

commemorative postage stamp should be issued by the United States Postal Service honoring the members of the Armed Forces who have been awarded the Purple Heart; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN:

S. 1273. A bill to amend the Federal Power Act, to facilitate the transition to more competitive and efficient electric power markets, and for other purposes; to the Committee on Energy and Natural Resources.

FEDERAL POWER ACT OF AMENDMENTS OF 1999

Mr. BINGAMAN. Mr. President, I rise to introduce the electricity restructuring bill I introduced in the last Congress. I offer the bill today because the Energy and Natural Resources Committee will be holding two legislative hearings next week on the pending electricity restructuring bills, and I want this bill to be included in the discussions. With the exception of two typographical corrections, the text of the bill is identical to S. 1276, which I introduced in the last Congress.

The bill has three principal legislative objectives: (1) clarifying the line between state and federal jurisdiction, (2) strengthening the reliability of the transmission system, and (3) ensuring fair access to the interstate transmission grid. When I introduced the bill in the last Congress it received wide support as the nucleus of the most critical issues that Congress must address in any restructuring legislation.

As many Senators are aware, I am working with the chairman of the Energy and Natural Resources Committee, my good friend Senator MURKOWSKI, on developing a consensus electricity bill that can be marked up and reported to the full Senate. Although I had expected that we would be further along in the process by now, I remain fully committed to following this bipartisan course. My introduction of this bill should not impeded that process.

Much has happened in the electric utility industry since this bill was first drafted nearly two years ago. There are now six approved regional transmission operators, and several more are on the drawing boards. Twenty-two states, including New Mexico, have implemented some form of electric competition and two more may pass legislation this year. And there is now industry-wide consensus on the importance of federal legislation to assure the continued security and reliability of the nation's high-tension transmission grid.

Mr. President, I continue to see a strong need for federal electricity legislation so that states that have elected retail competition can fully enjoy all of the benefits that completion brings. In addition, improvements in federal regulation will streamline wholesale markets in every state. At the same time, I believe Congress should not enact federal legislation

that disrupts existing state laws or that forces unwilling states to restructure.

I also have increasing concern about the mounting cloud of litigation pending in the federal courts that could frustrate the development of healthy wholesale and retail markets. Only Congress can clear up jurisdictional issues and let competitive markets fully develop. Interstate transmission must be a federal responsibility.

Mr. President, I believe we now have a consensus on the core issues that Congress must address. The Energy Committee held an oversight hearing last month on the status of restructuring in the states. There was nearly universal agreement among the witnesses on the need for federal legislation addressing interstate transmission and federal-state jurisdiction

I look forward to the legislative hearings next week on this and other bills and to reporting bi-partisan electricity legislation that can pass the Senate this year.

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

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

S. 1273

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 "Federal Power Act Amendments of 1999".

SEC. 2. CLARIFICATION OF JURISDICTION.

(a) DECLARATION OF POLICY.—Section 201(a) of the Federal Power Act (16 U.S.C. 824(a)) is amended by—

(1) inserting after "transmission of electric energy in interstate commerce" the following: ", including the unbundled transmission of electric energy sold at retail,"; and

(2) striking "such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States." and inserting the following: "such Federal regulation shall not extend, however, to the bundled retail sale of electric energy or to unbundled local distribution service, which are subject to regulation by the States."

(b) APPLICATION OF PART.—Section 201(b) of the Federal Power Act (16 U.S.C. 824(b)(1)) is amended by—

(1) inserting after "the transmission of electric energy in interstate commerce" the following: ", including the unbundled transmission of electric energy sold at retail,"; and

(2) adding at the end the following:

"(3) The Commission, after consulting with the appropriate State regulatory authorities, shall determine, by rule or order, which facilities used for the transmission and delivery of electric energy are used for transmission in interstate commerce subject to the jurisdiction of the Commission under this Part, and which are used for local distribution subject to State jurisdiction."

(c) DEFINITION OF INTERSTATE COMMERCE.—Section 201(c) of the Federal Power Act (16 U.S.C. 824(c)) is amended by inserting after "outside thereof" the following: "(including consumption in a foreign country)".

(d) DEFINITION OF TYPES OF SALES.—Section 201(d) of the Federal Power Act (16 U.S.C. 824(d)) is amended by—

(1) inserting "(1) after the subsection designation;

(2) adding at the end the following:

"(2) The term 'bundled retail sale of electric energy' means the sale of electric energy to an ultimate consumer in which the generation and transmission service are not sold separately.

"(3) The term 'unbundled local distribution service' means the delivery of electric energy to an ultimate consumer if—

"(A) the electric energy and the service of delivering it are sold separately, and

"(B) the delivery uses facilities for local distribution as determined by the Commission under subsection (b)(3).

"(4) The term 'unbundled transmission of electric energy sold at retail' means the transmission of electric energy to an ultimate consumer if—

"(A) the electric energy and the service of transmitting it are sold separately, and

"(B) the transmission uses facilities for transmission in interstate commerce as determined by the Commission under subsection (b)(3)."

(e) DEFINITIONS OF PUBLIC UTILITY.—Section 201 of the Federal Power Act (16 U.S.C. 824) is amended by striking subsection (e) and inserting the following:

"(e) The term 'public utility' when used in this Part or in the Part next following means—

"(1) any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part (other than facilities subject to such jurisdiction solely by reason of section 210, 211, or 212); or

"(2) any electric utility or Federal power marketing agency not otherwise subject to the jurisdiction of the Commission under this Part, including—

"(A) the Tennessee Valley Authority.

"(B) a Federal power marketing agency.

"(C) a State or any political subdivision of a State, or any agency, authority, or instrumentality of a State or political subdivision,

"(D) a corporation or association that has ever received a loan for the purpose of providing electric service from the Administrator of the Rural Electrification Administration or the Rural Utilities Service under the Rural Electrification Act of 1936; or

"(E) any corporation or association which is wholly owned, directly or indirectly, by any one or more of the foregoing,

but only with respect to determining, fixing, and otherwise regulating the rates, terms, and conditions for the transmission of electric energy under this Part (including sections 217, 218, and 219)."

(f) APPLICATION OF PART TO GOVERNMENT UTILITIES.—Section 201(f) of the Federal Power Act (16 U.S.C. 824(f)) is amended by striking "No provision" and inserting "Except as provided in subsection (e)(2) and section 3(23), no provision".

(g) DEFINITION OF TRANSMITTING UTILITY.—Section 3 of the Federal Power Act (16 U.S.C. 796) is amended by striking paragraph (23) and inserting the following:

"(23) TRANSMITTING UTILITY.—The term 'transmitting utility' means any electric utility, qualifying cogeneration facility, qualifying small power production facility, Federal power marketing agency, or any public utility, as defined in section 201(e)(2), that owns or operates electric power transmission facilities which are used for the sale of electric energy."

SEC. 3. FEDERAL WHEELING AUTHORITY.

(a) COMMISSION AUTHORITY TO ORDER RETAIL WHEELING.—

(1) Section 211(a) of the Federal Power Act (16 U.S.C. 824j(a)) is amended by striking "for resale".

(2) Section 212(a) of the Federal Power Act (16 U.S.C. 824k(a)) is amended by striking

"wholesale transmission services" each place it appears and inserting "transmission services".

(3) Section 212(g) of the Federal Power Act (16 U.S.C. 824k(g)) is repealed.

(b) LIMITATION ON COMMISSION AUTHORITY TO ORDER RETAIL WHEELING.—Section 212 of the Federal Power Act (16 U.S.C. 824k) is further amended by striking subsection (h) and inserting the following:

"(h) LIMITATION ON COMMISSION AUTHORITY TO ORDER RETAIL WHEELING.—No rule or order issued under this Act shall require or be conditioned upon the transmission of electric energy:

"(I) directly to an ultimate consumer in connection with a sale of electric energy to the consumer unless the seller of such energy is permitted or required under applicable State law to make such sale to such consumer, or

"(2) to, or for the benefit of, an electric utility if such electric energy would be sold by such utility directly to an ultimate consumer, unless the utility is permitted or required under applicable State law to sell electric energy to such ultimate consumer."

(c) CONFORMING AMENDMENT.—Section 3 of the Federal Power Act (16 U.S.C. 796) is amended by striking paragraph (24) and inserting the following:

"(24) TRANSMISSION SERVICES.—The term 'transmission services' means the transmission of electric energy in interstate commerce."

SEC. 4. STATE AUTHORITY TO ORDER RETAIL ACCESS.

Part II of the Federal Power Act is further amended by adding at the end the following:

SEC. 215. STATE AUTHORITY TO ORDER RETAIL ACCESS.

"(a) STATE AUTHORITY.—Neither silence on the part of Congress nor any Act of Congress shall be construed to preclude a State or State commission, acting under authority of state law, from requiring an electric utility subject to its jurisdiction to provide unbundled local distribution service to any electric consumer within such State.

"(b) NONDISCRIMINATORY SERVICE.—If a State or State commission permits or requires an electric utility subject to its jurisdiction to provide unbundled local distribution service to any electric consumer within such State, the electric utility shall provide such service on a not unduly discriminatory basis. Any law, regulation, or order of a State or State commission that results in unbundled local distribution service that is unjust, unreasonable, unduly discriminatory, or preferential is hereby preempted.

"(c) RECIPROCITY.—Notwithstanding subsection (b), a State or state commission may bar an electric utility from selling electric energy to an ultimate consumer using local distribution facilities in such State if such utility or any of its affiliates owns or controls local distribution facilities and is not itself providing unbundled local distribution service.

"(d) STATE CHARGES.—Nothing in this Act shall prohibit a State or State regulatory authority from assessing a nondiscriminatory charge on unbundled local distribution service within the State, the retail sale of electric energy within the State, or the generation of electric energy for consumption by the generator within the State."

SEC. 5. UNIVERSAL AND AFFORDABLE SERVICE.

Part II of the Federal Power Act is further amended by adding at the end the following:

SEC. 216. UNIVERSAL AND AFFORDABLE SERVICE.

"(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

"(I) every consumer of electric energy should have access to electric energy at reasonable and affordable rates, and

"(2) the Commission and the States should ensure that competition in the electric energy business does not result in the loss of service to rural, residential, or low-income consumers.

"(b) CONSIDERATION AND REPORTS.—Any State or State commission that requires an electric utility subject to its jurisdiction to provide unbundled local distribution service shall—

"(I) consider adopting measures to—

"(A) ensure that every consumer of electric energy within such State shall have access to electric energy at reasonable and affordable rates, and

"(B) prevent the loss of service to rural, residential, or low-income consumers; and

"(2) report to the Commission on any measures adopted under paragraph (1)."

SEC. 6. NATIONAL ELECTRIC RELIABILITY STANDARDS.

Part II of the Federal Power Act is further amended by adding at the end the following:

SEC. 217. NATIONAL ELECTRIC RELIABILITY STANDARDS.

"(a) RELIABILITY STANDARDS.—The Commission shall establish and enforce national electric reliability standards to ensure the reliability of the electric transmission system.

"(b) DESIGNATION OF NATIONAL AND REGIONAL COUNCILS.—

"(I) For purposes of establishing and enforcing national electric reliability standards under subsection (a), the Commission may designate an appropriate number of regional electric reliability councils composed of electric utilities or transmitting utilities, and one national electric reliability council composed of designated regional electric reliability councils, whose mission is to promote the reliability of electric transmission system.

"(2) The Commission shall not designate a regional electric reliability council unless the Commission determines that the council—

"(A) permits open access to membership from all entities engaged in the business of selling, generating, transmitting, or delivering electric energy within its region;

"(B) provides fair representation of its members in the selection of its directors and the management of its affairs; and

"(C) adopts and enforces appropriate standards of operation designed to promote the reliability of the electric transmission system.

"(c) INCORPORATION OF COUNCIL STANDARDS.—The Commission may incorporate, in whole or in part, the standards of operation adopted by the regional and national electric reliability councils in the national electric reliability standards adopted by the Commission under subsection (a).

"(d) ENFORCEMENT.—The Commission may, by rule or order, require any public utility or transmitting utility to comply with any standard adopted by the Commission under this section.

SEC. 7. SITING NEW INTERSTATE TRANSMISSION FACILITIES.

Part II of the Federal Power Act is further amended by adding at the end the following:

SEC. 218. SITING NEW INTERSTATE TRANSMISSION FACILITIES.

"(a) COMMISSION AUTHORITY.—Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may order a transmitting utility to enlarge, extend, or improve its facilities for the interstate transmission of electric energy.

"(b) PROCEDURE.—The Commission may commence a proceeding for the issuance of an order under subsection (a) upon the application of an electric utility, transmitting utility, or state regulatory authority, or upon its own motion.

"(c) COMPLIANCE WITH OTHER LAWS.—Commission action under this section shall be subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable state and federal laws.

"(d) USE OF JOINT BOARDS.—Before issuing an order under subsection (a), the Commission shall refer the matter to a joint board appointed under section 209(a) for advice and recommendations on the need for, design of, and location of the proposed enlargement, extension, or improvement. The Commission shall consider the advice and recommendations of the Board before ordering such enlargement, extension, or improvement.

