consumer goodwill.

SEC. 3. TRADEMARK REMEDIES.

(a) RECOVERY FOR VIOLATION OF RIGHTS.—Section 35 of the Act entitled ''An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946, (commonly referred to as the ''Trademark Act of 1946'') (15 U.S.C. 1117) is amended by adding at the end the following:

''(d)(1) In this subsection, the term 'Internet' has the meaning given that term in section 230(f)(1) of the Communications Act of 1934 (47 U.S.C. 230(f)(1)).

''(2)(A) In a case involving the registration or use of an identifier described in subparagraph (B), the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a)—

''(i) an award of statutory damages in the amount of—

''(I) not less than $1,000 or more than $100,000 per trademark per identifier, as the court considers just; or

''(II) if the court finds that the registration or use of the registered trademark as an identifier was willful, not less than $3,000 or more than $300,000 per trademark per identifier, as the court considers just; and

''(ii) full costs and reasonable attorney's fees.

''(B) An identifier referred to in subparagraph (A) is an Internet domain name or other identifier of an online location that is—

''(i) the trademark of a person or entity other than the person or entity registering or using the identifier; or

''(ii) sufficiently similar to a trademark of a person or entity other than the person or entity registering or using the identifier as to be likely to—

''(I) cause confusion or mistake;

''(II) deceive; or

''(III) cause dilution of the distinctive quality of a famous trademark.''.

(b) REMEDIES FOR DILUTION OF FAMOUS MARKS.—Section 43(c)(2) of the Act entitled ''An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946, (commonly referred to as the ''Trademark Act of 1946'') (15 U.S.C. 1125(c)(2)) is amended by striking ''35(a)'' and inserting ''35 (a) and (d)''.

SEC. 4. CRIMINAL USE OF COUNTERFEIT TRADEMARK.

(a) IN GENERAL.—Section 2320(a) of title 18, United States Code, is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by striking ''section that occurs'' and inserting ''paragraph that occurs''; and

(3) by adding at the end the following:

''(2)(A) In this paragraph, the term 'Internet' has the meaning given that term in section 230(f)(1) of the Communications Act of 1934 (47 U.S.C. 230(f)(1)).

''(B)(i) Except as provided in clause (ii), whoever knowingly and fraudulently or in bad faith registers or uses an identifier described in subparagraph (C) shall be guilty of a Class B misdemeanor.

''(ii) In the case of an offense by a person under this paragraph that occurs after that person is convicted of another offense under this section, that person shall be guilty of a Class E felony.

''(C) An identifier referred to in subparagraph (B) is an Internet domain name or other identifier of an online location that is—

''(i) the trademark of a person or entity other than the person or entity registering or using the identifier; or

''(ii) sufficiently similar to a trademark of a person or entity other than the person or entity registering or using the identifier as to be likely to—

''(I) cause confusion or mistake;

''(II) deceive; or

''(III) cause dilution of the distinctive quality of a famous trademark.

''(D)(i) For the purposes of a prosecution under this paragraph, if all of the conditions described in clause (ii) apply to the registration or use of an identifier described in subparagraph (C) by a defendant, those conditions shall constitute prima facie evidence that the registration or use was fraudulent or in bad faith.

''(ii) The conditions referred to in clause (i) are as follows:

''(I) The defendant registered or used an identifier described in subparagraph (C)—

''(aa) with intent to cause confusion or mistake, deceive, or cause dilution of the distinctive quality of a famous trademark; or

''(bb) with the intention of diverting consumers from the domain or other online location of the person or entity who is the owner of a trademark described in subparagraph (C) to the domain or other online location of the defendant.

''(II) The defendant—

''(aa) provided false information in the defendant's application to register the identifier; or

''(bb) offered to transfer the registration of the identifier to the trademark owner or another person or entity in consideration for any thing of value.

''(III) The identifier is not—

''(aa) the defendant's legal first name or surname; or

''(bb) a trademark of the defendant used in legitimate commerce before the earlier of the first use of the registered trademark referred to in subparagraph (C) or the effective date of the registration of that trademark.

''(iii) The application of this subparagraph shall not be exclusive. Nothing in this subparagraph may be construed to limit the applicability of subparagraph (B).''.