"(e) LIMITATION ON AUTHORITY.—The Commission shall have no authority to compel a transmitting utility to extend or improve its transmission facilities if such enlargement, extension, or improvement would unreasonably impair the ability of the transmitting utility to render adequate service to its customers."

SEC. 8. REGIONAL INDEPENDENT SYSTEM OPERATORS.

Part II of the Federal Power Act is further amended by adding at the end the following:

SEC. 219. REGIONAL INDEPENDENT SYSTEM OPERATORS.

"(a) REGIONAL TRANSMISSION SYSTEMS.—Whenever the Commission finds such action necessary or desirable in the public interest to ensure the fair and non-discriminatory access to transmission services within a region, the Commission may order the formation of a regional transmission system and may order any transmitting utility operating within such region to participate in the regional transmission system.

"(b) OVERSIGHT BOARD.—The Commission shall appoint a regional oversight board to oversee the operation of the regional transmission system. Such oversight board shall be composed of a fair representation of all of the transmitting utilities participating in the regional transmission system, electric utilities and consumers served by the system, and State regulatory authorities within the region. The regional oversight board shall ensure that the independent system operator formulates policies, operates the system, and resolves disputes in a fair and non-discriminatory manner.

"(c) INDEPENDENT SYSTEM OPERATOR.—The regional oversight board shall appoint an independent system operator to operate the regional transmission system. No independent system operator shall—

"(1) own generating facilities or sell electric energy, or

"(2) be subject to the control of, or have a financial interest in, any electric utility or transmitting utility within the region served by the independent system operator.

"(d) COMMISSION RULES.—The Commission shall establish rules necessary to implement this section."

SEC. 9. ENFORCEMENT.

"(a) GENERAL PENALTIES.—Section 316(c) of the Federal Power Act (16 U.S.C. 825o(c)) is amended by—

"(1) striking "subsection" and inserting "section"; and

"(2) striking "or 214" and inserting: "214, 217, 218, or 219".

"(b) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o-1) is amended by striking "or 214" each place it appears and inserting: "214, 217, 218, or 219".

SEC. 10. AMENDMENT TO THE PUBLIC UTILITY REGULATORY POLICIES ACT.

Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is amended by adding at the end the following:

"(m) PROTECTION OF EXISTING WHOLESALE POWER PURCHASE CONTRACTS.—No State or

State regulatory authority may bar a State regulated electric utility from recovering the cost of electric energy the utility is required to purchase from a qualifying cogeneration facility or qualifying small power production facility under this section."

By Mr. GRAMS (for himself, Mr. ROTH, Mr. ABRAHAM, Mr. ASHCROFT, Mr. BURNS, Mr. DEWINE, Mr. FRIST, Mr. GORTON, Mrs. HUTCHISON, Mr. SANTORUM, Mr. THOMAS, Mr. NICKLES, Mr. MACK, Mr. CRAIG, Mr. COVERDELL, and Mr. McCONNELL):

S. 1274. A bill to amend the Internal Revenue Code of 1986 to increase the accessibility to and affordability of health care, and for other purposes; to the Committee on Finance.

HEALTH CARE ACCESS AND EQUITY ACT OF 1999

Mr. GRAMS. Mr. President, I rise today with my colleagues Chairman ROTH and Senator ABRAHAM, to introduce legislation which will provide access to affordable health insurance for 43 million uninsured Americans, correct the inequities in the tax treatment of certain types of health insurance, and allow for the full deductibility of long term care insurance.

The Health Care Accessibility and Equity Act of 1999 presents us with the opportunity to create the most comprehensive tax-deductible coverage system in our nation's history.

One of the most discriminatory portions of the tax code is the disparate treatment between an employer purchasing a health plan as opposed to an individual purchasing health insurance on their own.

Mr. President, when employers purchase a health plan for their employees, he or she can fully deduct the costs of providing that insurance, effectively lowering the actual costs of providing that coverage.

However, when an employee purchases an individual policy on their own, they must do so with after tax-dollars. They don't have the ability or the advantage offered to employers to reduce the actual costs of the policy by deducting premiums from their taxes every year.

Therefore, they usually wind up without health coverage. The Health Care Accessibility and Equity Act will end this discrimination within the tax code and make health care available for many Americans today.

Further, the legislation offered today by Senator ROTH, Senator ABRAHAM, and myself would immediately allow the self-employed to fully deduct health insurance costs. Twenty-five million Americans are in families headed by a self-employed individual—20 percent of those are uninsured.

We always talk about trying to have more Americans covered by health care insurance. Yet, we have a tax code which discriminates against some, while favoring others. This results in fewer people being covered.

Let's make the same tax incentives for purchasing health insurance avail-

able to employers apply to everyone—level the playing field and we will have taken the next logical step in the evolution of our health care system.

Mr. President, I believe Congress should be doing all we can to lower the costs of health insurance.

However, it seems most proposals before the Senate do just the opposite by forcing some federal definition of a quality health plan on consumers and sticking them with the bill.

It's not good policy it does nothing for those who are uninsured and it certainly won't help those who will be forced to drop health insurance because they can no longer afford the premiums.

Mr. President, we've heard a lot of rhetoric about patient protections and why the Federal Government needs to step in and help consumers. Indeed, a better role for the Government is to help consumers by removing restrictions on Medical Savings Accounts as we do in this legislation as well.

MSAs allow the consumers to control their costs when it comes to providing their families with health care. It would allow them to decide which provider they want to see and which services they want and will pay for. Certainly, empowering patients is a much more productive solution to a problem than simply forcing consumers to buy the government's definition of quality health insurance.

When Congress created the medical savings accounts in the Kassebaum-Kennedy Health Insurance Portability and Accountability Act, there were so many restrictions placed upon the program then that it was essentially set up to fail. Yet MSAs have managed to become tremendously successful.

According to the General Accounting Office, 37 percent of all MSA policy-holders were previously uninsured. When you gave them the option and the opportunity, they were then able financially to buy insurance. Clearly, MSAs are providing an option for those who before couldn't afford to buy health insurance.

The bill we are introducing today does not force Americans into a government-centered health care plan, a system that they spoke so loudly against back in 1993, if we remember. Senator KENNEDY's Patients' Bill of Rights legislation, I think, is another example of a government-centered approach which actually threatens the accessibility and the affordability of health care.

Again, this morning, our legislation fosters a consumer-centered health care system without raising the costs, which so many of our constituents have favored.

Glenn Howatt of the Minneapolis Star Tribune recently did an article on MSAs and spoke with several policy-holders. I will read a portion of his article which I believe demonstrates exactly why Congress needs to lift the restrictions on MSAs so that everyone has the opportunity to purchase an af-

fordable health insurance plan. Mr. Howatt gives an account of Suzanne Eisenreich Roberts.

Last year, Roberts thought it would be a good idea to dump her individual health insurance policy, which cost \$330 every month, because she rarely got sick.

She switched to an MSA last year. Her premiums dropped to \$100 per month, but her deductible shot up to \$2,250 a year.

Two days after the new policy became effective, Roberts developed a gallstone problem that required surgery. Although the insurance covered the \$14,000 surgery, Roberts had to pay \$2,250 to satisfy the deductible requirement.

"Financially, I can afford the deductible," said Roberts. And, she noted, "I was really out nothing because I would have spent it in premiums anyway."

If Roberts had kept her old policy, her annual premiums would have been \$3,960.

But her new policy's premiums are just \$1,200 a year—a \$2,760 saving that more than makes up for the deductible cost.

Even though she went with the MSA, even though she had to have surgery the first year, she was far ahead by having a medical savings account compared to her own insurance policy.

I ask unanimous consent to have printed the entire text of Mr. Howatt's article and another pertinent article in the RECORD.

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

[From the Star Tribune, Feb. 28, 1999]

MEDICAL SAVINGS ACCOUNTS OFFER RELIEF FROM HIGH HEALTH CARE PREMIUMS

(By Glenn Howatt)

At time when health care premiums in Minnesota are up 15 to 20 percent over last year's rates, a growing number of small businesses are turning to medical savings accounts as a way to seek relief.

Commonly known as MSAs, medical savings accounts combine a high-deductible insurance policy with a tax-advantaged account the consumer can use to pay the deductible. MSAs represent a departure from the norm in a state serviced primarily by health maintenance organizations and other forms of managed care.

Most health insurance policies in Minnesota provide coverage for a wide range of medical needs—everything from complex surgery to routine clinic visits.

But under MSAs, insurance coverage doesn't kick in until the individual policyholder has paid for thousands of dollars worth of health care out of pocket.

This high-deductible insurance policy is paired with the medical savings account, a tax-advantaged fund that helps the policyholder cope financially with the demands of the deductible.

To its advocates, the MSA is more than a one-time fix to cut costs, instead representing a long-term approach to buying health care.

THE ADVANTAGES

The catastrophic insurance policy results in much lower premiums, the high deductible controls costs by cutting down on unnecessary visits to the doctor, and the attractive savings account gives users an incentive to stay healthy so they can use the money for other things, such as retirement, advocates contend.

But MSAs also have critics, who say the high deductible is a burden for those with chronic medical conditions. Some also fear public health consequences if individuals

avoid spending money to receive the kind of preventive health care that is fully covered by managed care policies.

Congress asked the General Accounting Office (GAO), the investigative and research arm of the government, to gauge the impact of MSAs on the health insurance market when it authorized the marketing of MSAs under a four-year experiment that began in 1997.

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While the policy implications of MSAs are still unclear, in practical terms, MSAs are becoming an option for small businesses and the self-employed, the only groups that are eligible to set up MSAs.

Under the current law, the definition of self-employed is the same as the Internal Revenue Service's: a person who pays self-employment tax or pays Social Security tax as a self-employed person. The plans are not available to people who are unemployed or who have retired early and are not yet covered by Medicare, but a bill proposed in the U.S. House would expand the definition to include those groups.

SMALL BUSINESS BUYER

Eldon Kimball, owner of Edina-based Creative Systems Software, happened upon the MSA option after he received a general mailing from an insurance broker.

Kimball, who provides health benefits for himself and his four employees, was looking for some way to deal with spiraling health care premiums.

"Premiums were going up and up and up and up and for a small company like ours, that was becoming a terrible burden," Kimball said.

Small businesses such as Kimball's have few options—cut benefits, ask employees to shoulder more cost, drop health insurance altogether, or let health care take a bigger bite out of the bottom line.

While Kimball noted that switching to an MSA would lower his total premium bill by nearly \$200 a month, he was more impressed with the benefits that the MSA could provide to his employees.

Kimball uses the money he saves on premiums to partially fund the medical savings accounts for his employees, a move that gives him a break on his taxes.

The employees can use the money in their MSAs to pay for medical costs—the annual deductibles for the insurance policy are \$2,250 for individuals and \$4,450 for families.

Anything that employees don't spend they keep, making the MSA another way of saving for retirement. At that point, the money becomes available for any purpose without penalty. Withdrawals from MSAs can be made before retirement for non-medical purposes, but those are subject to penalties and taxes.

RETIREMENT FUND

"It has a long-term advantage," said Kimball. The MSA "becomes another benefit in the form of a retirement fund if they don't use it."

Under the MSA regulations, employers are not required to put money into employees' accounts.

Edwrd M. Ryan, an Eden Prairie-based certified public accountant who employs 10 workers, said his employees still come out ahead even though he doesn't fund their MSAs.

Before his office switched to MSAs last year, he split the cost of the monthly insurance premium with his workers. Now he pays the entire cost of the premium, freeing up workers' money to fund their MSAs.

But MSAs also come with high deductibles, as Suzanne Eisenreich Roberts, who owns Accountant Profile Inc., a Roseville-based

placement agency for accountants, knows well.

Last year, Roberts thought it would be a good idea to dump her individual health insurance policy, which cost \$330 every month, because she rarely got sick.

She switched to an MSA last year. Her premiums dropped to \$100 per month, but her deductible shot up to \$2,250 a year.

Two days after the new policy became effective, Roberts developed a gallstone problem that required surgery. Although the insurance covered the \$14,000 surgery, Roberts had to pay \$2,250 to satisfy the deductible requirement.

"Financially I can afford the deductible," said Roberts. And, she noted, "I was really out nothing because I would have spent it in premiums anyway."

If Roberts had kept her old policy, her annual premiums would have been \$3,960. But her new policy's premiums are just \$1,200 a year—a \$2,760 saving that more than makes up for the deductible cost.

TARGETING UNINSURED

Companies that sell MSAs obviously are targeting people such as Roberts who have little downside risk. But they also hope to sign up people who could not afford health insurance before.

The GAO reported that of the nearly 42,000 MSA accounts established in 1997, 37 percent were started by individuals who previously did not have health insurance.

"MSAs were intended for having a lower cost mechanism to attract more people without insurance," said Scott Krienke, vice president of marketing for Fortis Insurance in Milwaukee.

The GAO report issued in December said about 40 companies nationally were selling high-deductible insurance policies paired with MSAs. Some insurance companies act as trustee for the account, but sometimes a bank or investment company serves as the trustee.

Insurance companies responding to the GAO survey said they were disappointed with sales, but hoped that growing familiarity with MSAs on the part of consumers and brokers would lead to greater acceptance of the product.

Fortis, which sells MSAs nationwide, is believed to be the largest seller of MSA policies in Minnesota, according to state officials.

Krienke said Fortis sold 260 individual policies in Minnesota in 1997 and nearly doubled that number to 516 in 1998. He hopes sales will reach 700 this year.

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NEW CUSTOMERS

MSAs could gain a larger market presence this year through Community Coordinated Health Care, a new health plan being formed by a consortium of clinics and hospitals.

The plan will offer MSAs to small and medium-sized businesses that are part of the Employers Association, a coalition of more than 1,700 companies.

"We are going to appeal to everybody," said Bernie Mackell, of Eden Prairie-based Medical Savings Accounts Inc., who is coordinating MSAs for the new health plan.

Mackell said education will be a large component of the MSA programs being offered to Employers Association companies.

"Having employees involved in their health care is important," Mackell said. Health education would encourage employees to seek preventive care as one way that they can preserve capital in the MSA funds.

The new health plan is expected to be operational by this summer.

And at least two large health insurers are watching the MSA market closely.

Blue Cross and Blue Shield of Minnesota said it is monitoring the market, although right now it has not plans to offer an MSA.

However, HealthPartners said it is actively considering offering an MSA product.

"We already have in our product line a \$1,000 deductible plan for individuals that moves in the direction that MSAs go," said George Halvorson, HealthPartners chief executive, adding that there is a "good likelihood" that HealthPartners may add an MSA into the mix at some point.

A NATIONAL EXPERIMENT

Insurance companies began selling medical savings accounts (MSAs) in 1997 under a four-year trial period established by Congress. Self-employed workers and small businesses with 50 or fewer employees are eligible for MSAs. Sales of MSAs have not met expectations, and only 42,000 MSAs were opened in 1997, according to the General Accounting Office (GAO). MSA advocates say the rules laid down by Congress are too restrictive and want the accounts to be available to a wider market. But critics fear that MSAs could siphon healthier individuals from the traditional insurance market. A GAO study on the effect of MSAs was canceled because not enough MSAs have been sold.

HOW MSAS WORK

Medical savings accounts are paired with high-deductible, low-premium health insurance policies.

THE HEALTH INSURANCE POLICY

Premiums on high-deductible policies are typically lower than most other forms of insurance. Employers offering MSAs can require workers to pay part of the premium.

For individual coverage, deductibles must be at least \$1,500 but no more than \$2,250. For family coverage, deductibles range between \$3,000 and \$4,500.

The policy might (but is not required to) have additional out-of-pocket costs, such as copayments for office visits. Maximum annual out-of-pocket expenses, including the deductible, are \$3,000 for individuals and \$5,500 for families.

THE MEDICAL SAVINGS ACCOUNT

DEPOSITS

Money deposited into the MSA, which is separate from the premiums paid on the health policy, can come from the individual or the employer, but not from both in the same year.

There's a limit to how much money can be put into an MSA each year. For individual coverage, up to 65 percent of the deductible amount can be contributed. For family coverage, the maximum goes up to 75 percent of the deductible.

Contributions made by individuals are tax-deductible. Contributions made by employers do not count toward gross income and are not subject to taxes.

Most MSA accounts earn interest similar to passbook savings accounts, but some MSA administrators offer the option to transfer money into money market accounts or mutual funds under certain conditions.

WITHDRAWALS

MSA contributions accrue and are not "use it or lose it" accounts. Individuals are not required to use MSA funds when paying deductible amounts under the insurance policy.

MSA dollars can be used to pay for qualified medical expenses, including doctor visits, prescription drugs, vision and dental care.

Withdrawals from MSAs for non-medical expenses are subject to a 15 percent tax penalty and are counted as gross income.

After the MSA account holder turns age 65, MSA funds can be used for any purpose and are not assessed the 15 percent penalty.

Mr. GRAMS. Clearly, Mr. President, MSAs offer many benefits for the uninsured. Let's lift the restrictions placed on MSAs and allow everyone to open a Medical Savings Account.

The Health Care Accessibility and Equity Act begins the process of dealing with our nation's long term care needs.

Mr. President, it is estimated that, in the history of the world, half of the people who have ever reached age 65 are alive today.

And as the babyboom generation ages, the population of those over age 65 will increase quicker than at any time in history.

The increase in the aged population brings with it a number of complex and vexing issues, one of which is long term care.

The Health Insurance Portability and Accountability Act tinkered slightly with the issue of long term care insurance, but we need to meet the issue head on.

The legislation Chairman ROTH, Senator ABRAHAM, and I are introducing today would eliminate the questions surrounding what constitutes a qualified versus non-qualified long term care plan and their tax treatment.

I have always believed we should encourage individuals to save for their retirement needs and, for a number of reasons, usually cost, long term care insurance is often overlooked during retirement planning.

Unfortunately, this often leads to individuals spending themselves down to poverty and relying on Medicaid. By allowing individuals to deduct the costs of long-term care insurance, we can prevent many of our elderly from impoverishing themselves in order to receive long-term care.

The Health Care Accessibility and Equity Act of 1999 is good policy and will begin to address the crisis of 43 million Americans without access to affordable health care insurance today. Most important, it levels the playing field for those who are purchasing health insurance individually.

I urge my colleagues to support this legislation and to help us get closer to the goal of health care access for all Americans.

Mr. ROTH. Mr. President, there is a serious inadequacy in the treatment of Americans who must pay for their health care on their own and those who receive it on a tax subsidized basis from their employers. In addition, our tax code restricts people from making health care decisions in a tax advantaged way. I am happy to join with my colleagues, Senator GRAMS of Minnesota and Senator ABRAHAM of Michigan in sponsoring the Health Care Access and Equity Act of 1999. Our bill would rectify this situation and provide a level playing field for all Americans who purchase their own health insurance and those who receive employer subsidized insurance. It will also give people more tax-advantaged options in how they use their health care dollars.

Let me explain the current unfairness of our tax code as it relates to health care insurance. Current law provides that any employer subsidy of health benefits is not included in the income of the employee. This means that if an employer pays the entire cost of health care insurance, that entire subsidy is not included in the employee's taxable income.

However, if the employer does not provide health care insurance for its employees or if the employee has to pay the full cost of the insurance, they do not get the same tax benefit as those who have all or a portion of their health care insurance paid for by their employer. Those premiums that are not paid for by the employer can be deducted by the employee—but only to the extent that the total premium amount and other health care costs exceed 7.5% of the employee's adjusted gross income. What this effectively means is that these individuals are denied a tax effective way of paying for health insurance.

Self-employed individuals don't have an employer to cover their health insurance needs; they must pay for their health insurance on their own. Self-employed individuals can only deduct 60% of the amount of their health care premiums. This percentage will increase over time until the year 2003, when health care premiums will be fully deductible.

Our current tax code does not treat all taxpayers the same. Our bill changes this situation.

This bill provides that all taxpayers can fully deduct the amount paid for health insurance—as long as the taxpayer is not eligible to participate in an employer subsidized medical plan. This equalizes the tax treatment of paying for health insurance so that all individuals get a tax incentive when they have health care insurance, regardless of whether their employer pays for the coverage.

This amendment underscores the need to make health care more affordable for more Americans and to begin providing greater equity in the tax treatment of health insurance whether people obtain their coverage at their place of employment or purchase coverage in the individual health insurance market.

It is a sobering fact that there are over 41 million Americans without health insurance.

Largely as a result of the tax incentives I explained before, the number of people covered by employer-provided health insurance has grown from less than 12 million in 1940 to approximately 150 million today.

However, those who do not have tax-subsidized health care benefits do not fare as well. According to the Employee Benefit Research Institute, individuals who must pay for health coverage with after-tax dollars are 24 times more likely to be uninsured as those with employer-provided coverage.

With this change, all individuals who do not receive the employer-provided

subsidies for health care insurance will not have the opportunity to have their taxes reduced because they purchased insurance.

This amendment will benefit approximately 12 million taxpayers who do not have health insurance that is subsidized by an employer.

Our bill also provides that more individuals will be able to have long term care insurance in a tax effective manner, by giving them a tax deduction for the payment of premiums for a long term care policy. Current law only allows a deduction for long term care premiums if those premiums, along with other medical expenses exceed 7.5% of adjusted gross income. With this bill, the entire amount of the long term care premium will be deductible. This will benefit at least 3.8 million taxpayers. Clearly more people will be able to prepare for their future needs by buying long term care insurance.

Another important provision of our bill is the expansion of the availability of medical Savings Accounts. MSAs gives individuals more choice in how they spend their health care dollars.

Current law restricts who can participate in an MSA and clearly these restrictions have limited who participate in this program. Our bill would lift these caps on this program and give people more reason to choose to be in an MSA.

Another important point to remember with MSAs is that they encourage those individuals who are not insured to become insured. When the General Accounting Office reviewed what has happened in the MSA market, they reported that approximately one third of those who participated in the MSA program had been previously uninsured. The MSA participated in the MSA program had been previously uninsured. The MSA program has been proven to increase those covered under a health plan; with this bill we expand the program so that more people will be insured.

Finally, our bill provides incentives for employees to contribute to flexible spending accounts. With a flexible spending account, an employee can contribute a portion of his salary—thereby reducing his taxable income—to a flexible spending account and then use the money in that account to pay for health care benefits, whether or not they are covered by his medical insurance. Increasing the availability of these FSAs, will give employees more freedom on how to spend their money when purchasing health care.

The policy behind our bill is clear—increased equity in the tax system for health care insurance and more choice for individuals in how they spend their health care dollars. I am happy to join my two distinguished colleagues—Senator GRAMS and ABRAHAM and the other Senators co-sponsoring this important health care legislation.

By Mr. KYL:

S. 1275. A bill to authorize the Secretary of the Interior to produce and sell products and to sell publications relating to the Hoover Dam, and to deposit revenues generated from the sales into the Colorado River Dam fund; to the Committee on Energy and Natural Resources.

HOOVER DAM MISCELLANEOUS SALES ACT

Mr. KYL. Mr. President, I rise today to introduce a bill to authorize the Bureau of Reclamation to produce commemorative items for sale at the Hoover Dam Visitor Center.

Mr. President, the Hoover Dam receives more than one million visitors a year. Many of those visitors have expressed an interest in purchasing books, maps, photos, and other memorabilia relating to the Colorado River and the design, construction, and operation of the Dam. This bill would authorize the production and sale of such items, including the minting of commemorative coins from scrap copper that came from electrical cabinets and boxes which were used when the Dam was manually operated. Four to five tons of copper are available for this purpose.

Mr. President, this bill not only responds to the public's demand for Hoover Dam-related items, it also creates a revenue source to help repay the cost of constructing the visitor center and of providing guided tours of the Dam and its power plant. Currently, purchasers of Hoover Dam power in Arizona, California, and Nevada are paying for the construction of the visitor center, which ended up costing approximately \$125 million, nearly four times as much as the original estimate. This bill further authorizes the Bureau to select a private concessionaire to manage the gift shop selling these items, thereby creating a new business opportunity for a private or a non-profit entity. Thus, this bill would enhance the visitor experience at Hoover Dam in a taxpayer-friendly way.

Mr. President, I ask unanimous consent 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. 1275

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 "Hoover Dam Miscellaneous Sales Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) the sale and distribution of general public information about the use of public land and water areas for recreation, fish, wildlife, and other purposes serve significant public benefits;

(2) publications and other materials educate the public and provide general information about Bureau of Reclamation programs and projects;

(3) in 1997, more than 1,000,000 visitors, including 300,000 from foreign countries, toured the Hoover Dam;

(4) hundreds of thousands of additional visitors stopped to view the dam;

(5) visitors often ask to purchase maps, publications, and other items to enhance their experience or serve educational purposes;

(6) in many cases the Bureau of Reclamation is the sole source of those items;

(7) the Bureau is in a unique position to fulfill public requests for those items; and

(8) as a public agency, the Bureau should be responsive to the public by having appropriate items available for sale.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to authorize the Secretary of the Interior to offer for sale to members of the public that visit the Hoover Dam Visitor Center educational materials and memorabilia; and

(2) to use revenue from those sales to repay the costs relating to construction of the Hoover Dam Visitor Center.

SEC. 4. AUTHORITY TO CONDUCT SALES.

With respect to the Hoover Dam, the Secretary of the Interior, acting through the Commissioner of Reclamation, may—

(1) conduct sales of—

(A) materials generated by the Bureau of Reclamation such as posters, maps, brochures, photographs, and similar publications, videotapes, and computer information discs that are related to programs or projects of the Bureau; and

(B) memorabilia and other commemorative items that depict programs or projects of the Bureau;

(2) convert unneeded property or scrap material into Bureau memorabilia for sale purposes; and

(3) enter into agreements with nonprofit organizations, other Federal agencies, State and local governments, and commercial entities for—

(A) the production or sale of items described in paragraphs (1) and (2); and

(B) the sale of publications described in paragraph (1).