(b) SENTENCING GUIDELINES.—

(1) IN GENERAL.—Pursuant to the authority granted to the United States Sentencing Commission under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall—

(A) review the Federal sentencing guidelines for crimes against intellectual property (including offenses under section 2320 of title 18, United States Code); and

(B) promulgate such amendments to the Federal Sentencing Guidelines as are necessary to ensure that the applicable sentence for a defendant convicted of a crime against intellectual property is sufficiently stringent to deter such a crime.

(2) FACTORS FOR CONSIDERATION.—In carrying out this subsection, the United States Sentencing Commission shall—

(A) take into account the findings under section 2; and

(B) ensure that the amendments promulgated under paragraph (1)(B) adequately provide for sentencing for crimes described in paragraph (2) of section 2320(a) of title 18, United States Code, as added by subsection (a).

SEC. 5. LIMITATION OF LIABILITY.

Section 39 of the Act entitled ''An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946, (commonly referred to as the ''Trademark Act of 1946'') (15 U.S.C. 1121) is amended by adding at the end the following:

''(c)(1) In this subsection, the term 'Internet' has the meaning given that term in section 230(f)(1) of the Communications Act of 1934 (47 U.S.C. 230(f)(1)).

''(2)(A) An Internet service provider, domain name registrar, or registry described in subparagraph (B) shall not be liable for monetary relief to any person for a removal or transfer described in that subparagraph, without regard to whether the domain name or other identifier is ultimately determined to be infringing or dilutive.

''(B) An Internet service provider, domain name registrar, or registry referred to in subparagraph (A) is a provider, registrar, or registry that, upon receipt of a written notice from the owner of a trademark registered in the Patent and Trademark Office, removes from domain name service (DNS) service or registration, or transfers to the trademark owner, an Internet domain name or other identifier of an online location alleged to be infringing or dilutive, in compliance with—

''(i) a court order; or

''(ii) the reasonable implementation of a policy prohibiting the unauthorized registration or use of another's registered trademark as an Internet domain name or other identifier of an online location.''.

THE ANTICYBERSQUATTING CONSUMER PROTECTION ACT—SECTION-BY-SECTION ANALYSIS

A bill to protect consumers and promote electronic commerce by amending certain trademark infringement, dilution, and counterfeiting laws, and for other purposes.

SECTION 1: SHORT TITLE

This Act may be cited as the ''Anticybersquatting Consumer Protection Act.''

SECTION 2: FINDINGS

This section sets out Congressional findings concerning the effect of ''unauthorized registration or use of trademarks as Internet domain names or other identifiers of online locations'' (''cybersquatting''). Cyber- squatting (1) results in consumer fraud, (2) impairs electronic interstate commerce, and (3) deprives trademark owners of revenue and consumer goodwill.

SECTION 3: TRADEMARK REMEDIES

(a) Recovery for violation of rights

The Trademark Act of 1946 (15 U.S.C. 1117) shall incorporate the definition of ''Internet'' used in the Communications Act of 1934 (47 U.S.C. 230 (f) (1)).

An ''identifier'' refers to an Internet domain name or another identifier of an online location that is (i) the plaintiff's trademark, or (ii) so sufficiently similar to the plaintiff's trademark as to be likely to ''cause confusion or mistake,'' ''deceive,'' or ''cause dilution of the distinctive quality of a famous trademark.''

This section expands civil penalties for cybersquatting by providing that before final judgment in a case involving the registration or use of an identifier, a plaintiff may—instead of seeking actual damages or profits—elect to recover statutory damages of at least $1,000, but not more than $100,000 (at least $3,000, but not more than $300,000 if court finds that the registration or use of the trademark was willful) per trademark per identifier, as the court considers just. Furthermore, the plaintiff may recover full costs and reasonable attorney's fees.

(b) Remedies for dilution of famous marks

This section amends the Trademark Act of 1946 (15 U.S.C. 1125 (c) (2)) by making the remedies set forth in section 3 (a) also available for the willful dilution of famous marks or trade on the owner's reputation.

SECTION 4: CRIMINAL USE OF COUNTERFEIT TRADEMARK

(a) In general

This section amends 18 U.S.C. 2320 (a) (''Trafficking in Counterfeit Goods or Services'') by adding criminal penalties for the use of a counterfeit trademark on the Internet. Like section 3 (a), this section incorporates the definition of Internet used in the Communications Act of 1934 (47 U.S.C. 230 (f) (1)). It also incorporates the same definition of ''identifier'' found in section 3 (a).