SEC. 5. COSTS AND REVENUES.

(a) COSTS.—All costs incurred by the Bureau of Reclamation under this Act shall be paid from the Colorado River Dam fund established by section 2 of the Act of December 21, 1928 (43 U.S.C. 617a).

(b) REVENUES.—

(1) USE FOR REPAYMENT OF SALES COSTS.—All revenues collected by the Bureau of Reclamation under this Act shall be credited to the Colorado River Dam fund to remain available, without further Act of appropriation, to pay costs associated with the production and sale of items in accordance with section 4.

(2) USE FOR REPAYMENT OF CONSTRUCTION COSTS.—All revenues collected by the Bureau of Reclamation under this Act that are not needed to pay costs described in paragraph (1) shall be transferred annually to the general fund of the Treasury in repayment of costs relating to construction of the Hoover Dam Visitor Center.

By Mr. JEFFORDS (for himself, Mr. KENNEDY, Mr. LIEBERMAN, Mr. CHAFFEE, Mr. DASCHLE, Mr. SPECTER, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. BINGAMAN, Mr. WELLSTONE, Mrs. MURRAY, Mr. REED, Mr. LEAHY, Ms. LANDRIEU, Mr. REID, Mr. WYDEN, Mr. SARBANES, Mr. KERRY, Mr. INOUYE, Mr. LATENBERG, Mr. ROBB, Mr. CLELAND, Mr. MOYNIHAN, Mr. SCHUMER, Mr. AKAKA, Mr. DURBIN, Mrs. BOXER, Mr. TORRICELLI, Mr. KERREY, Mr. LEVIN, Mr. FEINGOLD, Mr.

BRYAN, Mrs. FEINSTEIN, and Mr. KOHL):

S. 1276. A bill to prohibit employment discrimination on the basis of sexual orientation; to the Committee on Health, Education, Labor, and Pensions.

EMPLOYMENT NON-DISCRIMINATION ACT OF 1999

Mr. JEFFORDS. Mr. President, I am delighted to be here today to introduce the Employment Non-Discrimination Act of 1999 (ENDA). I am here today because I believe that the principles of equality and opportunity should be applied to all Americans and that success at work should be based on performance, not prejudice.

Unfortunately, qualified, hard-working Americans continue to be denied job opportunities based instead on sexual orientation. The Employment Non-Discrimination Act will help put an end to this insidious discrimination. By extending to sexual orientation the same federal employment discrimination protections established for race, religion, gender, national origin, age and disability, the Employment Non-Discrimination Act will further ensure that principals of equality and opportunity apply to all Americans.

This bill is about fairness, this bill is about equality, this bill is about basic civil rights. This bill must pass this Congress.

ENDA will achieve equal rights — not "special rights" — for gays and lesbians. This legislation prohibits preferential treatment based on sexual orientation. To remove any doubt, we have added language to expressly prohibit affirmative action on the basis of sexual orientation.

ENDA does not require an employer to justify a neutral practice that may have a statistically disparate impact based on sexual orientation, nor provide benefits for the same-sex partner of an employee. Rather, it simply protects a right that should belong to every American, the right to be free from discrimination at work because of personal characteristics unrelated to successful performance on the job.

We took a fresh look at ENDA and we have made a number of constructive changes this year. We have re-written the discrimination section to more closely track Title VII of the Civil Rights Act of 1964. This new language has the benefit of 35 years of legal interpretation. Employers and courts alike understand this language and what is expected under it.

One concern that we have heard repeatedly during past debates is that this language will create a tidal wave of litigation. In Vermont, one of 11 states to have enacted a sexual-orientation anti-discrimination law, the legal waters have been more like the Tidal Basin. In the 9 years since the enactment of Vermont's law, Vermont's Attorney General has initiated only 25 investigations of alleged sexual orientation discrimination.

Vermont is not unique. According to the GAO, none of the states with

ENDA-type laws have experienced a wave of litigation. Instead, these states have ensured that employees working within their borders cannot be discriminated against for being gay.

As I have stated before, success at work should be directly related to one's ability to do the job, period. We first introduced ENDA in 1994. Over the past six years, we have held hearings, listened to the concerns raised and revised this legislation to respond to those concerns. I am pleased to report that it was worth the effort because The Employment Non-Discrimination Act of 1999 is the best bill we have ever introduced. The time has come to make the Employment Non-Discrimination Act the law of the land.

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

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

S. 1276

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 "Employment Non-Discrimination Act of 1999".

SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to provide a comprehensive Federal prohibition of employment discrimination on the basis of sexual orientation;
- (2) to provide meaningful and effective remedies for employment discrimination on the basis of sexual orientation; and
- (3) to invoke congressional powers, including the powers to enforce the 14th amendment to the Constitution and to regulate interstate commerce, in order to prohibit employment discrimination on the basis of sexual orientation.

SEC. 3. DEFINITIONS.

In this Act:

(1) **COMMISSION.**—The term "Commission" means the Equal Employment Opportunity Commission.

(2) **COVERED ENTITY.**—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) **EMPLOYER.**—The term "employer" means—

(A) a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h))) who has 15 or more employees (as defined in section 701(f) of such Act (42 U.S.C. 2000e(f))) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986;

(B) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies;

(C) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) or section 401 of title 3, United States Code; or

(D) an entity to which section 717(a) of the Civil Rights of 1964 (42 U.S.C. 2000e-16(a)) applies.

(4) **EMPLOYMENT AGENCY.**—The term "employment agency" has the meaning given the

term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(5) **EMPLOYMENT OR AN EMPLOYMENT OPPORTUNITY.**—Except as provided in section 10(a)(1), the term "employment or an employment opportunity" includes job application procedures, referral for employment, hiring, advancement, discharge, compensation, job training, a term, condition, or privilege of union membership, or any other term, condition, or privilege of employment, but does not include the service of a volunteer for which the volunteer receives no compensation.

(6) **LABOR ORGANIZATION.**—The term "labor organization" has the meaning given the term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

(7) **PERSON.**—The term "person" has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(8) **RELIGIOUS ORGANIZATION.**—The term "religious organization" means—

- (A) a religious corporation, association, or society; or
- (B) a school, college, university, or other educational institution or institution of learning, if—

(i) the institution is in whole or substantial part controlled, managed, owned, or supported by a religion, religious corporation, association, or society; or

(ii) the curriculum of the institution is directed toward the propagation of a religion.

(9) **SEXUAL ORIENTATION.**—The term "sexual orientation" means homosexuality, bisexuality, or heterosexuality, whether the orientation is real or perceived.

(10) **STATE.**—The term "State" has the meaning given the term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

SEC. 4. DISCRIMINATION PROHIBITED.

(a) **EMPLOYER PRACTICES.**—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's sexual orientation; or

(2) to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee, because of such individual's sexual orientation.

(b) **EMPLOYMENT AGENCY PRACTICES.**—It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the sexual orientation of the individual or to classify or refer for employment any individual on the basis of the sexual orientation of the individual.

(c) **LABOR ORGANIZATION PRACTICES.**—It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of the sexual orientation of the individual;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect the status of the individual as an employee or as an applicant for em-

ployment, because of such individual's sexual orientation; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) **TRAINING PROGRAMS.**—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of the sexual orientation of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) **ASSOCIATION.**—An unlawful employment practice described in any of subsections (a) through (d) shall be considered to include an action described in that subsection, taken against an individual based on the sexual orientation of a person with whom the individual associates or has associated.

(f) **DISPARATE IMPACT.**—Notwithstanding any other provision of this Act, the fact that an employment practice has a disparate impact, as the term "disparate impact" is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(k)), on the basis of sexual orientation does not establish a prima facie violation of this Act.

SEC. 5. RETALIATION AND COERCION PROHIBITED.

(a) **RETALIATION.**—A covered entity shall not discriminate against an individual because such individual opposed any act or practice prohibited by this Act or because such individual made a charge, assisted, testified, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) **COERCION.**—A person shall not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of such individual's having exercised, enjoyed, or assisted in or encouraged the exercise or enjoyment of, any right granted or protected by this Act.

SEC. 6. BENEFITS.

This Act does not apply to the provision of employee benefits to an individual for the benefit of the domestic partner of such individual.

SEC. 7. COLLECTION OF STATISTICS PROHIBITED.

The Commission shall not collect statistics on sexual orientation from covered entities, or compel the collection of such statistics by covered entities.

SEC. 8. QUOTAS AND PREFERENTIAL TREATMENT PROHIBITED.

(a) **QUOTAS.**—A covered entity shall not adopt or implement a quota on the basis of sexual orientation.

(b) **PREFERENTIAL TREATMENT.**—A covered entity shall not give preferential treatment to an individual on the basis of sexual orientation.

(c) **ORDERS AND CONSENT DECREES.**—Notwithstanding any other provision of this Act, an order or consent decree entered for a violation of this Act may not include a quota, or preferential treatment to an individual, based on sexual orientation.

SEC. 9. RELIGIOUS EXEMPTION.

(a) **IN GENERAL.**—Except as provided in subsection (b), this Act shall not apply to a religious organization.

(b) **UNRELATED BUSINESS TAXABLE INCOME.**—This Act shall apply to employment or an employment opportunity for an employment position of a covered entity that is a religious organization if the duties of the position pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under section 511(a) of the Internal Revenue Code of 1986.

SEC. 10. NONAPPLICATION TO MEMBERS OF THE ARMED FORCES; VETERANS' PREFERENCES.

(a) ARMED FORCES.—

(1) EMPLOYMENT OR AN EMPLOYMENT OPPORTUNITY.—In this Act, the term "employment or an employment opportunity" does not apply to the relationship between the United States and members of the Armed Forces.

(2) ARMED FORCES.—In paragraph (1), the term "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) VETERANS' PREFERENCES.—This Act does not repeal or modify any Federal, State, territorial, or local law creating a special right or preference concerning employment or an employment opportunity for a veteran.

SEC. 11. CONSTRUCTION.

Nothing in this Act shall be construed to prohibit a covered entity from enforcing rules regarding nonprivate sexual conduct, if the rules of conduct are designed for, and uniformly applied to, all individuals regardless of sexual orientation.

SEC. 12. ENFORCEMENT.

(a) ENFORCEMENT POWERS.—With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act—

(1) the Commission shall have the same powers as the Commission has to administer and enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. 1202 and 1220);

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)), respectively;

(2) the Librarian of Congress shall have the same powers as the Librarian of Congress has to administer and enforce title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(3) the Board (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) shall have the same powers as the Board has to administer and enforce the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1));

(4) the Attorney General shall have the same powers as the Attorney General has to administer and enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. 1202 and 1220);

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)), respectively;

(5) the President, the Commission, and the Merit Systems Protection Board shall have the same powers as the President, the Commission, and the Board, respectively, have to administer and enforce chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title;

(6) a court of the United States shall have the same jurisdiction and powers as the court has to enforce—

(A) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (2 U.S.C. 1202

and 1220) in the case of a claim alleged by such individual for a violation of section 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

(C) the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)); and

(D) chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title.

(b) PROCEDURES AND REMEDIES.—The procedures and remedies applicable to a claim alleged by an individual for a violation of this Act are—

(1) the procedures and remedies applicable for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) in the case of a claim alleged by such individual for a violation of such title;

(2) the procedures and remedies applicable for a violation of section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) in the case of a claim alleged by such individual for a violation of such section;

(3) the procedures and remedies applicable for a violation of section 201(a)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in the case of a claim alleged by such individual for a violation of such section; and

(4) the procedures and remedies applicable for a violation of section 411 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of such section.

(c) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleged by a covered employee (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) for a violation of this Act, title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleged by such a covered employee for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

(d) PROHIBITION OF AFFIRMATIVE ACTION.—Notwithstanding any other provision of this section, affirmative action for a violation of this Act may not be imposed. Nothing in this section shall prevent the granting of relief to any individual who suffers a violation of such individual's rights provided in this Act.

SEC. 13. STATE AND FEDERAL IMMUNITY.

(a) STATE IMMUNITY.—A State shall not be immune under the 11th amendment to the Constitution from an action in a Federal court of competent jurisdiction for a violation of this Act.

(b) REMEDIES AGAINST THE UNITED STATES AND THE STATES.—Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States or a State for a violation of this Act, remedies (including remedies at law and in equity, and interest) are available for the violation to the same extent as the remedies are available for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) by a private entity, except that—

(1) punitive damages are not available; and

(2) compensatory damages are available to the extent specified in section 1977A(b) of the Revised Statutes (42 U.S.C. 1981a(b)).

SEC. 14. ATTORNEYS' FEES.

Notwithstanding any other provision of this Act, in an action or administrative proceeding for a violation of this Act, an entity described in section 12(a) (other than paragraph (4) of such section), in the discretion of the entity, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (includ-

ing expert fees) as part of the costs. The Commission and the United States shall be liable for the costs to the same extent as a private person.

SEC. 15. POSTING NOTICES.

A covered entity who is required to post notices described in section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10) shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 12(b) apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964.

SEC. 16. REGULATIONS.

(a) IN GENERAL.—Except as provided in subsections (b), (c), and (d), the Commission shall have authority to issue regulations to carry out this Act.

(b) LIBRARIAN OF CONGRESS.—The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees of the Library of Congress.

(c) BOARD.—The Board referred to in section 12(a)(3) shall have authority to issue regulations to carry out this Act, in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384), with respect to covered employees, as defined in section 101 of such Act (2 U.S.C. 1301).

(d) PRESIDENT.—The President shall have authority to issue regulations to carry out this Act with respect to covered employees, as defined in section 401 of title 3, United States Code.

SEC. 17. RELATIONSHIP TO OTHER LAWS.

This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or any law of a State or political subdivision of a State.

SEC. 18. SEVERABILITY.

If any provision of this Act, or the application of the provision to any person or circumstance, is held to be invalid, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected by the invalidity.

SEC. 19. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of enactment of this Act and shall not apply to conduct occurring before the effective date.

Mr. KENNEDY. Mr. President, I am proud to stand with Senator JEFFORDS, Senator LIEBERMAN, Congressman FRANK, and Congressman SHAYS to announce the introduction of the Employment Non-Discrimination Act of 1999, which has over 30 co-sponsors in the Senate and over 150 co-sponsors in the House of Representatives. Once this bill becomes law, it will ensure that all Americans have the opportunity to work without fear of reprisal because of their sexual orientation. It is the next important step for civil rights in America.

This country has made great progress toward fairness and an end to bigotry in the workplace. Title VII of the Civil Rights Act of 1964 ensures that Americans—without regard to their race, ethnic background, gender, or religion—have the opportunity to obtain and keep a job. The Minimum Wage guarantees a basic standard of living. The Family and Medical Leave Act guarantees that working men and

women can balance important family and employment responsibilities without fear of reprisal by their employer. The Americans with Disabilities Act establishes important protections for workers with disabilities.

Now, Congress must take steps to achieve the same kind of fairness for gay men and lesbians who encounter blatant discrimination in the workplace. The Employment Non-Discrimination Act will accomplish that goal by prohibiting employers from using sexual orientation as a basis for hiring, firing, promotion, or compensation.

The bill is important for what it does, as well as what it doesn't do. It does not require domestic partnership benefits. It does not authorize "disparate impact" claims. It does not apply to the Armed Services. It contains a broad exemption of religious organizations. It prohibits quotas and preferential treatment, and bars the EEOC from requiring the collection of statistical information on sexual orientation.

A broad coalition of churches, businesses, and civil rights liberties organizations support the Employment Non-Discrimination Act. 68 percent of Americans from all regions of the country support its passage.

The American people agree that workplace discrimination is wrong, and that clear protections are needed to prevent it. Some states already have such laws, and many businesses have policies similar to our proposal. But this patchwork of protection is inadequate. A national standard is essential for the protection of this basic right.

The discrimination that exists today is a stain on our democracy.

David Horowitz encountered this bigotry when he applied to be an Assistant City Attorney in Mesa, Arizona. He had graduated near the top of his law school class at the University of Arizona. While employed by a private law firm, he applied for a position with the City Attorney. He was not offered a position, but he was told he was the second choice. Six months later, he was called and interviewed for another job opening. The City Attorney asked David for references and told him that, "I only ask for references when I'm ready to make someone an offer." In the interview, David told the City Attorney that he was openly gay, and the tone of the interview suddenly changed. David was told that his sexual orientation posed a problem, and three weeks later he received a rejection letter.

What happened to David Horowitz was wrong, but he had no recourse under State or Federal law against this blatant discrimination. No American should be denied a chance to work because of prejudices. It is long past time to close this loophole in our civil rights law, and I urge the Congress to act this year to close it.

Mr. LIEBERMAN. Mr. President, I am delighted to join with Senators

JEFFORDS, KENNEDY and over 30 of our colleagues as an original cosponsor of this important legislation, the Employment Non-Discrimination Act of 1999. By guaranteeing that American workers cannot lose their jobs simply because of their sexual orientation, this bill would extend the bedrock American values of fairness and equality to a group of our fellow citizens who too often have been denied the benefit of those most basic values.

Our nation's foundational document, the Declaration of Independence, expressed a vision of our country as one premised upon the essential equality of all people and upon the recognition that our Creator endowed all of us with the inalienable rights to life, liberty and the pursuit of happiness. Two hundred and twenty-three years ago, when that document was drafted, our laws fell far short of implementing the Declaration's ideal. But since that time, we have come ever closer, extending by law to more and more of our citizens—to African Americans, to women, to disabled Americans, to religious minorities and to others—a legally enforceable guarantee that, with respect to their ability to earn a living at least, they will be treated on their merits and not on characteristics unrelated to their ability to do their jobs.

It is time to extend that guarantee to gay men and lesbians, who too often have been subject to incidents of discrimination and denied the most basic of rights: the right to obtain and maintain a job. A collection of one national survey and twenty city and state surveys found that as many as 44 percent of gay, lesbian and bisexual workers faced job discrimination in the workplace at some time in their careers. Other studies have reported even greater discrimination—as much as 68 percent of gay men and lesbians reporting employment discrimination. The fear in which these workers live was clear from a survey of gay men and lesbians in Philadelphia. Over three-quarters told those conducting the survey that they sometimes or always hide their orientation at work out of fear of discrimination.

The toll this discrimination takes extends far beyond its effect on those individuals who must live in fear and without full employment opportunities. It also takes an unacceptable toll on America's definition of itself as a land of equality and opportunity, as a place where we judge each other on our merits, and as a country that teaches its children that anyone can succeed here as long as they are willing to do their job and work hard.

This bill provides for equality and fairness—that and no more. It says only what we already have said for women, for people of color and for others: that you are entitled to have your ability to earn a living depend only on your ability to do the job and nothing else. In fact, the bill would even do somewhat less than it does for women and people of color, because it would

not give gay men and women all of the protections we currently provide to other groups protected under our civil rights laws.

Mr. President, this bill would bring our nation one large step closer to realizing the vision that Thomas Jefferson so eloquently expressed 223 years ago when he wrote that all of us have a right to life, liberty and the pursuit of happiness. I urge my colleagues to join me in supporting this important legislation.

Mrs. MURRAY. Mr. President, I am very pleased to join Senator JEFFORDS as he reintroduces the Employment Non-Discrimination Act. As before, I speak as a strong supporter of this legislation, because I have always believed that every single American deserves fair treatment under the law no matter his or her gender, race, religion or sexual orientation.

As one of only a few women to ever serve in the United States Senate, and the first ever from Washington state, I understand what it means to be part of a group that seeks fairness and equal opportunity. I have never advocated for any special class, just equal treatment and protection under the law.

Not long ago, many thought it would be impossible for women to serve in the Senate or an elected office of any kind. It was felt this was not a suitable occupation for a woman and that simply being a woman meant a person was incapable of meeting the demands of the job. These people alleged that women would somehow jeopardize the work done in the U.S. Congress. While these statements may seem impossible to believe today, they do illustrate what many women faced. However, to our country's benefit, these stereotypes were overcome. I am confident that none of my colleagues today would deny the tremendous contributions women have made here, in the House, in state and local government, and at every level of public service.

People suffer when stereotypes based on fear or ignorance are used to justify discrimination. I do not believe elected leaders serve our country well if they deny any citizen equal opportunities and equal treatment under the law. A person's success or failure must depend on his or her qualifications, skills, efforts, and even luck. But, no one, I repeat, no one, should be denied opportunities because of race, gender, religion, age or sexual orientation. No one should endure discrimination such as many people have endured in the workplace because of sexual orientation.

I am always disappointed to hear about cases of economic discrimination based solely on sexual orientation. It defies logic that in today's society any employer could refuse to hire an individual, deny them equal pay, or professional advancement and subject them to harassment simply because of their sexual orientation. Our country is based on the ideal of allowing equal opportunity and basic civil rights for all Americans, but we have not fully

achieved this goal. The Employment Non-Discrimination Act will correct that wrong.

As we would all agree, discrimination based on race, gender, ethnic origin, or religion is not just unfair, but illegal as well. ENDA would simply add sexual orientation to this list. It is written even more narrowly than current law for other areas of non-discrimination, because it does not allow positive corrective actions such as quotas or other preferential treatment. It simply says that a person cannot be unfairly treated in employment, based on his or her sexuality, whether that person is heterosexual or homosexual. Mr. President, this is a reasonable expectation. In fact, it has become a reality in nine states, including California, Massachusetts, and Minnesota, and in many local jurisdictions across the country. Also, many Fortune 500 companies, such as Microsoft and IBM, have adopted their own non-discrimination policies. Companies such as these recognize that it makes good business sense to value each and every one of their employees equally. It is time that our laws reflect these values as well.

Not only do these companies and governments support a non-discrimination policy in the workplace, but the public also supports ENDA by a wide margin, according to a bipartisan 1998 poll conducted for the Human Rights Campaign. This poll found that 58 percent of Americans support the Employment Non-Discrimination Act. This is compelling evidence that Americans are behind ENDA, support expanding these basic civil rights to all, and believe that everyone deserves these rights. They understand that our country will be a better place when discrimination based on sexual orientation in the workplace is put to an end.

Mr. President, this is not about one group's protection at another's expense. This issue is still not about allowing a greater window for litigation, as opponents have previously argued. It is about common sense, common decency and our fundamental values as Americans.

In the last Congress, we came within one vote of adopting this important, bipartisan legislation. I urge my colleagues now to support this measure so that we can continue our proud tradition of protecting basic civil rights and opportunity for all Americans. Let us join together to pass this bill so that our brothers and sisters, sons and daughters, friends and relatives will have protection against unjust discrimination. We have the opportunity to provide them with these basic civil rights now. I hope my colleagues will seize this opportunity to make our country the just, equal, and fair place it should be.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. MURKOWSKI, Mr. ROCKEFELLER, Mr. CONRAD, Mr. HARKIN, and Mr. ROBB):

S. 1277. A bill to amend title XIX of the Social Security Act to establish a

new prospective payment system for Federally-qualified health centers and rural health clinics; to the Committee on Finance.

SAFETY NET PRESERVATION ACT OF 1999

• Mr. GRASSLEY. Mr. President, I rise today to introduce a bill co-sponsored by Senator BAUCUS to preserve hundreds of community health centers and rural health clinics across the country. Our bill, The Safety Net Preservation Act of 1999, would remedy a phase-out of the payment system that covers the clinics' cost of caring for Medicaid patients. Congress approved the phase-out of cost-based reimbursement during the Balanced Budget Act of 1997.

The phase-out was meant to save Medicaid money and respond to those who felt cost-based reimbursement imposed an expensive mandate on states. Scheduled to begin on October 1, the phase-out will force the clinics to use scarce federal grants intended to provide care for the uninsured to prop up Medicaid under-payments. The change could force health centers to lose as much as \$1.1 billion over the next five years.

Our bill would establish a prospective payment system to ensure that health centers and clinics receive sufficient Medicaid funding. The bill would protect the federal investment in health centers while giving states the flexibility to design their own payment systems for health centers and clinics.

There's no doubt that community health centers and rural health clinics serve a unique and essential role in getting high-quality health care services to those in need. They are the backbone of America's health care infrastructure for millions of medically under-served rural and urban communities, where access to health care is often limited. I've seen first hand the valuable services provided by these centers and the obstacles the providers overcome to do so. Last year, I visited a center in Des Moines. They serve patients who speak nine different languages. In many cases, these clinics are often the difference between seeing a doctor and forgoing treatment. We can't allow money shortfalls to force them to shut down. We have to preserve this safety net for millions of Americans.

I am pleased for the support of Senators MURKOWSKI, ROCKEFELLER, CONRAD, ROBB and HARKIN as original co-sponsors of The Safety Net Preservation Act of 1999. I look forward to passage of this important legislation in the 106th Congress.●

By Mr. KERREY (for himself, Mr. DASCHLE, and Mr. JOHNSON):

S. 1279. A bill to improve the environmental quality and public use and appreciation of the Missouri River and to provide additional authority to the Army Corps of Engineers to protect, enhance, and restore fish and wildlife habitat on the Missouri River; to the Committee on Environment and Public Works.

MISSOURI RIVER VALLEY IMPROVEMENT ACT OF 1999

• Mr. KERREY. Mr. President, I am pleased to introduce today, along with my colleagues Senator DASCHLE and Senator JOHNSON, the Missouri River Valley Improvement Act of 1999. This legislation is important for the 10,000 people who live along the 2,321-mile Missouri River, and marks also the upcoming bicentennial anniversary of the Lewis and Clark expeditions along this great River. The intent of the Act is to improve the environmental quality and public use and appreciation of the Missouri River, and to provide additional authorities to the Army Corps of Engineers to protect, enhance, and restore fish and wildlife habitat as part of their ongoing operations on the River.