Under this section, whoever knowingly and fraudulently or in bad faith registers or uses the trademark of another would be guilty of a Class B misdemeanor. Repeat offenders would be guilty of Class E felony.

Prima facie evidence that a registration or use was fraudulent or in bad faith would require satisfaction of the following elements:

(1) the defendant registered or used an identifier with intent to (a) cause confusion or mistake, deceive, or cause dilution of the distinctive quality of a famous trademark, or (b) with intention of diverting consumers from the trademark owner to the defendant; and

(2) the defendant provided false information in its application to register the identifier or offered to transfer the identifier's registration to the trademark owner or other person or entity for something of value; and

(3) the identifier is not the defendant's legal first name or surname or the defendant had not used the identifier in legitimate commerce before the earlier of either the first use of the registered trademark or the effective date of its registration.

(b) Sentencing guidelines

(1) In general

The United States Sentencing Commission shall provide for penalties for the criminal use of counterfeit trademarks by amending the sentencing guidelines in accordance with the guidelines for crimes against intellectual property (18 U.S.C. 2320).

(2) Factors for consideration

The United States Sentencing Commission shall take into account the Findings promulgated in Section 2 and ensure that the amendments to the sentencing guidelines adequately provide penalties for the crimes described in this Act.

SECTION 5: LIMITATION OF LIABILITY

An Internet service provider (ISP) or domain name registrar shall not be liable for monetary damages to any person if it removes an infringing identifier from domain name server (DNS) service or from registration, or transfers it to the trademark owner: (1) upon written notice from the trademark owner and (2) in compliance with either a court order or the reasonable implementation of a policy prohibiting the unauthorized registration or use of another's registered trademark.

This limitation shall apply without regard to whether the domain name or other identifier is ultimately determined to be infringing or dilutive.

INFORMATION TECHNOLOGY INDUSTRY COUNCIL,
Washington, DC, June 21, 1999.

Hon. SPENCER ABRAHAM,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR ABRAHAM: On behalf of ITI's member companies, I am writing to thank you, Senator Hatch and Senator Torricelli for your leadership in introducing the Anti-Cybersquatting Consumer Protection Act today.

ITI is the association of leading U.S. providers of information technology products and services. It advocates growing the economy through innovation and supports free-market policies. ITI members had worldwide revenue of more than $440 billion in 1998 and employ more than 1.2 million people in the United States.

Over the past several years, trademark holders have found it difficult and expensive to prevent infringement and dilution of their marks online, especially as ''cybersquatters'' have made a cottage industry out of intentionally registering others' trademarks as domain names and seeking to sell the domain name back to the rightful owners. Such activity damages electronic commerce by sowing confusion among consumers and other Internet users.

While some ITI members have concerns about the bill's criminal provisions, we believe the importance of federal legislation to stop cybersquatting should not be underestimated and we look forward to working with you as this legislation is considered by the Senate.

Best regards,

PHILLIP BOND,
Senior Vice President, Government Relations.

ADDITIONAL COSPONSORS

S. 25

At the request of Ms. LANDRIEU, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 25, a bill to provide Coastal Impact Assistance to State and local governments, to amend the Outer Continental Shelf Lands Act Amendments of 1978, the Land and Water Conservation Fund Act of 1965, the Urban Park and Recreation Recovery Act, and the Federal Aid in Wildlife Restoration Act (commonly referred to as the Pittman-Robertson Act) to establish a fund to meet the outdoor conservation and recreation needs of the American people, and for other purposes.

S. 37

At the request of Mr. GRASSLEY, the names of the Senator from Minnesota (Mr. GRAMS) and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. 37, a bill to amend title XVIII of the Social Security Act to repeal the restriction on payment for certain hospital discharges to post-acute care imposed by section 4407 of the Balanced Budget Act of 1997.

S. 57

At the request of Ms. MIKULSKI, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 57, a bill to amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees and annuitants, and for other purposes.

S. 61

At the request of Mr. DEWINE, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 61, a bill to amend the Tariff Act of 1930 to eliminate disincentives to fair trade conditions.