The Missouri River is a resource of incalculable value to the 10 states which it traverses, but it is a river that has changed dramatically since the pioneering days of Lewis and Clark. The construction of dams and levees over the past 50 years has aided navigation, flood control, and water supply along the Missouri River, but has also reduced habitat for native river fish and wildlife, and resulted in lost opportunities for recreation on the river.

The legislation will help to restore a series of nature areas along the river in time to celebrate the 2004 anniversary of the Lewis and Clark, when we are anticipating greatly increased visitation along the river and to the surrounding areas, due in large part to the records and descriptions as detailed by these explorers on their 1804 trip.

The bill will also aid native river fish and wildlife, help to restore cottonwoods along the river, reduce flood losses, and enhance recreation and tourism, all vital to the economies and quality of life to our communities along the river. It also provides authorities for the revitalization of historic riverfronts, similar to the ongoing 'Back to the River' revitalization project currently underway in my home state of Nebraska. The Back of the River Project in Nebraska is bringing our families and our businesses back to the Missouri River, for recreational enjoyment as well as for the commercial and business-related opportunities that follow. It is our hope that this will aid other communities to participate in similar efforts in their riverfronts.

Another major provision of this bill is the creation of a long-term, science-based monitoring program on the Missouri River. This program, to be developed and operated through the U.S. Geological Survey-Biological Resources Division in Columbia, Missouri, will monitor the physical, biological, and chemical characteristics of the Missouri River. The program will help us to monitor and assess the quality of biota, habitats, and the water itself in this great river, and to provide information that will enhance our understanding of the Missouri, how it is operated, and how future operation decisions may affect the river.

We currently do not understand a lot about the river, beyond the physical and some of the habitat-based impacts that have been caused by channelization. This program will create a publicly-accessible database of all the information we do have on the river, and all that is collected through the project, and will help to guide our management of the river in the future. The database will also provide additional opportunities for the people who live along the river to interact with the river in another way, and to learn more about the river that they live near.

I have seen how successful educational opportunities related to the River can be, and how excited and involved children and adults get when they learn about and become more involved with their natural resources. The Fontenelle Forest Association in Nebraska, which contains forests and wetlands, and is along the Missouri River, has hands-on exhibits, live animal displays, teaching spaces, and even meeting spaces for Nebraskans. Ken Finch, the Executive Director of the Fontenelle Forest Association, has been instrumental in providing educational programs and opportunities, including a program called H2Omaha, a multi-faceted science education program which uses the Missouri River and its watershed as a living laboratory. I envision that the Missouri River database created by this Improvement Act will greatly expand information and data available to Ken and the participants at Fontenelle Forest, and I know that other communities will find this resource valuable, as well.

I have also seen successful restoration efforts on the river—efforts like Boyer Chute and Hamburg Bend in Nebraska—both side channels created with the aid of the Corps of Engineers. These side channels have been enormously successful in restoring lost habitat for river species by creating slower-moving, more shallow waterways parallel to the river. These restoration areas have attracted not just wildlife, such as the native fish and birds and even river otter that historically lived in large numbers on the Missouri, but have also attracted canoeists and hikers who enjoy the scenic beauty and the recreational opportunities that these sites offer. This bill will help communities to create additional restoration projects like this along the river, projects that will not impact existing uses of the river, but that will add immensely to recreational and wildlife opportunities, and that will also add additional flood protection to surrounding communities.

In anticipation of the greatly increased visitation along the river that will occur with the Lewis and Clark bicentennial celebration, the bill additionally will establish Lewis and Clark Interpretive Centers to educate the public about the Missouri River, and will allow the Corps of Engineers to provide enhancements to recreational facilities and visitors centers.

Mr. President, I urge my colleagues who represent the states and communities along the Missouri River to look closely at this bill, and to join me and the other cosponsors of the bill in supporting this important legislation. The Missouri River Valley Improvement Act of 1999 will help to restore and improve our access and enjoyment of the river, and will provide vital economic, recreational, and educational opportunities for everyone who lives along and visits this great river, the Crown Jewel of the midwest.●

By Mr. DURBIN (for himself, Mr. TORRICELLI, Ms. MIKULSKI, and Mr. CLELAND):

S. 1281. A bill to consolidate in a single independent agency in the executive branch the responsibilities regarding food safety, labeling, and inspection currently divided among several Federal agencies.

THE SAFE FOOD ACT

Mr. DURBIN. Mr. President, today I am introducing legislation that would replace the current fragmented federal food safety system with a single, independent agency responsible for all federal food safety activities—the Safe Food Act of 1999 (S. 1281). I am pleased to be joined by Senators TORRICELLI, MIKULSKI, and CLELAND in this important effort.

Make no mistake, our country has been blessed with one of the safest and most abundant food supplies in the world. However, we can do better. Foodborne illness is a significant problem.

The safety of our nation's food supply is facing tremendous pressures with regard to emerging pathogens, an aging population with a growing number of people at high risk for foodborne illnesses, broader food distribution patterns, an increasing volume of food imports, and changing consumption patterns.

The General Accounting Office (GAO) estimates that as many as 81 million people will suffer food poisoning this year and more than 9,000 will die. Children and the elderly are especially vulnerable. In terms of medical costs and productivity losses, foodborne illness costs the nation up to \$37 billion annually. The situation is not likely to improve without decisive action. The Department of Health and Human Services predicts that foodborne illnesses and deaths will increase 10–15 percent over the next decade.

In 1997, a Princeton Research survey found that 44 percent of Americans believe the food supply in this country is less safe than it was 10 years ago. American consumers spend more than \$617 billion annually on food, of which about \$511 billion is spent on foods grown on U.S. farms. Our ability to assure that the safety of our food and to react rapidly to potential threats to food safety is critical not only for public health, but also to the vitality of both domestic and rural economies and international trade.

Many of you are probably following the dioxin crisis in Belgium. Days before the national elections poultry, eggs, pork, beef, and dairy products were withdrawn from supermarket shelves. Butcher shops closed and livestock farms were quarantined. Since then countries, worldwide, have restricted imports of eggs, chickens, and pork from the European Union. Public outrage in Belgium over the dioxin scandal led to a disastrous showing by the ruling party in the national and European elections on June 14, and the government was forced to resign. Food safety concerns and fears are global.

Today, food moves through a global marketplace. This was not the case in the early 1900's when the first federal food safety agencies were created. Throughout this century, Congress responded by adding layer upon layer—agency upon agency—to answer the pressing food safety needs of the day. That's how the federal food safety system got to the point where it is today. And again as we face increasing pressures on food safety, the federal government must respond. But we must respond not only to these pressures but also to the very fragmented nature of the federal food safety structure.

Fragmentation of our food safety system is a burden that must be changed to protect the public health from these increasing pressures. Currently, there are at least 12 different federal agencies, 35 different laws governing food safety, and 28 House and Senate subcommittees with food safety oversight. With overlapping jurisdictions, federal agencies often lack accountability on food safety-related issues.

Last August, the National Academy of Sciences (NAS) released a report recommending the establishment of a "unified and central framework" for managing federal food safety programs, "one that is headed by a single official and which has the responsibility and control of resources for all federal food safety activities." I agree with this conclusion.

The Administration has stepped forward on the issue of food safety—the President's Food Safety Initiatives and the President's Council on Food Safety have focused efforts to track and prevent microbial foodborne illnesses. I commend President Clinton and Secretaries Glickman and Shalala for their commitment to improving our nation's food safety and inspection systems. Earlier this year in response to the NAS report, the President's Council on Food Safety stated its support for the NAS recommendation calling for a new statute that establishes a unified framework for food safety programs with a single official with control over all federal food safety resources.

An independent single food safety agency is needed to replace the current, fragmented system. My proposed legislation would combine the functions of USDA's Food Safety and Inspection Service, FDA's Center for

Food Safety and Applied Nutrition and the Center for Veterinary Medicine, the Department of Commerce's Seafood Inspection Program, and the food safety functions of other federal agencies. This new, independent agency would be funded with the combined budgets from these consolidated agencies.

With overlapping jurisdictions, federal agencies many times lack accountability on food safety-related issues. There are simply too many cooks in the kitchen. A single, independent agency would help focus our policy and improve enforcement of food safety and inspection laws.

The General Accounting Office has been unequivocal in its recommendation for consolidation of federal food safety programs. GAO's April 1998 report states that "since 1992, we have frequently reported on the fragmented and inconsistent organization of food safety responsibilities in the federal government." In a May 25, 1994 report, GAO cites that its "testimony is based on over 60 reports and studies issued over the last 25 years by GAO, agency Inspectors General, and others." The Appendix to the 1994 GAO report lists: 49 reports since 1977, 9 USDA Office of Inspector General reports since 1986, 1 HHS Office of Inspector General report in 1991, and 15 reports and studies by Congress, scientific organizations, and others since 1981.

Again, earlier this year, GAO in its 21-volume report on government waste, pointed to the lack of coordination of the federal food safety efforts as an example. "So many cooks are spoiling the broth," says the GAO while highlighting the absurdity of having one federal agency inspecting frozen meat pizza and another inspecting frozen cheese pizza.

Over 20 years ago, the Senate Committee on Governmental Affairs advised that consolidation is essential to avoid conflicts of interest and overlapping jurisdictions. In a 1977 report the committee stated, "While we support the recent efforts of FDA and USDA to improve coordination between the agencies, periodic meetings will not be enough to overcome [these] problems." This statement is just as true today as it was then.

It's time to move forward. Let us stop using multiple federal agencies to inspect pizza. Instead let us "deliver" what makes sense—a single, independent food safety agency.

A single, independent agency with uniform food safety standards and regulations based on food hazards would provide an easier framework for implementing U.S. standards in an international context. When our own agencies don't have uniform safety and inspection standards for all potentially hazardous foods, the establishment of uniform international standards will be next to impossible.

Research could be better coordinated within a single agency than among multiple programs. Currently, federal funding for food safety research is

spread over at least 20 federal agencies, and coordination among those agencies is ad hoc at best.

New technologies to improve food safety could be approved more rapidly with one food safety agency. Currently, food safety technologies must go through multiple agencies for approval, often adding years of delay.

In this era of limited budgets, it is our responsibility to modernize and streamline the food safety system. The U.S. simply cannot afford to continue operating multiple systems. This is not about more regulation, a super agency, or increased bureaucracy, it's about common sense and more effective marshaling of our existing federal resources.

With the incidence of food recalls on the rise, it is important to move beyond short-term solutions to major food safety problems. A single, independent food safety and inspection agency could more easily work toward long-term solutions to the frustrating and potentially life-threatening issue of food safety.

Mr. President, together, we can bring the various agencies together to eliminate the overlap and confusion that have, unfortunately, at times characterized our food safety efforts. We need action, not simply reaction. I encourage my colleagues to join me in this effort to consolidate the food safety and inspection functions of numerous agencies and offices into a single, independent food safety agency.

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

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

S. 1281

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the "Safe Food Act of 1999".

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Establishment of independent Food Safety Administration.
Sec. 5. Consolidation of separate food safety and inspection services and agencies.
Sec. 6. Additional authorities of the Administration.
Sec. 7. Limitation on authorization of appropriations.
Sec. 8. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—Congress finds the following:

(1) The safety and security of the food supply of the United States requires efficient and effective management of food safety regulations.

(2) The safety of the food supply of the United States is facing tremendous pressures with regard to the following issues:

(A) Emerging pathogens and the ability to detect them.
(B) An aging population with a growing number of people at high risk for foodborne illnesses.

(C) An increasing volume of imported foods, without adequate monitoring and inspection.

(D) Maintenance of adequate inspection of the domestic food processing and food service industry.

(3) Federal food safety inspection, enforcement, and research efforts should be based on scientifically supportable assessments of risks to public health.

(4) The Federal food safety system is fragmented, with at least 12 primary Federal agencies governing food safety.

(b) **PURPOSES.**—It is the purpose of this Act—

(1) to establish a single agency, the Food Safety Administration, that will be responsible for the regulation of food safety and labeling and for conducting food safety inspections to ensure, with reasonable certainty, that no harm will result from the consumption of food, by preventing food-borne illnesses due to microbial, natural, or chemical hazards in food; and

(2) to transfer to the Food Safety Administration the food safety, labeling, and inspection functions currently performed by other Federal agencies, to achieve more efficient management and effective application of Federal food safety laws for the protection and improvement of public health.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) **ADMINISTRATION.**—The term "Administration" means the Food Safety Administration established under section 4.

(2) **ADMINISTRATOR.**—The term "Administrator" means the Administrator of Food Safety appointed under section 4.

(3) **FOOD SAFETY LAWS.**—The term "food safety laws" means the following:

(A) The Federal Meat Inspection Act (21 U.S.C. 601 et seq.).

(B) The Poultry Products Inspection Act (21 U.S.C. 451 et seq.).

(C) The Egg Products Inspection Act (21 U.S.C. 1031 et seq.).

(D) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), with regard to food safety, labeling, and inspection under that Act.

(E) Such other laws and portions of laws regarding food safety, labeling, and inspection as the President may designate by Executive order as appropriate to consolidate under the administration of the Administration.

SEC. 4. ESTABLISHMENT OF INDEPENDENT FOOD SAFETY ADMINISTRATION.

(a) **ESTABLISHMENT OF ADMINISTRATION; ADMINISTRATOR.**—There is established in the executive branch an agency to be known as the "Food Safety Administration". The Administration shall be an independent establishment, as defined in section 104 of title 5, United States Code. The Administration shall be headed by the Administrator of Food Safety, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) **RESPONSIBILITIES.**—The Administrator shall administer and enforce the food safety laws for the protection of the public health and shall oversee the following functions of the Administration:

(1) Implementation of Federal food safety inspection, enforcement, and research efforts, based on scientifically supportable assessments of risks to public health.

(2) Development of consistent and science-based standards for safe food.

(3) Coordination and prioritization of food safety research and education programs with other Federal agencies.

(4) Coordination of the Federal response to foodborne illness outbreaks with other Federal agencies and State agencies.

(5) Integration of Federal food safety activities with State and local agencies.

SEC. 5. CONSOLIDATION OF SEPARATE FOOD SAFETY AND INSPECTION SERVICES AND AGENCIES.

(a) TRANSFER OF FUNCTIONS.—For each Federal agency specified in subsection (b), there are transferred to the Administration all functions that the head of the Federal agency exercised on the day before the effective date specified in section 8 (including all related functions of any officer or employee of the Federal agency) that relate to administration or enforcement of the food safety laws, as determined by the President.

(b) COVERED AGENCIES.—The Federal agencies referred to in subsection (a) are the following:

(1) The Food Safety and Inspection Service of the Department of Agriculture.

(2) The Center for Food Safety and Applied Nutrition of the Food and Drug Administration.

(3) The Center for Veterinary Medicine of the Food and Drug Administration.

(4) The National Marine Fisheries Service of the National Oceanic and Atmospheric Administration of the Department of Commerce as it relates to the Seafood Inspection Program.

(5) Such other offices, services, or agencies as the President may designate by Executive order to further the purposes of this Act.

(c) TRANSFER OF ASSETS AND FUNDS.—Consistent with section 1531 of title 31, United States Code, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds that relate to the functions transferred under subsection (a) from a Federal agency shall be transferred to the Administration. Unexpended funds transferred pursuant to this subsection shall be used by the Administration only for the purposes for which the funds were originally authorized and appropriated.

(d) REFERENCES.—After the transfer of functions from a Federal agency under subsection (a), any reference in any other Federal law, Executive order, rule, regulation, document, or other material to that Federal agency or the head of that agency in connection with the administration or enforcement of the food safety laws shall be deemed to be a reference to the Administration or the Administrator, respectively.

(e) SAVINGS PROVISIONS.—The transfer of functions from a Federal agency under subsection (a) shall not affect—

(1) an order, determination, rule, regulation, permit, agreement, grant, contract, certificate, license, registration, privilege, or other administrative action issued, made, granted, or otherwise in effect or final with respect to that agency on the day before the transfer date with respect to the transferred functions; or

(2) any suit commenced with regard to that agency, and any other proceeding (including a notice of proposed rulemaking), or any application for any license, permit, certificate, or financial assistance pending before that agency on the day before the transfer date with respect to the transferred functions.

SEC. 6. ADDITIONAL AUTHORITIES OF THE ADMINISTRATION.

(a) OFFICERS AND EMPLOYEES.—The Administrator may appoint officers and employees for the Administration in accordance with the provisions of title 5, United States Code, relating to appointment in the competitive service, and fix the compensation of the officers and employees in accordance with chapter 51 and with subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—The Administrator may procure the services of ex-

perts and consultants as authorized by section 3109 of title 5, United States Code, and pay in connection with the services travel expenses of individuals, including transportation and per diem in lieu of subsistence while away from the homes or regular places of business of the individuals, as authorized by section 5703 of such title.

(c) BUREAUS, OFFICES, AND DIVISIONS.—The Administrator may establish within the Administration such bureaus, offices, and divisions as the Administrator may determine to be necessary to discharge the responsibilities of the Administration.

(d) RULES.—The Administrator may prescribe, in accordance with chapters 5 and 6 of title 5, United States Code, such rules as the Administrator determines to be necessary or appropriate to administer and manage the functions of the Administrator.

SEC. 7. LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.

For the fiscal year that includes the effective date of this Act, the amount authorized to be appropriated to carry out this Act shall not exceed—

(1) the amount appropriated for that fiscal year for the Federal agencies described in section 5(b) for the purpose of administering or enforcing the food safety laws; or

(2) the amount appropriated for these agencies for such purpose for the preceding fiscal year, if, as of the effective date of this Act, appropriations for these agencies for the fiscal year that includes the effective date have not yet been made.

SEC. 8. EFFECTIVE DATE.

This Act shall take effect on the earlier of—

(1) the date that is 180 days after the date of the enactment of this Act; and

(2) such date during that 180-day period as the President may direct in an Executive order.

By Mr. NICKLES:

S. 1284. A bill to amend the Federal Power Act to ensure that no State may establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy or otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier; to the Committee on Energy and Natural Resources.

Mr. NICKLES. Mr. President, I rise today to introduce the Electric Consumer Choice Act. For the last three years hearings and workshops have been held in both the House and Senate examining the issue of restructuring the electric industry. Many bills have been introduced on this issue by both Congressmen and Senators, some comprehensive and some dealing with more discreet issues such as repeal of the Public Utility Holding Company (PUHCA) or repeal of the Public Utility Regulatory Policies Act of 1978 (PURPA). The bill that I am introducing today cuts to the heart of the issue: do we or don't we support allowing consumers to choose their electric supplier? Do we or don't we support a national competitive market in electricity? I believe the answer to these questions is a resounding "yes"! I believe competition is good, that free markets work and that every American will benefit from a competitive electric industry.

The Electric Consumer Choice Act is intended to begin the process of achiev-

ing a national, competitive electricity market. It achieves this in a simple, straight-forward method. Primarily, it eliminates electric monopolies by prohibiting the granting of exclusive rights to sell to electric utilities. It prohibits undue discrimination against consumers purchasing electricity in interstate commerce. It provides for access to local distribution facilities and it allows a state to impose reciprocity requirements on out-of-state utilities. The bill before you today also includes a straight repeal of PUHCA and the prospective repeal of the mandatory purchase provisions of PURPA. The bill also makes it clear that nothing in this act expands the authority of the Federal Energy Regulatory Commission (FERC) or limits the authority of a state to continue to regulate retail sales and distribution of electric energy in a manner consistent with the Commerce Clause of the United States Constitution.

The premise of this bill is that all attributes of today's electric energy market—generation, transmission, distribution and both wholesale and retail sales—are either in or affect interstate commerce. Therefore, any State regulation of these attributes that unduly discriminates against the interstate market for electric power violates the Commerce Clause unless such State action is protected by an act of Congress.

The Supreme Court has interpreted Part II of the Federal Power Act (FPA) as protecting State regulation of generation, local distribution, intrastate transmission and retail sales that unduly discriminates against the interstate market for electric power. The Court has reasoned that Congress, in the FPA, determined that the federal government needed only to regulate wholesale sales and interstate transmission in order to adequately protect interstate commerce in electric energy. Thus, all other aspects of the electric energy market were reserved to the States and protected from challenges under the Commerce Clause. The Electric Consumer Choice Act amends the FPA to eliminate the protection provided for State regulation that establishes, maintains, or enforces an exclusive right to sell electric energy or that unduly discriminates against any consumer who seeks to purchase electric energy in interstate commerce.

This bill provides consumers and electric energy suppliers with the means to achieve retail choice in all States by January 1, 2002. It does not impose a federal statutory mandate on the States. It does not preempt the States' traditional jurisdiction to regulate the aspects of the electric power market in the reserved realm—generation, local distribution, intrastate transmission, or retail sales—it merely limits the scope of what the States can do in that realm. It does not expand or extend FERC jurisdiction into the aspects of traditional State authority.

As I stated earlier, this bill is intended to provide every consumer a

choice when it comes to electricity suppliers. It is intended to be the beginning, not the end of the process. There are many other issues that need to be addressed at the federal level to facilitate a national market for electricity. Some of these issues include taxation differences between various electric providers, clarification of jurisdiction over transmission, ensuring reliability, providing for inclusion of the Power Marketing Administrations and the Tennessee Valley Authority in a national market, and other issues that can only be addressed at the Federal level. These issues need to be addressed and should be addressed. But while these issues are being debated we should ensure that progress towards customer choice proceeds.

I am proud to say that my state of Oklahoma has been in the forefront of opening up its electricity markets to competition. Nineteen other states have also moved to open their markets. It is my hope that the Electric Consumer Choice Act will facilitate this process nationally. To that end, I am introducing this bill today.

Mr. President, I ask unanimous consent that the Electric Consumer Choice Act be printed in the RECORD.

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

S. 1284

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 "Electric Consumer Choice Act".

SEC. 2. FINDINGS.

The Congress finds that—

(a) the opportunity for all consumers to purchase electric energy in interstate commerce from the supplier of choice is essential to a dynamic, fully integrated and competitive national market for electric energy;

(b) the establishment, maintenance or enforcement of exclusive rights to sell electric energy and other State action which unduly discriminates against any consumer who seeks to purchase electric energy in interstate commerce from the supplier of its choice constitutes an unwarranted and unacceptable discrimination against and burden on interstate commerce;

(c) in today's technologically driven marketplace there is no justification for the discrimination against and burden imposed on interstate commerce by exclusive rights to sell electric energy or other State action which unduly discriminates against any consumer who seeks to purchase electric energy in interstate commerce from the supplier of its choice; and

(d) the electric energy transmission and local distribution facilities of all of the nation's utilities are essential facilities for the conduct of a competitive interstate retail market in electric energy in which all consumers have the opportunity to purchase electric energy in interstate commerce from the supplier of their choice.

SEC. 3. DECLARATION OF PURPOSE.

The purpose of this act is to ensure that nothing in the Federal Power Act or any other federal law exempts or protects from Article I, Section 8, Clause 3 of the Constitution of the United States exclusive rights to sell electric energy or any other State ac-

tions which unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from the supplier of its choice.

SEC. 4. SCOPE OF STATE AUTHORITY UNDER THE FEDERAL POWER ACT.

Section 201 of the Federal Power Act (16 U.S.C. §824) is amended by adding at the end the following—

"(h) Notwithstanding any other provision of this section, nothing in this Part or any other federal law shall be construed to authorize a State to—

"(1) establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy; or,

"(2) otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier."

SEC. 5. ACCESS TO TRANSMISSION AND LOCAL DISTRIBUTION FACILITIES.

No supplier of electric energy, who would otherwise have a right of access to a transmission or local distribution facility because such facility is an essential facility for the conduct of interstate commerce in electric energy, shall be denied access to such facility or precluded from engaging in the retail sale of electric energy on the grounds that such denial or preclusion is authorized or required by State action establishing, maintaining, or enforcing an exclusive right to sell, transmit, or locally distribute electric energy.

SEC. 6. STATE AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

Part II of the Federal Power Act (16 U.S.C. §824) is amended by adding at the end the following:

SEC. 215. STATE AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

"A State or state commission may prohibit an electric utility from selling electric energy to an ultimate consumer in such State if such electric utility or any of its affiliates owns or controls transmission or local distribution facilities and is not itself providing unbundled local distribution service in a State in which such electric utility owns or operates a facility used for the generation of electric energy."

SEC. 7. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) is repealed, effective on and after the enactment of this Act.

SEC. 8. PROSPECTIVE REPEAL OF SECTION 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978.

(a) NEW CONTRACTS.—No electric utility shall be required to enter into a new contract or obligation to purchase or to sell electricity or capacity under section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a-3).

(b) EXISTING RIGHTS AND REMEDIES.—Nothing in this section affects the rights or remedies of any party with respect to the purchase or sale of electricity or capacity from or to a facility determined to be a qualifying small power production facility or a qualifying cogeneration facility under section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) under any contract or obligation to purchase or to sell electricity or capacity in effect on the date of enactment of this Act, including the right to recover the costs of purchasing the electricity or capacity.

SEC. 9. SAVINGS CLAUSE.

Nothing in this Act shall be construed to—

(a) authorize the Federal Energy Regulatory Commission to regulate retail sales or local distribution of electric energy or otherwise expand the jurisdiction of the Commission, or,

(b) limit the authority of a State to regulate retail sales and local distribution of electric energy in a manner consistent with Article I, Section 8, Clause 3 of the Constitution of the United States.

SEC. 10. EFFECTIVE DATES.

Section 5 and the amendment made by Section 4 of this act take effect on January 1, 2002. The amendment made by section 6 of this act takes effect on the date of enactment of this act.

By Mr. GRAHAM (for himself, Mr. DEWINE, and Mr. FEINGOLD):

S. 1285. A bill to amend section 40102(37) of title 49, United States Code, to modify the definition of the term "public aircraft" to provide for certain law enforcement and emergency response activities; to the Committee on Commerce, Science, and Transportation.

LAW ENFORCEMENT PUBLIC AVIATION REFORM ACT OF 1999

• Mr. GRAHAM. Mr. President, I am extremely pleased to join with my distinguished colleagues, Senator DEWINE and Senator FEINGOLD, in introducing the Law Enforcement Public Aviation Reform Act of 1999. This legislation will help law enforcement officers in their efforts to protect our citizens. In 1994, the Congress made a terrible mistake when it passed Public Law 103-411. Under this law, aircraft belonging to law enforcement agencies are considered "commercial" if costs incurred from flying missions to support neighboring jurisdictions are reimbursed.

In the last Congress, we were able to include an amendment on the Commerce, State, and Justice appropriations bill that would have made the necessary changes. Unfortunately, this measure was stripped from the final conference committee report.

This law has placed unnecessary restrictions and costly burdens on government agencies who operate public aircraft, particularly law enforcement agencies. At a time when law enforcement faces growing sophistication and organization of criminals, the federal government should not be placing additional mandates on our law enforcement officials. This law is so restrictive that it even prevents assistance from neighboring jurisdictions under mutual aid compacts.

Current law requires that the agency in need of assistance exhaust all commercially available options before requesting assistance from another jurisdiction. Even in the event of "significant and imminent threat to life or property," the requesting agency must first establish that "no service by a private operator was reasonably available to meet the threat." Law officers, pledged to protect public safety and fight crime, need the flexibility to determine the appropriate aircraft for any particular mission. They should not be required to offer private companies the right of first refusal on sensitive law enforcement missions. In

many cases, it is simply not appropriate to have private companies performing law enforcement or other governmental functions.

Under this bill, public agencies would be permitted to recover costs incurred by operating aircraft to assist other jurisdictions for the purpose of law enforcement, search and rescue, or imminent threat to life, property or natural resources.

Mr. President, law enforcement organizations strongly support this bill. This legislation has the endorsement of the National Sheriff's Association, Airborne Law Enforcement Association, International Association of Chiefs of Police, Florida Sheriff's Association, and the California State Sheriff's Associations. From my home state in Florida, I have heard from Sheriff George E. Knupp, Jr. of Lake County. Sheriff Knupp stated, "Current law restricts our ability to use this aircraft in the best possible manner and frankly, the law questions the authority of a popularly elected official to exercise the duties and responsibilities of the office."

Our bipartisan proposed is simple, sound, and will serve the interests of law enforcement officials across this country. I urge all my colleagues to support the passage of this much needed legislation. Further delay in this matter will only serve to cost the American people unnecessary tax dollars and hamper the efforts of our law enforcement officials.●

• Mr. FEINGOLD. Mr. President, I rise today to join my distinguished colleague from Florida, Senator GRAHAM, to introduce a bill that will assist our local law enforcement agencies to respond in a timely fashion to life or death situations.

Sheriffs in my state and around this country have found that their hands are tied when it comes to sharing helicopters or other public aircraft with neighboring jurisdictions. The Milwaukee County Sheriff's Department recently became the first sheriff's department in Wisconsin to acquire a helicopter. Neighboring counties would like to borrow that helicopter and reimburse the Milwaukee County Sheriff for the cost of their use of that helicopter. The Milwaukee County Sheriff's Department is perfectly willing to share its helicopter but it can't easily do so. Under current law, in order for the assisting agency to receive a cost reimbursement from the neighboring jurisdiction for use of a helicopter, the neighboring sheriff must first exhaust the possibility that a private commercial helicopter is available. Even when the neighboring sheriff is faced with a serious imminent threat to life or property, the law requires the neighboring sheriff to first determine whether a privately operated helicopter is available. This law is absurd and puts everyone's safety at risk.

Law enforcement agencies use helicopters for a variety of reasons—to chase a suspect fleeing the scene of a crime, in search and rescue missions,

to control crowds in public gatherings, to transport prisoners and to detect and eradicate marijuana. Saving lives and maintaining law and order is delayed if we require sheriffs to determine first whether they can find a private helicopter. Public safety is also jeopardized because private commercial pilots are likely not trained law enforcement personnel with experience in sensitive and sometimes dangerous situations. But if we allow sheriffs to share their aircraft with neighboring jurisdictions without first exhausting private avenues, law enforcement response is far more likely to be swift and sure.

This bill modifies the definition of "public aircraft" so that law enforcement agencies no longer need to make an attempt to find a private helicopter operator before using a neighboring jurisdiction's helicopter.

Mr. President, we demand that law enforcement act quickly and professionally to life or death situations. But we're not giving them the tools they need to do their job. We must do our part. I urge my colleagues to join in this bipartisan effort to change the law and give the sheriffs in Wisconsin and across this country the tools they need to keep our communities safe and secure.●

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

S. 1286. A bill to authorize the Attorney General to make grants to local educational agencies to carry out school violence prevention and school safety activities in secondary schools; to the Committee on the Judiciary.

SCHOOL SAFETY FUND ACT

Mrs. BOXER. Mr. President, it has been two months since the tragic shooting at Columbine High School in Colorado. That incident heightened awareness around the country—and I saw it first hand when I traveled throughout California—of the need to take steps to make our schools safer.

It seems to me that being safe in school is a fundamental right. It ought to be a top priority of every school district in America—and I know that a lot of schools are committed to making improvements. But some are having a hard time finding the money to do what needs to be done. I believe it ought to be a top priority of the federal government to help localities do what they need to do to ensure the safety of our children when they are in school.

So, today, I am introducing, along with my colleague, Senator DURBIN, the School Safety Fund Act. This bill would allow the Attorney General to provide grants to school districts to undertake a variety of activities to prevent school violence and to make our schools safer. The key is we want local schools to make the decision about what they need to do, but we want the federal government to provide some financial help.

Now, what are some of the things that schools want to—and should—do?

Schools could establish hotlines and tiplines, so that students could anonymously report potentially dangerous situations. We could put more community police officers in the public schools. Some schools need metal detectors and other security equipment. I think almost all schools could use more counselors, psychologists, and school social workers. Many teachers and administrators need training on the identification of the early warning signs of troubled youth. And, many of our students need conflict resolution programs and mentoring.

The point is, each school needs to decide the extent of its problem and what the best solution will be in that community. We are not dictating here. We are saying that we want to—we need to—help our local schools.

Let me talk about how these grants will be funded, because I think it is an interesting approach. Rather than set up a specific authorization level—rather than pulling a number out of a hat and saying, this is the need—my bill would give discretion to the Attorney General. The bill says that the Attorney General can make these grants out of the Violent Crime Reduction Trust Fund to meet the need that is out there.

For example, if there is a particular crisis in a particular community, the Attorney General has the flexibility to make grants. She does not have to wait for Congress to act—or watch as Congress fails to act. If the problem improves, the Attorney General can spend less or, perhaps someday, no money at all for school safety. Again, the number of grants would be based on an assessment of the needs.

Finally, let me say a word about my cosponsor, Senator DURBIN. I am very pleased to have him join me in this effort because several weeks ago, he fought this fight hard. He was a member of the conference committee on the supplemental appropriations bill, and he tried to get additional emergency funding—and it was and still is, in many respects, an emergency—for many of the activities we are talking about in this bill. Some on the other side of the aisle resisted his efforts, and eventually they voted him down. But, with his previous work on the subject, I am so pleased that he has joined me on this bill.

Mr. President, it is now mid-June, and many schools are closed for the summer or will close shortly. We must reject the notion that because our children are no longer in school, there is no longer a problem. There is a problem, and unless we begin to find ways to solve it—and unless the federal government helps fund the solutions our local communities come up with—I fear that when the school house doors open again in the Fall, the problem might again hit the front pages of the newspapers.

I urge my colleagues to support this bill, and I ask unanimous consent that a copy be printed in the RECORD.

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

S. 1286

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 "School Safety Fund Act of 1999".

SEC. 2. DEFINITIONS.

In this Act, the terms "local educational agency" and "secondary school" have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

SEC. 3. PURPOSE.

The purpose of this Act is to assist local educational agencies in preventing and responding to the threat of juvenile violence in secondary schools through the implementation of effective school violence prevention and school safety programs.

SEC. 4. PROGRAM AUTHORIZED.

The Attorney General is authorized to carry out a program under which the Attorney General awards grants to local educational agencies to assist the local educational agencies in establishing and operating school violence prevention and school safety activities in secondary schools.

SEC. 5. APPLICATIONS.

Each local educational agency desiring a grant under this section shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may require. Each application shall—

- (i) include a detailed explanation of—
 - (A) the intended uses of funds provided under the grant; and
 - (B) how the activities funded under the grant will meet the purpose of this Act; and
 - (2) a written assurance that the funds provided under the grant will be used to supplement and not supplant other State and local public funds available for school violence prevention and school safety activities in secondary schools.

SEC. 6. AUTHORIZED ACTIVITIES.

A local educational agency may use grant funds provided under this Act—

- (1) to establish hotlines or tiplines for the reporting of potentially dangerous students and situations;
- (2) to hire community police officers;
- (3) to purchase metal detectors, surveillance cameras, and other school security equipment;
- (4) to provide training to teachers, administrators, and other school personnel in the identification and detection of, and responses to, early warning signs of troubled and potentially violent youth;
- (5) to establish conflict resolution, counseling, mentoring, and other violence prevention and intervention programs for students;
- (6) to hire counselors, psychologists, mental health professionals, and school social workers; and
- (7) for any other purpose that the Attorney General determines to be appropriate and consistent with the purpose of this Act.

SEC. 7. FUNDING.

From amounts appropriated to the Department of Justice from the Violent Crime Reduction Trust Fund established under section 310001 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14211), the Attorney General may make available such sums as may be necessary to carry out this Act for each of the fiscal years 2000 through 2004.

SEC. 8. REPORT TO CONGRESS.

Not later than November 30th of each year, the Attorney General shall report to Con-

gress regarding the number of grants funded under this Act for the preceding fiscal year, the amount of funds provided under the grants for the preceding fiscal year, and the activities for which grant funds were used for the preceding fiscal year.

ADDITIONAL COSPONSORS

S. 71

At the request of Ms. SNOWE, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 71, a bill to amend title 38, United States Code, to establish a presumption of service-connection for certain veterans with Hepatitis C, and for other purposes.

S. 348

At the request of Ms. SNOWE, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 348, a bill to authorize and facilitate a program to enhance training, research and development, energy conservation and efficiency, and consumer education in the oilheat industry for the benefit of oilheat consumers and the public, and for other purposes.

S. 386

At the request of Mr. GORTON, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 386, a bill to amend the Internal Revenue Code of 1986 to provide for tax-exempt bond financing of certain electric facilities.

S. 631

At the request of Mr. DEWINE, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 631, a bill to amend the Social Security Act to eliminate the time limitation on benefits for immunosuppressive drugs under the medicare program, to provide continued entitlement for such drugs for certain individuals after medicare benefits end, and to extend certain medicare secondary payer requirements.

S. 655

At the request of Mr. LOTT, the names of the Senator from Tennessee (Mr. THOMPSON), the Senator from Kansas (Mr. ROBERTS), the Senator from Wyoming (Mr. ENZI), the Senator from Utah (Mr. HATCH), and the Senator from Michigan (Mr. ABRAHAM) were added as cosponsors of S. 655, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

S. 693

At the request of Mr. HELMS, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 693, a bill to assist in the enhancement of the security of Taiwan, and for other purposes.

S. 712

At the request of Mr. LOTT, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 712, a bill to amend title 39, United States Code, to allow postal patrons to contribute to funding for highway-rail

grade crossing safety through the voluntary purchase of certain specially issued United States postage stamps.

S. 801

At the request of Mr. SANTORUM, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 801, a bill to amend the Internal Revenue Code of 1986 to reduce the tax on beer to its pre-1991 level.

S. 817

At the request of Mrs. BOXER, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 817, a bill to improve academic and social outcomes for students and reduce both juvenile crime and the risk that youth will become victims of crime by providing productive activities during after school hours.

S. 894

At the request of Mr. CLELAND, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 894, 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. 911

At the request of Mr. GRAMS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 911, a bill to amend title XVIII of the Social Security Act to ensure medicare reimbursement for certain ambulance services, and to improve the efficiency of the emergency medical system, and for other purposes.

S. 1023

At the request of Mr. MOYNIHAN, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1023, a bill to amend title XVIII of the Social Security Act to stabilize indirect graduate medical education payments.

S. 1144

At the request of Mr. VOINOVICH, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 1144, a bill to provide increased flexibility in use of highway funding, and for other purposes.

S. 1157

At the request of Mr. SESSIONS, his name was added as a cosponsor of S. 1157, a bill to repeal the Davis-Bacon Act and the Copeland Act.

S. 1172

At the request of Mr. TORRICELLI, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 1172, a bill to provide a patent term restoration review procedure for certain drug products.

S. 1200

At the request of Ms. SNOWE, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1200, a bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

S. 1212

At the request of Mr. CAMPBELL, the name of the Senator from Alaska (Mr.